

Environment Bay of Plenty

Report From: B W O'Shaughnessy
Principal Environmental Consents Officer

Date: 15 July 2004

File Reference: 1370 05 0518

Report to:

AC Bruere
Manager Consents & Compliance

Meeting of

**Non-Notified
Change Application
Consent Number 05 0518
Trustees of Te Tumu Kaituna 14 and 7B Trusts
Papamoa**

1 **Background**

On 28 March 2001, the Trustees of Te Tumu Kaituna 14 Trust and Te Tumu Kaituna 7B Trust were granted a resource consent for large scale earthworks to carry out sand mining operations on the sand dunes inland from the foredune at the eastern end of Papamoa Beach.

On 5 July 2004, the consent holders made application pursuant to section 127 of the Resource Management Act 1991 (RMA), to change conditions of Consent No. 05 0518.

Under the terms of the original application, conditions of consent provided for works to be limited to no greater than 0.5 hectares of exposed ground, and that surveying be undertaken by a Registered Surveyor.

The application for change of consent requests that the following matters be considered:

- An increase in the amount of area that is open for mining from 0.5 to 3 hectares for land within the less sensitive inland areas; and
- To provide for the surveying of the area by expert mining personnel other than a Registered Surveyor.

The applicant has entered into contractual arrangements with Fulton Hogan Ltd to undertake the sand mining operations. Fulton Hogan Ltd have been operating on the site for approximately 18 months. The previous contractor had operated the sand mining excavations with a number of breaches of conditions, particularly in terms of having large areas exposed, with little rehabilitation, and on-going problems of dust emissions. Since starting at the site, Fulton Hogan's operations have generally been in accordance with consent conditions except for the area exposed. The contractor has found it extremely difficult to carry out sand excavations and remain within the 0.5 hectare maximum exposed area.

Fulton Hogan Ltd has operated the quarry in a manner that provides for progressive rehabilitation as the areas are worked out. The current area of operations is within the less sensitive older sand dunes, which are approximately one kilometre landward of the Coastal Marine Area.

The sensitive dune areas are generally in the order of 250 metres to 350 metres from the Coastal Marine Area, and have been identified on a new plan (BOPRC Plan No. RC 50518/4). BOPRC Plan No. RC 50518/4 clearly identifies the more sensitive coastal dune area (where a maximum area of exposed ground would remain at 0.5 ha), and the less sensitive dune area to the landward side of the wetland swale (where the proposed maximum area of exposed ground would become 3 ha).

The requirement for the area to be surveyed by a Registered Surveyor relates specifically to the need for accuracy in terms of levels and set back distances from the Coastal Marine Area. For the excavation areas within the less sensitive dunes, this requirement is not necessary. Surveying in the more sensitive fore dune area may not specifically require a Registered Surveyor, but would need to be carried out to the satisfaction of the Chief Executive of the Regional Council to ensure that the survey is accurate.

2 Time Frames

The application for change of consent was lodged on 5 July 2004. The area was inspected on 14 July 2004, and no further information was required for consent processing purposes.

3 Discussion

3.1 Matters to be Considered

In considering changes pursuant to s.127 (RMA), the RMA requires consideration of adverse effects, submitters to the original application, and affected parties to the change application.

3.2 Adverse effects

Sections 127 (3)(a) and (b) RMA, require that the application for change of condition be treated as for a discretionary activity, and that sections 88 to 121 RMA apply. Section 104(1) RMA requires the consideration of Part II matters, and that regard be had to: any actual and potential effects on the environment of allowing the activity (s.104(1)(a)); the Bay of Plenty Regional Policy Statement (s.104(1)(b)(iii); relevant plans (s.104 (1)(b)(iv)) and other matters (s.104(1)(c)).

Possible environmental effects from the application to change include the following:

- Potential for wind erosion and dust emissions from the larger areas opened at any one time.
- Uncertainty in terms of area excavated and ground levels.

