



SHELLY BAY ROAD,
SHELLY BAY
SHELLY BAY TAIKURU LIMITED

RESOURCE CONSENT
& DISCHARGE PERMIT APPLICATION

SEPTEMBER 2021

DOCUMENT CONTROL

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1. APPLICATION DETAILS

TABLE ONE: APPLICATION DETAILS

<p>LOCALITY DIAGRAM</p> <p>(Source: Wellington City Council Online Maps)</p>	
<p>SITE ADDRESS</p>	<p>Shelly Bay Road, Shelly Bay Taikuru, Wellington 6022</p>
<p>LEGAL DESCRIPTION</p>	<p>Lots 1 – 8 DP 515825, Lot 100 DP 515825, Section 3 – 6 SO 339948, Section 10 SO 339948, Section 100 SO 528811, Lot 906 DP 548924, Lots 13 – 24 DP 548924 and Section 1 SO 419545</p> <p>Refer Record of Title's attached in Appendix Two</p>
<p>TOTAL SITE AREA</p>	<p>12.4 hectares</p>
<p>APPLICANT</p>	<p>Shelly Bay Taikuru Limited</p>
<p>REGIONAL PLANS</p>	<p>Proposed Natural Resources Plan (Appeals Version) ("PNRP-AV") Regional Freshwater Plan ("RFP") Regional Discharges to Land Plan ("RDLP") Regional Coastal Plan ("RCP") Regional Soil Plan ("RSP")</p>
<p>NATIONAL ENVIRONMENTAL STANDARDS</p>	<p>National Environmental Standard for Freshwater ("the NES-F")</p>
<p>NATIONAL POLICY STATEMENTS</p>	<p>National Policy Statement for Urban Development 2020 ("the NPS-UD") National Policy Statement for Freshwater Management ("the NPS-FW")</p>
<p>PROPOSAL DESCRIPTION</p>	<p>Land use consent for earthworks / soil disturbance Discharge permit for operational stormwater to land where it may enter water Discharge permit for sediment laden stormwater to land where it may enter water Discharge permit for discharge from contaminated land Land use consent for vegetation clearance, replacement stormwater inflill structure in the bed of an intermittent stream and associated diversion and discharge.</p>
<p>OVERALL ACTIVITY STATUS</p>	<p>Discretionary Activity</p>

2. INTRODUCTION

The Applicant, Shelly Bay Taikuru Limited, seeks land use consents and discharge permits from the Greater Wellington Regional Council (“the Regional Council”) to undertake earthworks to facilitate the Shelly Bay Masterplan development at Shelly Bay, Wellington.

Resource consents and discharge permits are required under the PNRP-AV and regional rules that are still operative for the following:

- Discharge permit for operational stormwater;
- Land use consent for earthworks exceeding 3,000m² associated within new urban development;
- Discharge permit and resource consent for works associated with the replacement of an existing structure in the bed of an intermittent stream;
- Discharge permit for discharges from a contaminated site;
- NES-FW resource consent for the reclamation of a portion of an intermittent stream associated with the replacement of an inlet structure; and,
- Land use consent for vegetation clearance.

Seawall maintenance and upgrade works will form part of a separate consent application to the Regional Council.

2.1 INFORMATION REQUIREMENTS

The information in this application meets the requirements of Section 88 and the Fourth Schedule of the Resource Management Act 1991 (“the Act”). The following documents are included as appendices to this application:

- Regional Council Resource Consent Forms (**Appendix One**);
- Record of Titles (**Appendix Two**);
- Earthworks Plans (**Appendix Three**);
- Stormwater Discharge Report and stormwater plans (**Appendix Four**);
- Earthworks and Construction Management Plan and ESC plans (**Appendix Five**);
- Ecology Memorandum (**Appendix Six**);
- GWRC Pre-Application Meeting Minutes (**Appendix Seven**);
- WCC Masterplan Resource Consent Decision and Conditions (**Appendix Eight**);
- Preliminary Site Investigation (**Appendix Nine**);
- Ecology Memorandum - Freshwater (**Appendix Ten**);
- Ecology Memorandum - Coastal (**Appendix Eleven**);
- Preliminary Geotechnical Assessment (**Appendix Twelve**);
- Contaminated Site Management Plan (**Appendix Thirteen**);

- Soil and Sampling Analysis Plan (**Appendix Fourteen**); and,
- Cultural Impact Assessment (**Appendix Fifteen**).

