



Office of the Attorney-General

8 August 2014

Bay of Plenty Regional Council

PO Box 364


Whakatane 3158

Application for Resource consent *MV Rena*

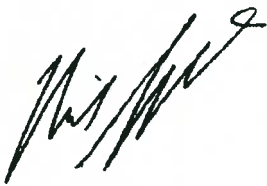
1. The Crown makes this submission on the resource consent application for the *MV Rena* to be left on the Astrolabe (Ōtāiti) Reef.
2. The application to abandon the wreck of the *MV Rena* its equipment fittings and cargo including discharges is opposed in part.
3. The grounding of the *MV Rena* on the Astrolabe Reef (Ōtāiti) was a nationally significant maritime environmental disaster. As a result of the significant efforts of many people, including local communities, Maori, and central and local government, the worst effects were dealt with during the initial cleanup effort in 2011 and 2012.
4. The Crown's four year *Rena* Long-term Environmental Recovery Plan, developed in conjunction with many groups, including tangata whenua, is being funded by the Government through to June 2015. The report prepared by Waikato University arising out of the Plan's environmental monitoring workstream concluded at a high level that the Bay of Plenty environment is recovering well.
5. While the initial response and subsequent prosecution addressed the immediate clean up, the proposal to leave the wreck *in situ* requires resource consent and consideration of ongoing longer term effects is a significant regional issue, including for Maori with strong cultural connections to the Reef, which they consider is a taonga. For these reasons, and others, the Crown has decided to make a submission.
6. To achieve the purpose of the Resource Management Act 1991 the Crown seeks improved outcomes in terms of health and safety, environmental, social and cultural effects recognising that any action must be able to be safely and reasonably achieved.

7. The detailed parts of this submission contained in attachment 1 that follow broadly address the following;
 - 7.1 The effects of the abandonment of the *MV Rena* on the Astrolabe (Otaiti) Reef, including effects on cultural values, marine and birdlife (including threatened bird species), natural character and recreational values;
 - 7.2 Possible mitigation of adverse effects through consent conditions and monitoring requirements; and
 - 7.3 Where further information would assist in determining the application.

8. The Crown wishes to be heard on this submission.



Hon Christopher Finlayson QC
Attorney-General of New Zealand



Hon Dr Nick Smith
Minister of Conservation



Hon Amy Adams
Minister for the Environment

Attachment 1

This submission relates to the application in its entirety. The Crown opposes the application in part. In terms of **specific parts of the application**:

1. The Crown opposes in part the applicant leaving *in situ* those parts of the wreck and its debris field that currently lie above the minus 30m Lowest Astronomical Tide (LAT) contour. The remaining parts of the wreck that lie above the minus 30m LAT contour should be removed, as well as specific material from the debris field, as outlined below¹.
2. In the event that the decision maker is of a mind to grant consent to leave *in situ* those parts of the wreck and its debris field that lie below the minus 30m LAT contour, the Crown seeks more rigorous consent conditions including an improved monitoring regime and an extended duration of consent, as set out in parts 3, 4 & 5 of this attachment.
3. In the event that decision maker is of a mind to grant consent to discharge contaminants from the wreck and its debris field, the Crown seeks appropriate conditions including an improved monitoring regime and an extended duration of consent to ensure that discharges (including of copper clove, antifoulant or other toxins, and plastic beads) do not adversely affect the marine or coastal environment, as set out in parts 3, 4 & 5 of this attachment.

REASONS

1. Wreck removal

- 1.1 The applicant proposes limited partial wreck removal which will result in much of the wreck and debris currently in place being left *in situ*.
- 1.2 Full wreck removal is considered as an alternative to the limited partial wreck removal proposed in the applicant's Assessment of Environmental Effects (AEE). The applicant has identified significant short term risks associated with full removal. The most substantial costs and risks are associated with the aft section of the wreck and debris lying below the 30m LAT contour, which is also the accepted limit for recreational diving. The applicant discounts full removal of the wreck citing significant concern for diver safety and the substantial financial costs it would impose.
- 1.3 A fuller examination of partial wreck removal options other than the limited partial wreck removal proposed by the applicant is warranted. For example, options involving other techniques (e.g. a wreck grab, jack up rigs, dynamically positioned craft and alternative cutting techniques) should also be assessed.
- 1.4 In evaluating the single option of limited partial wreck removal, several notable risks appear to have been understated. These include the risk of movement of the wreck and debris field during future storm events, contamination arising from the copper clove cargo, and the loss of Tributyltin (TBT) paint material from the wreck's hull.