The applicant has generally been operating with approximately 3 hectares open for the last 18 months. The applicant has noted that there are operational difficulties operating an efficient excavation site on a smaller area, as 3 hectares allows for the efficient movement of machines, stockpiling and progressive rehabilitation. Compliance monitoring during this period has indicated that dust problems tend to be confined to the access road, and the dust is not a nuisance off site. The dust problems on the access road can be relatively easily controlled using a water cart as necessary.

Providing the 3 hectares of maximum exposed area is confined to the less sensitive inland dunes (as identified on BOPRC Plan No. RC 50518/4), then it is considered that adverse effects as a result of increasing the area of exposed ground is no more than minor.

The degree of accuracy required for survey information in the less sensitive area does not need the services of a Registered Surveyor. However, in the more sensitive Coastal Dune area, there is a requirement for a high degree of accuracy. This does not necessarily mean that it needs to be undertaken by a Registered Surveyor, but it does need a competent surveyor to attain a reasonably high degree of accuracy. This can be achieved by specifying that the survey will be carried out to the satisfaction of the Chief Executive of the Regional Council or delegate.

The applicant has not proposed any change that is within more sensitive area close to the foredune. The proposed increase in area for exposed ground for sand mining operations is on the landward side of the wetland swale as set out in BOPRC Plan No. RC 50518/4.

It is considered that that proposed change is not inconsistent with the objectives and policies of the Bay of Plenty Regional Policy Statement, Bay of Plenty Regional Coastal Environment Plan or proposed Regional Water and Land Plan. It is also considered that the change is not inconsistent with the objectives, policies or rules of the Bay of Plenty Regional Land Management Plan.

3.3 Original submitters / Affected Parties

The original application was processed as a non-notified application. Consultation was undertaken with the Department of Conservation and the Historic Places Trust. Their concerns were subsequently addressed by the land use consent issued by the Tauranga District Council. Therefore, in terms of the Regional Council earthworks consent, there were no identified affected parties.

3.4 Iwi Consultation

The applicants are duly elected representatives of the tangata whenua trusts and as such are considered, in line with the Consents & Compliance Iwi Consultation Guidelines, to be spokespeople for the cultural and spiritual values of the land.

3.5 **Waiver of Notification**

It is considered that the adverse environmental effects resulting from the proposed change will be no more than minor, and there are no identified parties to the proposed change.

Accordingly, under delegated authority, the Manager Consents and Compliance has approved that public notification can be waived, pursuant to s.94 RMA.

4 **Schedule of Proposed Changes**

4.1 **Condition 5.2**

Amend condition 5.2 by amalgamating original conditions 5.2 and 5.3, and referring to exceptions set out under new condition 5.3.

Amended condition 5.2:

The activity shall be carried out in stages as generally described in BOPRC Plan No. RC 50518/3 within the following parameters:

- Each stage set out in BOPRC Plan No. RC 50518/3 shall be no greater than 0.5 hectares in area; and
- The consent holder shall ensure that no more than 0.5 hectares of ground is exposed for sand mining at any time during the duration of this consent except for those areas described in condition number 5.3.

4.2 **New Condition 5.3**

Delete existing condition 5.3, and insert new condition 5.3.

New condition 5.3

Mining landward of the Dune-Inland Area Boundary shown on Boffa Miskell Plan "Bell Road Sand Mine Site Plan – 30 June 2004" and identified as BOPRC Plan No. RC 50518/4 shall comply with the following:

- The activity shall generally be carried out in stages, with each stage being no greater than 3 hectares; and
- The consent holder shall ensure that no more than 3 hectares of ground is exposed for sand mining landward of the Dune-Inland Area Boundary, at any time during the duration of this consent.

4.3 **Condition 5.6**

Amend condition 5.6 by deleting "Registered Surveyor" and inserting "surveyor".