2.2 PRE-APPLICATION MEETINGS

Pre-application meetings were held with Regional Council Officers and Advisors on the 29th of September 2020 and the 4th of February 2021. Regional Council minutes from these meetings are attached as **Appendix Seven**.

3. BACKGROUND

In June 2014, Wellington City Council (“WCC”) and Central Government entered into the Wellington City Housing Accord (“the Accord”) under Sections 10 and 11 of the Housing Accords and Special Housing Areas Act 2013.

As part of the Accord, a Special Housing Area (“SHA”) was established at Shelly Bay, and an application was lodged by The Wellington Company Limited to redevelop the site in accordance with the Shelly Bay Masterplan (“the Masterplan”) and the Shelly Bay Design Guide (“the Design Guide”). Together, the Masterplan and the Design Guide set out the framework and guidelines for the predominantly multi-unit residential development with supporting mixed-use activities, as well as a new public realm and infrastructure and roading upgrades.

The application was initially granted by WCC in 2017. This was followed by a judicial review of the decision being lodged with the High Court and the decision of the High Court to uphold WCC’s decision was then appealed to the Court of Appeal. The Court of Appeal then quashed WCC’s decision to grant the resource consent and, in its decision on 3 December 2018, the Court ordered the application to be resubmitted to Council for reconsideration. The reconsidered application was lodged with Council on 9 May 2019 and on 31 October 2019 it was granted via an Independent Hearings Panel. A judicial review was lodged for the reconsidered application and the High Court recently upheld WCC’s decision to grant the resource consent.

3.1 SHELLY BAY MASTERPLAN RESOURCE CONSENT

The Masterplan consented by WCC sets out building locations, footprints, maximum building envelopes and activity use as a basis for the future detailed design. Through a process set out in resource consent conditions, future development in accordance with the Masterplan will be approved at the detailed design stage via an appointed Shelly Bay Independent Design Panel.

The overall design strategy for the development is described in Section 1.4 of the Masterplan document¹ as follows:

The Masterplan has evolved to respond to the unique characteristics and features of the Shelly Bay area, including the relationship to the wider peninsular, hills and harbour.

The figure opposite describes the key drivers and features of the plan and include:

- *Landscape links and views to a regenerating escarpment;*
- *Emphasising the promontory arrival points into Shelly Bay as natural landscape spaces;*

¹ Refer Shelly Bay Masterplan document: <https://wellington.govt.nz/-/media/property-rates-and-building/resource-consents/files/hashaa-applications/shelly-bay/shelly-bay-2019/appendix-2-shelly-bay-masterplan.pdf?la=en&hash=D22A9A1F4C4624E8265B31C5BA1E14C078B8B9EC>

- *Creating a publicly accessible, continuous waterfront;*
- *Creating a heart to the area that optimises the existing character buildings; and,*
- *Stepping relationship of built form to foreshore. Lower scale finer grain to Shelly Bay Road, larger scale forms set up and back.*
- *Creating a place through place based and placemaking activities that is distinctively Taranaki Whanui*

Typically, public facilities and amenities are located on the harbour side of the main through road (Shelly Bay Road / Massey Road). Residential accommodation is placed to the east of the road.

Two scales of residential development are proposed. The 'front row' adjacent to the main road are townhouse and detached house sites. These will be no greater than three levels in height. Behind these are apartment building sites.

These will be no greater than six levels in height and will have a generous ground floor height to elevate the lower apartment levels to improve their outlook to the harbour. The townhouse sites and apartment sites are separated by a laneway that provides vehicle access and will create a 12m separation between buildings.

The Shelly Bay Masterplan sets out to create a unique waterfront destination for Wellington. Drawing on its military and Maori lineage and embracing the water's edge and hills. Shelly Bay will become a place of special community, a place to live and work, and to interact with the natural environment that is distinctively Taranaki Whanui.