¹ Refer decisions sought, (2) (a), (b), (c) pg 7

- 1.5 The application partly relies on information collected prior to Cyclone Lusi that occurred in March 2014. It is unclear from the information provided to what extent the limited partial wreck removal proposed by the applicant will occur and within what timeframe. The lack of reliable and clear baseline information about what the state of the wreck will be at the time of decision making, makes evaluation of the effects of the proposal difficult to establish.
- 1.6 In its current form the proposed limited partial wreck removal does not achieve sustainable management or address the directions in section 6 matters of national importance. Options for an increased degree of (partial) wreck removal would improve sustainable management outcomes in terms of health and safety, environmental, social and cultural effects and section 6 matters of national importance.
- 1.7 The Crown acknowledges that full wreck removal presents additional risks to health and safety and will incur substantial costs particularly in relation to that part of the wreck below the minus 30m LAT contour. A balanced approach should give consideration to more comprehensive partial wreck removal options for the remaining parts of the wreck that lie above the minus 30m LAT contour. Partial removal options need to recognise that any action must be able to be safely and reasonably achieved.

2. Assessment of risks and effects

Cultural values

- 2.1 The owner's assessment in relation to tāngata whenua values records that tāngata whenua consider the reef is a taonga, but currently focuses mainly on the value of Ōtāiti (Astrolabe Reef) as a food gathering resource. The limited focus is an insufficient acknowledgment of wider cultural values, including the values of tāngata whenua living on Motiti Island, which is closest to the reef.
- 2.2 The Crown supports the ongoing involvement of iwi throughout the duration of the consent and the establishment of the proposed Kaitiakitanga Reference group.

Discharges

- 2.3 The AEE and supporting documents do not provide sufficiently clear information or analysis about the scope of discharges that are likely to occur during the term of the consent sought, the effect of the discharges and how quickly the environment might recover. The New Zealand Coastal Policy Statement (NZCPS) Policy 23 (Discharges of Contaminants) is relevant, but has only been assessed within the application in a limited way.
- 2.4 The AEE and its supporting documents do not provide sufficiently clear information about what constitutes a zone of reasonable mixing for any of the known contaminants around the wreck and debris field. The establishment of reasonable mixing zones for the proposed discharges is essential to determine

appropriate monitoring thresholds and, whether further work or actions may be required to manage the environmental effects of the proposed discharges.

- 2.5 NZCPS Policy 3 (Precautionary Approach) is relevant to consideration of the proposal under s104 of the RMA. The AEE acknowledges that there are various uncertainties related to the extent and nature of the discharges from the cargo (some of which is not accounted for) and from the debris field. The risk of effects that are uncertain, unknown, or little understood, but potentially significantly adverse, requires active consideration.
- 2.6 There are significant data gaps and a lack of sufficiently detailed or scientifically robust risk assessment, particularly in terms of water or seabed sediment contamination, risk to endangered birds, and dangers to human visitors to the reef. Specific areas which merit further attention here include antifoulant paint discharges; management of the remaining cargo (such as plastic beads and copper clove), and the risks to recreational divers. It is unclear how safety for recreational divers will be maintained on an ongoing basis, given that any remaining debris (from both the ship and cargo) is likely to be re-mobilised and dispersed after each major weather event.
- 2.7 There is also no information to support the statement in the AEE that there will be no discharges after 5 years. The technical reports which accompany the AEE do not support this proposition.

Copper clove

- 2.8 The Crown notes the lack of clarity in the AEE, proposed conditions and monitoring regime with regard to potential discharges arising from copper clove. The applicant's technical report acknowledges that a mass release of copper clove could potentially lead to significant contamination of sediment within an area in excess of 48 hectares, however there is insufficient information provided to enable the potential risks from this discharge to be properly assessed. For example, it is not clear what the risks are to the health and safety of recreational divers or what the ecological effects would be, including recovery time of ecosystems should a mass release occur.
- 2.9 The AEE states that the risk of a mass release of copper clove is very low, unless there is a major physical disturbance to Hold 6 (which is the copper clove's assumed location). The Crown considers that this assessment is insufficient, especially with regard to the likely ongoing degradation of the wreckage through storms and currents and given the significant movement of the wreck that occurred with Cyclone Lusi.