Amended condition 5.6

Prior to earthworks commencing, the consent holder shall engage a surveyor to carry out the following:

- (a) Submit a plan confirming the location of each stage of excavation as being in accordance with the application, which shall be submitted to the Regional Council prior to the activity commencing.
- (b) Place survey pegs at the corners of the seaward boundary of the excavation stages, and clearly demarcating the location of the 100-metre set back from Mean High Water Springs prior to the activity commencing. The pegs shall remain in place for the duration of the activity. The seaward boundary of the proposed excavation should not be sited directly at the 100 metre set back distance. Instead, the siting should be of sufficient distance inland from the 100 metre set back point to take into account any dune stabilisation that needs to be carried out on completion of excavation, such that there is no disturbance of sand dunes within the 100 metre set back area.
- (c) Provide a copy of the plan approved by Tauranga District Council (either in total or for each stage) showing the proposed final earthworks contours to a standard suitable for use to monitor the rehabilitation of the site.

4.4 **Condition 5.7**

Amend condition 5.7 by deleting “Registered Surveyor” and inserting “surveyor”.

Amended condition 5.7

Following the completion of each stage of excavation, a surveyor shall be engaged to provide sufficient details on the extent of excavation, to confirm that the excavation stage has not exceeded the extent identified by this consent, and has not encroached into the 100 metre set back from Mean High Water Springs. The information shall be submitted to the Regional Council within one month of the date of completion of each stage.

4.5 **New condition 5.8**

Insert new condition 5.8 as written below:

The consent holder shall ensure that the survey information provided pursuant to conditions 5.6 and 5.7 is undertaken by a competent surveyor and is accurate to the satisfaction of the Chief Executive Officer of the Regional Council or delegate.

4.6 **Consequential change**

As a result of the proposed changes, there needs to be a consequential change to condition 5.1, referring to the information provided by the change application. This results in a further two bullet points being added to the original consent condition 5.1

Amended Condition 5.1

The works shall be carried out in general accordance with the following documentation:

- NIWA Consultancy Report PAT005 “Application for Large Scale earthworks on the Te Tumu Kaituna No. 7B and 14 Blocks” by R Keith Smith, Andrew Swales and Ron Ovenden, dated December 1994.
- Further Information on the Large Scale Earthworks on the Te Tumu Kaituna No. 7B and 14 Blocks dated June 1995 (NIWA Consultancy Report PAT005).

- Addendum to the Large Scale Earthworks at Te Tumu Kaituna Blocks 7B and 14 Proposal by R Keith Smith, Andrew Swales and Ron Ovenden 1994, Proposed Sequence of Mining at Papamoa.
- Information in sections 2 and 3 of “Application by Te Tumu Kaituna 14 Trust and Te Tumu 7B Trust to Environment Bay of Plenty for Variation to Large Scale Earthworks Consent at Bell Road, Papamoa” dated June 2004.
- Boffa Miskell Plan “Bell Road Sand Mine Site Plan – 30 June 2004”, identified as BOPRC Plan No. RC 50518/4.

5 **Conclusion**

It is considered that the adverse effects of the proposed change are likely to be no more than minor, and therefore, the proposed change is consistent with the principles of sustainable management and the purpose of the Resource Management Act 1991.

Report prepared by Norm Ngapo, Environmental Consultant

Recommendation

That the Regional Council:

Approve the changes to Resource Consent 05 0518 as scheduled above.

B W O'Shaughnessy
Principal Consents Officer

Reasons for the decision

1. The decision meets the purpose of the Resource Management Act 1991 and was made after having regard to the provisions of Part II of the Act. In particular, the decision provides for avoiding, remedying and mitigating any adverse environmental effects of the activity.
2. The decision is consistent with the objectives and policies of the Bay of Plenty Regional Policy Statement, the Bay of Plenty Regional Coastal Environment Plan, and the proposed Bay of Plenty Regional Water and Land Plan.
3. The decision is consistent with the objectives policies and rules of the Bay of Plenty Regional Land Management Plan and the Bay of Plenty Regional Air Plan.
4. The adverse effects of the change application activity are considered to be no greater than minor.