Key outcomes of the plan include:

- *A high quality publicly accessible waterfront of promenade, wharf and beach;*
- *Strong expression of two bays and promontories;*
- *Historic character integrated and authentically displayed;*
- *Retained robustness and informality of the former air force base;*
- *A vibrant mixed use 'heart' at Shelly Bay Wharf;*
- *A unique living environment with a mix of housing and boutique hotel;*
- *Enhanced landscape and vegetation with visual and physical connections to the bush-clad hills;*
- *Upgraded Shelly Bay Road and Massey Road street system;*
- *Minimised intervention and earthworks to the escarpment; and,*
- *Development largely contained within the lower flat platforms of the two bays.*

3.1.1 SHELLY BAY MASTERPLAN STORMWATER CONCEPT

The Infrastructure Report² that accompanied the Masterplan resource consent application described the stormwater concept that was consented by WCC as follows:

“Stormwater from the Shelly Bay development area currently discharges through a number of undersized stormwater pipe and outfall structures passing under Shelly Bay Road and cascading into Shelly Bay.

The Lines are in poor condition and don’t work with the proposed development layout. It is intended that a proposed new network of public stormwater lines ranging in size from 225mm dia to 900mm dia will be installed, including 3 new / upgraded outfall structures discharging to Shelly Bay.

The proposed gravity reticulation required to serve the Shelly Bay development is shown on the approved Envelope resource consent plans.

In addition, we have also made some allowances for installation of rain gardens for runoff from proposed trafficked paved areas.

The required infrastructure will allow for the sufficient and appropriate drainage of stormwater into, within and thorough the site, along with the appropriate and controlled disposal into the harbour.”

Through the Masterplan resource consent process, Wellington Water Limited (“WWL”) agreed to the stormwater concept, including size and location of pipework and disposal of stormwater to the Coastal Marine Area (“CMA”) via new stormwater outlets, and provided conditions that were imposed on the Masterplan resource consent.

3.1.2 SHELLY BAY DESIGN GUIDE

A Design Guide³ that sets out the framework for Shelly Bay was consented with the Masterplan. The Design Guide includes the following overall principles, design guidance and technical specifications that are of relevance to aspects of this application:

PUBLIC REALM PRINCIPLES

- **INTEGRATE ENVIRONMENTAL INFRASTRUCTURE AND SUSTAINABILITY –**
 - *Support ecological function and biodiversity through selection of native coastal species in appropriate collections.*
 - *Undertake ecological repair including removal of weed species and reintroduction of indigenous native species.*
 - *Treat polluted stormwater from roads and parking, in a visible manner where feasible, prior to release into the marine environment.*
 - *Ensure design is resilient to predicted sea level rise and storm surge impacts for life cycle of materials, elements and structures.*

VILLAGE GREEN

- *GUIDELINE G1: Utilise space available to include raingardens for stormwater treatment of road runoff*
- *TECHNICAL SPECIFICATION T1: Surface to be fine grade asphalt.*

² Refer Infrastructure Report: <https://wellington.govt.nz/-/media/property-rates-and-building/resource-consents/files/hashaa-applications/shelly-bay/shelly-bay-2019/appendix-10-shelly-bay-infrastructure-report-combined.pdf?la=en&hash=CD126CB30A55A87FC41C6E8F43F73E8B6E646CB8>

³ Refer Shelly Bay Design Guide: <https://wellington.govt.nz/-/media/property-rates-and-building/resource-consents/files/hashaa-applications/shelly-bay/shelly-bay-2019/appendix-3-shelly-bay-design-guide.pdf?la=en&hash=274393F42A2A02851E76C057988FAEA2FD8B3478>

SHELLY BAY WHARF

- *TECHNCIAL SPECIFICATION T1: Asphalt surfacing. Within wharf itself retention of existing wharf surfacing with replacement where necessary to provide safe surfacing.*
- *TECHNCIAL SPECIFICATION T3: Raingarden to be provided with min 200mm wide concrete edges.*

Defining the stormwater concept at the masterplanning stage has ensured that adequate provision has been made for stormwater management, and that stormwater requirements have been integrated with other design elements in the overall design of the development.

3.1.3 SHELLY BAY MASTERPLAN RESOURCE CONSENT CONDITIONS

For reference, the Independent Hearings Panel Decision for the Masterplan resource consent is attached as **Appendix Eight**. The consent conditions include requirements to:

- Prepare an Earthworks and Construction Management Plan (Condition 18);
- Implement control measures to be put in place to prevent sediment, earth or debris collecting on land beyond the site, or Council's stormwater system or Wellington Harbour (Condition 22);
- Prepare as-builts of completed earthworks (Condition 25);
- Prepare Geotechnical Completion Reports after the completion of earthworks (Condition 26); and,
- Prepare a Contaminated Soil Management Plan (Condition 31).