Plastic beads

- 2.10 The AEE states that remnant plastic beads exist in such small volumes that risks (especially to avifauna) are negligible. However, the AEE also notes that there is still one container of beads that is unaccounted for, and that it will be removed "if located". The existence of the container presents a high risk to seabirds and other marine fauna if the beads are released, and the proposal

should therefore detail measures to locate and recover the container. These measures should be addressed by conditions.

- 2.11 In the event that the beads are not recovered, monitoring and consent conditions including review conditions should be employed to manage the risk to seabirds.

Antifoulants

- 2.12 The effect of antifoulant discharges arising from degradation of the wreck is an issue that needs to be further explored, and there is no scientifically robust information on this issue in the applicant's technical reports. Further information is necessary, including in relation to the history of the hull coating regime, an antifoulant toxins hazard assessment, identification of pathways for toxin release, the degree of existing colonisation of painted surfaces, and whether substances other than the four identified (copper, zinc, diuron and tributyltin) were analysed.

Natural Character

- 2.1 NZCPS policies 13 (Natural Character) and 15 (Natural Features and Landscapes), are relevant to the proposal, but they have only been assessed in a limited way. For example, only the small area of the reef where the wreck is located is the focus of the applicant's assessment of effects. However, effects have been and are likely to continue to be experienced across a wider area, and should be included assessment of natural character.

3. Conditions and monitoring

- 3.1 Greater clarity is required in respect of the date on which partial wreck removal (as sought by the applicant) would be complete, and how the timing of that activity relates to the proposed 10 year period of the consent. It is unclear whether the 10 year period is intended to commence on completion of partial wreck removal, or whether the 10 year period encompasses the wreck removal work. In any event, and on a precautionary basis, the Crown is not confident that the 10 year time frame for consent will be long enough to deal with adverse effects arising from the proposed abandonment.
- 3.2 The applicant proposes a Monitoring Plan, however its purpose and content appears to be too broadly stated to provide meaningful results. The proposed Monitoring Plan includes contingencies to respond to areas of environmental concern, but these are generally not clearly specified. If the consent is granted, the proposed Monitoring Plan would need to be supported by a robust set of consent conditions. Conditions should effectively prescribe the Monitoring Plan's objectives and expected content as well as processes for oversight and

formal approval by the Council and processes for amendment in response to future circumstances.

- 3.3 The applicant proposes various consent conditions including a monitoring regime, but reserves an unusually high degree of discretion to itself as the future consent holder. Discretions regarding the significance of monitoring trends and changes or reviews to monitoring requirements should rest with the Regional Council, with input from an independent review body (such as a peer review panel) appointed by the Council. The roles, membership, appointment process and administration of such a panel should also be set out in the conditions, should consent be granted.

Bond

- 3.4 The applicant has proposed that a fund be established to ensure compliance with consent conditions, as an alternative to a bond. However, it is not clear whether the intention is to ensure that the fund will also secure the performance of measures that are required to address adverse effects that become apparent after the expiry of the consent. A bond imposed in accordance with s108A of the RMA is required for that reason, and also because the 'fund' itself should not be used for the environmental management, but rather as an "insurance policy" available to the Council in the event the consent holder does not meet its obligations under the consent.

- 3.5 If a bond is imposed, it should (in accordance with s108A(2)(c)) provide that the liability of the consent holder is not limited to the amount of the bond.

The Crown seeks the following **decisions**:

1. That the decision maker seek further information from the applicant to address issues arising in the application documentation, as identified above and concerning:
 - Assessment of tāngata whenua values.
 - Assessment in relation to wreck removal options.
 - Updated and accurate assessment of the current state of the wreck, including maps, photographs and details on the extent of the partial wreck removal to date.
 - Assessment of the risks and effects related to antifoulant paint.
 - Assessment of the risks and effects related to copper clove.
 - Assessment of the risks and effects related to plastic beads.
 - Assessment of risks to recreational divers.
 - Assessment related to natural character.
 - Clarity around the commencement date for the consent, should consent be granted.
 - Expected term of the discharges.