In relation to the stormwater network, consent conditions require:

- Preparation of detailed construction plans for all stormwater connections (Condition 55);
- Installation of stormwater connections be in accordance with the detailed design plans (Condition 56);
- Preparation of detailed construction plans illustrating that the development will be provided with a public gravity stormwater network via a new network or upgrade to the existing network (Condition 58);
- Installation of the public network and/or upgrade to the existing public stormwater network be carried out in accordance with the detailed construction plans (Condition 59); and,
- Preparation of as-built drawings of the new / upgraded network (Condition 60).

In relation to the existing stormwater outfall structures, consent conditions require that:

- Should the existing public stormwater outfalls be utilised, the Consent Holder must assess the ability of the outfall to accommodate any proposed increase in stormwater runoff associated with the development and provide documentation to WWL for certification (Condition 61); and,
- If required, the Consent Holder undertake any works required to upgrade the existing outfalls to accommodate any increase in stormwater runoff associated with any new development (Condition 62).

In relation to stormwater quality, consent conditions require that:

- Prior to the construction of any buildings containing bare, unpainted or untreated materials that can leach contaminants such as lead, copper and zinc, the Consent Holder must submit stormwater treatment solutions to be installed to mitigate stormwater contamination to Council's CMO for certification (Condition 63); and,

- The stormwater treatment solutions required under Condition 63 must be installed in conjunction with the construction of any new buildings containing these materials.

The earthworks, erosion and sediment control measures and stormwater disposal methods included in this application do not conflict with any of the requirements in the Masterplan resource consent conditions. The Masterplan resource consent sets out the intended earthworks and stormwater disposal concept, and it is through the Masterplan conditions and this application that detailed designs have been developed. On this basis, if the resource consents and discharge permits sought in this application are granted by the Regional Council, it will not be necessary to vary the Masterplan resource consent.

4. THE SITE AND SURROUNDING ENVIRONMENT

4.1 THE SITE

The site is approximately 12.4 hectares and is located on the western side of Watts (Miramar) Peninsula / Te Motu Kairangi. Refer **Figure One** below.



FIGURE ONE: APPLICATION SITE

4.1.1 LEGAL DESCRIPTION AND DETAILS

The Masterplan resource consent included subdivision consent to undertake a super-lot subdivision to separate the future development sites, and create a new allotment accommodating the realigned public road. Titles for stages 1A and 1B, being lots 1 – 8 DP 515825 were issued in 2019. The titling of the remainder of the consented allotments, being Stage 1C has yet to be undertaken.

A separate subdivision was granted by WCC to create allotments to accommodate the dwellings in the South Bay that were approved as part of the Masterplan resource consent. These allotments, being lots 13 – 24 DP 548924 were created in 2020.

The site comprises the following titles:

- Lots 1 – 8 DP 515825

- Lot 100 DP 515825
- Section 3 – 6 SO 339948
- Section 10 SO 339948
- Section 100 SO 528811
- Lot 906 DP 548924
- Lots 13 – 24 DP 548924
- Section 1 SO 419545

The Record of Titles for the above land parcels are attached in **Appendix Two**.

4.1.2 REGIONAL PLAN NOTATIONS

PROPOSED NATURAL RESOURCES PLAN (APPEALS VERSION)

There are no overlays or scheduled areas applicable to the application site in the PNRP-AV, but the site is adjacent to the Te Whanganui-a-Tara Wellington Harbour that has the following notations:

- Schedule B – Nga Taonga Nui a Kiwa: Te Whanganui-a-Tara (Wellington Harbour);
- Schedule F2 – Indigenous Bird Habitat;
- Hutt Aquifer Protection Zone; and,
- Wellington Airport Height Restriction Area.

REGIONAL COASTAL PLAN

Te Whanganui-a-Tara Wellington Harbour has the following notations under the Regional Coastal Plan:

- Height restriction area; and,
- Water managed for contact recreation.

4.1.3 BUILDINGS AND ACTIVITIES

In general, the application site accommodates buildings and structures associated with the former RNZAF Shelly Bay Base. Until recently these buildings have been utilised for a range of activities include art studios and galleries, traveller accommodation, and workshops. A café still operates in the former submariners building.

Section 2.4 of the Masterplan⁴ includes a plan illustrating the existing buildings on the site and details the buildings to be retained, relocated, and removed as part of the Masterplan development.

4.1.4 TOPOGRAPHY

The site is defined by two bays (“the North Bay” and “the South Bay”) with steep vegetated coastal escarpments set back from the water’s edge. These coastal escarpments form the dominant landform of the area.

⁴ Refer Shelly Bay Masterplan document: <https://wellington.govt.nz/-/media/property-rates-and-building/resource-consents/files/hashaa-applications/shelly-bay/shelly-bay-2019/appendix-2-shelly-bay-masterplan.pdf?la=en&hash=D22A9A1F4C4624E8265B31C5BA1E14C078B8B9EC>

The area of the site where earthworks and development are predominantly focused is a relatively narrow, flat area that lies between the coast and the escarpment. This area accommodates the buildings and activities outlined above.

Between the two bays is the Shelly Bay wharf. On the landward side of the wharf are the RNZAF former workshop buildings and slipway structures.

4.1.5 GEOLOGY

As part of the Masterplan resource consent, a Preliminary Geotechnical Assessment was undertaken by AECOM and includes an assessment of the geology of the site. For reference, this report is attached in **Appendix Twelve**. This assessment and further geotechnical investigations undertaken on the site have informed the earthworks design outlined in this application.

4.1.6 ACCESS AND PARKING

Access to the site is provided via Shelly Bay Road which connects to the wider roading network via Miramar Avenue and Cobham Drive. Access from the north of the site is via Massey Road, which continues around the head of Te Motu Kairangi.

A formed carriageway runs through the site that generally follows the coastal edge. The formed road carriageway and legal road boundaries are not fully aligned through the site and area combination of vested road, Council owned land and privately-owned land.

Formal and informal parking is provided for the existing activities on hardstand areas of varying condition throughout the site. Section 2.6 of the Masterplan includes a plan illustrating the existing road and parking areas⁵.

4.1.7 STORMWATER MANAGEMENT

There is currently a network of pipes that pipe stormwater to the harbour and the site also receives surface flows from the Mount Crawford prison site above the site. The Stormwater Discharge Report attached in **Appendix Four** of this application outlines that the existing pipework is in poor condition and does not work with the proposed development layout.

The consented stormwater concept for the Masterplan development is outlined in Section Three above.

4.1.8 ECOLOGY AND HYDROLOGY

COASTAL ENVIRONMENT

To inform this application and future seawall works the project ecologists conducted site visits to assess the values and habitats of the CMA of Shelly Bay. The findings of the site investigations are outlined in the Coastal Ecology Memorandum attached as **Appendix Eleven** and are summarised as follows:

- *The coastal environment of Shelly Bay has been modified, comprised of a series of seawalls, historic reclamation and wharfs.*
- *The coastal edge is mainly roadway and hard stand areas with an occasional to rare patch of coastal vegetation, comprised of a mix of pōhutukawa (*Metrosideros excelsa*), native shrubs (shining karamu, *Coprosma lucida*; flax, *Phormium tenax*) and exotic groundcovers (buck's-horn plantain, *Plantago coronopus*; kikuyu grass, *Pennisetum clandestinum*).*

⁵ Refer Shelly Bay Masterplan document: <https://wellington.govt.nz/-/media/property-rates-and-building/resource-consents/files/hashaa-applications/shelly-bay/shelly-bay-2019/appendix-2-shelly-bay-masterplan.pdf?la=en&hash=D22A9A1F4C4624E8265B31C5BA1E14C078B8B9EC>