2. Above the minus 30m Lowest Astronomical Tide (LAT) contour, refuse in part consent to dump and discharge the materials which comprise the wreck (the remains of the ship, its equipment, fittings and cargo) including materials listed in Table 2 (Material remaining on the seabed (or lost to the sea)) of the Assessment of Environmental Effects which are also either;

(a) Materials greater than 1m² in area, which is generally considered prudent or good practice when compared to salvage events worldwide;

(b) Materials that present an entanglement or other physical hazard to divers, marine mammals or seabirds, or;

(c) Copper clove

and require that those materials as referred to in 2. (a) – (c) be removed to the extent which it is practicable.

3. In the event consent is granted (whether above and/or below minus 30m LAT), improved consent conditions are imposed for the dumping of the wreck and contaminant discharges from those parts of the wreck left *in situ*. In particular, consent conditions should specify:

(a) The nature of the activities required to be undertaken as part of the partial wreck removal operations, including requirements for the removal of those parts of the wreck above minus 30m LAT as specified in 2. (a) – (c) above;

(b) The date or time period (after grant of consent) within which partial wreck removal operations are to be completed;

(c) The date or time period (after grant of consent) within which the Shoreline Debris Management Plan is to be submitted to the Council for approval;

(d) The date or time period (after grant of consent) within which the Restoration & Mitigation Package is to be submitted to the Council for approval.

4. In the event that consent is granted (whether above and/or below minus 30m LAT), require an extended duration of consent, to better address the long term effects of the abandonment of the wreck.

5. In the event that consent is granted (whether above and/or below minus 30m LAT), require improved consent conditions and monitoring regime for those parts of the wreck left *in situ*. In particular, improvements to the proposed regime should include:

(a) An appropriate bond; which does not limit the wider liability of the consent holder;

- (b) An appropriate definition of 'major storm event' as referred to in sections 9.2 and 9.6 of the AEE, and in sections 4.2 and 5.0 of the monitoring plan;
- (c) An appropriate definition of 'additional monitoring' as referred to in section 1.0 of the monitoring plan; ;
- (d) The establishment of a peer review panel or 'Reference Group' comprised of experts in relevant areas to assist the Council in determining monitoring requirements and methodologies and assessing the actual adverse effects, should the consent be granted. The reasonable administration and other costs of the Reference Group should be met by the consent holder;
- (e) Monitoring provisions related to the physical environment (including reef sediments, invertebrates, marine mammals and fish species) that have been prepared in conjunction with the expert 'Reference Group';
- (f) Monitoring of the effects of 'major storm events' on the further breakup of the wreck and movement of the debris field and consequent effects on:
 - i. The recognised outstanding natural character values of the Astrolabe Reef,
 - ii. Associated risks to recreational diving activities (should such activities be authorised);
- (g) Within a defined area , monitoring of the effects of any plastic bead releases subsequent to the applicant lodging its resource consent application on:
 - i. Amenity and recreational values of the beach shorelines;
 - ii. Birdlife.
- (h) Monitoring of marine mammals if sonar is used in the partial recovery operations;
- (i) In relation to monitoring, specification of appropriate effects 'thresholds' or 'triggers' (rather than 'upward trends' as proposed) that will be used to determine if an effect is of a 'no more than minor' nature as predicted in the application reports;
- (j) Specification of the different actions (such as removal and relocation of 'at risk' invertebrate species as proposed) that the consent holder is required to take if the monitoring results show a 'more than minor' effect, particularly in respect of contaminant discharges that are of a potentially ecotoxic nature;
- (k) A programme for definitive and robust sediment sampling and analysis that enables contaminant levels and effects to be accurately assessed.

The programme should specify and include particular biocides and heavy metals. Meeting this condition will require a significantly expanded sample area and more replicates than are currently indicated by the application;

- (l) A robust fish sampling programme that covers a range of customary, commercial and recreational species from a range of trophic levels;
- (m) A requirement that the Director-General of Conservation be provided with copies of all monitoring reports;
- (n) Provision for review conditions to deal with any adverse effect arising from the exercise of the consent, in addition to the proposed fixed (2 year) review time period.
- (o) Provision for actions to address adverse effects of remaining debris and/or continuing discharges on the expiry of the consent.