- Within the CMA the natural environment is a high energy hard shore habitat, with rocky outcrops and mobile cobble beaches, and the seawalls provide a variety of hard substrates, i.e. smooth concrete, rough concrete and boulders, for intertidal and shallow subtidal marine flora and fauna. There were no soft shore habitats or soft deposition areas in the intertidal and shallow subtidal areas, although clean sand was observed at depth under the wharf in the southern embayment.
- The fauna was comprised of common rocky shore crustaceans and shellfish dominated by barnacles, (*Chamaesipho columna*, *Epopella plicata*); gastropod molluscs (*Diloma aethiops*, cats eye, *Lunella smaragda*, oyster borer, *Haustrum scobina*) and limpets (*Cellana radians*, *C. ornata* and *C. denticulata*). Blue mussels (*Mytilus edulis*) and green-lipped mussels (*Perna canaliculus*) occurred rarely as isolated individuals or in rare small patches. There were no large resources of shellfish of an attractive edible size.
- Additional hard shore species were recorded but all were common rocky shore intertidal species and no 'threatened' or 'at risk' fauna were observed (Freeman et al., 2014)¹.
- The flora was comprised of brown algae (*Carpophyllum maschalocarpum*, *Carpophyllum flexuosum*), corallina turf and paint, and occasional red filamentous algae. The brown algae formed bands of dense forests in the subtidal areas within the northern embayment.

TERRESTRIAL ENVIRONMENT

The ecology of Shelly Bay was significantly modified with the development of Shelly Bay as a naval base. The eastern escarpment was recorded as being cleared in 1942 to accommodate construction of the military road and magazine structures.

The eastern portion of the site is formed by a steeply graded vegetated escarpment. The escarpment is characterised by tracts of pine forest covered east-west orientated spurs. As a result of the site's historical excavations, its vegetation has been highly modified.

The site has two distinctive vegetation characters; the flatland coastal edge and steep escarpment. Avenues of Pohutukawas and exotic grasses are the dominant species within the site's lower elevations at the coastal edge. The escarpment backdrop is largely defined by tracts of *Pinus radiata* (*Monterey Pine*) and its lower slopes are largely defined by exotic weed species interspersed with sporadic specimens of Pohutukawas. and *Phormium cookianum* (*Wharariki/ Flax*) and macrocarpa.

Presently, within the exotic pine and macrocarpa forest, emergent regenerating native bush beneath the canopy is observable. Blaschke & Rutherford Environmental Consultants et al⁶, outlined that the regenerating bush on Te Motu Kairangi predominantly comprises:

- *Coprosma rigida*
- Mahoe (*Meliccytus ramiflorus*)
- Ngaio (*Myoporum laetum*)
- New Zealand Jasmine (*Parsonsia heterophylla* Kaihua)
- Kohuhu Pittosporum (*tenuifolium*)
- Five finger (*Pseudopanax arboreus*)

As part of the Masterplan resource consent an 'Escarpment Vegetation Management Zone' has been consented along the escarpment behind the development areas. This zone is intended on promoting

⁶ Watts Peninsula – Feasibility Study Identifying Options for Further Development. Blaschke & Rutherford Environmental Consultants et al, March 2012, for Ministry of Culture.

ecological restoration of the site's landscape features, increasing coastal biodiversity and maintaining the sites 'green' escarpment landscape character. This zone is the green area illustrated in **Figure Two** below.



FIGURE TWO: TREE AND VEGETATION MANAGEMENT PLAN (SOURCE: *Shelly Bay Masterplan*)

The management and planting within this zone is described in the Masterplan as follows:

*Within this zone a staged removal of exotic species including pine (*Pinus radiata*) and *Macrocarpa* (*Cupressus macrocarpa*) species will be undertaken and clearings will be planted with species indigenous to Wellington's coastal ecologies. With the staged removal of exotic species from the eastern escarpment, regenerating native bush is anticipated to emerge behind the buildings. Faster-growing emergent species along the toe slope, gullies and spurs (*Manuka* (*Leptospermum scoparium*) and the like will be interspersed by the slower growing successional species (such as *Mahoe* (*Melicactus ramiflorus*), *Whauwhaupaku* (*Pseudopanax arboreus*) and *Ngaio* (*Myoporum laetum*)).*

Tree removal and planting within this zone is covered under the following Masterplan resource consent conditions:

28. *At least 10 working days prior to the commencement of earthworks and construction for each stage of development, the Consent Holder shall submit a Tree Protection and Construction Methodology (TPCM) to the Council's CMO for review and certification in liaison with a Council Arborist. The TPCM must be prepared by a suitably qualified and experienced Arborist and shall be generally consistent with the Planting Strategy described on pages 97-100 of the Shelly Bay Masterplan, March 2019, Revision 10, and shall include specific information relating to the arborist works relating to each stage of the development, including:*
 - a) *Suitable trees for transplanting*
 - b) *Tree protection fencing for remaining trees*
 - c) *Low impact excavation processes within the dripline of trees; and,*
 - d) *Onsite arborist monitoring for any work within the fenced area of the trees.*
29. *At least 10 working days prior to the commencement of any tree removal works in the Escarpment Vegetation Management Zone (shown on page 98 of the Shelly Bay Masterplan, March 2019, Revision 10), the Consent Holder shall submit a Vegetation Protection Methodology (VPM) to the Council's CMO for review and certification in liaison with the Council's ecologist. The VPM must be prepared by a suitably qualified ecologist*

and shall detail the pine and other exotic species being removed and the species being protected within the Escarpment Vegetation Management Zone (EVMZ).

WATERCOURSES

As part of previous site assessments, two intermittent streams that meet the PNRP-AV definition of a Category 2 Surface Waterbody were identified on the site. One of these streams is partially located within the development area and the other is in the southernmost portion of the site.

The stream within the development area is 25 metres in length and has an average width of 0.5m. This stream has a small upper catchment to the east of the site, and feeds into an existing 500mm diameter culvert, which pipes the stream beneath the site, discharging into the CMA. Upon site inspection, the stream does not appear to provide habitat for fish (native or otherwise). For reference, this stream is indicated on 'insert 1' of stormwater plan 1098-01-GW401-R1 attached to the Stormwater Report in **Appendix Four**.

This application seeks the necessary approvals to undertake works within the bed of the stream to replace the existing inlet structure illustrated on **Figure Three** below.



FIGURE THREE: EXISTING INLET STRUCTURE IN INTERMITTENT STREAM

The second stream has a length of 92 metres, and average width of 0.5m and is wholly located outside of the works area, being upstream of the main development site. This stream is illustrated on stormwater plan 1098-01-GW-406-R2 attached to the Stormwater Discharge Report in **Appendix Four**.

OTHER AREAS

The project ecologist has assessed the area of vegetation located near one of the intermittent streams against the definition of wetland in the NPS-FM. The assessment, included in **Appendix Six** of this application, confirms that the area does not meet either the definition of wetland in the Act or the NPS-FM.

GROUNDWATER

The Preliminary Geotechnical Assessment Report attached as **Appendix Twelve** outlines that, based on trial pits and groundwater measurements taken in several boreholes, groundwater was measured at depths of 0.7m to 1.9m. The assessment also noted that, due to the proximity of the site to the CMA, it is

anticipated that the groundwater level close to the foreshore will be related to the sea level and tidal variations and that tidal effects will decrease moving inland.

4.1.9 CONTAMINATION

Parcels of land within the site are identified on Regional Council's Selected Land Use Register ("SLUR"). Illustrated in **Figure Four** below, the SLUR listing includes two parcels of land within the application site and a parcel of land directly to the east of the application site.



FIGURE FOUR: GWRC SLUR LISTING SN/05/059/02 (Source: Regional Council online maps)

The SLUR listing includes the following statement:

'This site has been used as an Air-Force base. General military camp facilities including workshops, paint stores, munitions stores, sewage pumping station, a rifle range and a shipway and repair yard were onsite. An underground storage tank was also on site but has since been removed. No tank pull report is held by Greater Wellington. There are unconfirmed notes on file suggesting a landfill on this site, but there is no indication of a location or likely contents if it exists. The site was decommissioned in 1995. Potential contaminants include explosives, lead, copper, antimony, solvents and metals and hydrocarbons. No detailed information is held for this site regarding the level of contamination, if any, that has occurred.'

A Preliminary Site Investigation ("PSI") prepared by AECOM is attached in **Appendix Nine**. The assessment included in the PSI outlines that potential sources of contamination associated with the land uses are as follows:

- *Leaks and spills of hydrocarbon products to ground from the refuelling of vehicles and marine craft;*
- *Leaks and spills of hydrocarbon products associated with the storage and the maintenance of transport vehicles;*
- *Concentrations of metals and antifouling substances associated with the maintenance of marine craft and the operation of the slipway;*
- *Localised impact from the wastewater treatment plant in South Bay; and,*
- *Localised metals impact to soil from the use of lead paint, coal ash (if buried at the site) and munitions residues.*

Notwithstanding the sources identified above, the PSI notes that the South Bay area mainly comprised residential facilities. It is noted that the boiler house and septic tanks were located in North Bay, and that elevated arsenic levels were encountered within shallow fill at one location there.

As part of this application Cardno New Zealand Limited were engaged to prepare a Soil and Sampling Analysis Plan (“SAP”) and undertake site testing in accordance with this plan (refer SAP in **Appendix Fourteen**). The SAP has been specifically prepared to address the areas of concern raised in previous site investigations (including the AECOM report) and to support the Contaminated Site Management Plan (“CSMP”) that has been developed for the proposed site works. A draft copy of the CSMP is attached in **Appendix Thirteen**.

Details of measures included in the SAP and CSMP to manage and mitigate potential effects associated with possible contamination within the site are included in the proposal section below (refer Section 5.1.6).

4.1.10 HAZARDS

FLOOD HAZARD

The site is not located on the Regional Council’s flood hazard area maps.

CLIMATE CHANGE AND INUNDATION

Section 2 of the Shelly Bay Design Guide⁷ includes design guidance relating to minimum floor levels in order to account for the effects of climate change and sea level rise. The Masterplan resource consent includes a consent notice condition that requires buildings to be raised above a certain Relative Level (“RL”).

GEOTECHNICAL AND GEOLOGICAL HAZARDS

A geohazard assessment was carried out to identify geotechnical and geological issues which may impact on the Masterplan development. The assessment, included in Section 5 of the Preliminary Geotechnical Assessment attached as **Appendix Twelve**, considers hazards such as tsunami inundation and ground fault rupture, liquefaction, lateral spreading, and rock slope instability. The assessment outlines that the marine sediments which underlie much of the site have been found to be susceptible to liquefaction, and vertical settlements of up to 250mm have been estimated in the southern bay where these deposits are encountered to their greatest extent. Elsewhere, the assessment notes that such settlements are generally around 50 – 60mm in magnitude. Based on the conclusions of the assessment, the Preliminary Geotechnical Assessment sets out a number of recommendations for development.

⁷ Refer Shelly Bay Design Guide: <https://wellington.govt.nz/-/media/property-rates-and-building/resource-consents/files/hashaa-applications/shelly-bay/shelly-bay-2019/appendix-3-shelly-bay-design-guide.pdf?la=en&hash=274393F42A2A02851E76C057988FAEA2FD8B3478>

4.2 SURROUNDING ENVIRONMENT

Land surrounding the site is owned by the New Zealand Defence Force and is unoccupied with no legal public access. There is a private access off Shelly Bay Road to this adjoining land. This Defence Force land is generally void of built structures except for bunker type structures.

Approximately 500 metres above the site to the east (on the top of the Miramar Peninsula / Te Motu Kaitangi) is the former Mount Crawford Prison site. The prison is now disused and unoccupied, although the buildings and structures remain. Part of the prison site is currently occupied with gardens that are maintained by members of the community. To the south of the site, on top of the escarpment is the suburb of Maupuia.

The Shelly Bay CMA environment is described in the Coastal Ecology Assessment attached in **Appendix Eleven**.

5. PROPOSAL DETAILS

This application seeks the following approvals from the Regional Council:

- Discharge permit for operational stormwater;
- Land use consent for earthworks exceeding 3,000m² associated within new urban development;
- Discharge permit and resource consent for works associated with the replacement of an existing structure in the bed of an intermittent stream;
- Discharge permit for discharges from a contaminated site;
- NES-FW resource consent for the reclamation of a portion of an intermittent stream associated with the replacement of an inlet structure; and,
- Land use consent for vegetation clearance.

The proposal details provided in the following sections shall be read in conjunction with the plans and technical reports accompanying this application.

5.1 EARTHWORKS AND CONSTRUCTION

While the built development consented under the Masterplan has sought to respect the landform and topography (therefore minimising the extent of earthworks), due to non-compliances with the earthworks provisions of the Wellington City Operative District Plan, the Masterplan resource consent application included seeking land use consent for earthworks to create building platforms, roading and access, and the public realm.

The areas of cut and fill are illustrated in the earthworks plans attached as **Appendix Three**. The largest earthwork cuts are at the toe of the escarpment to enable the construction of the apartments. Following construction, all cuts will be either covered by buildings, suitably retained, covered by roads/paths or suitably landscaped.

The proposed works include the upgrade of Shelly Bay Road and largely involve minor widening works to create a shared footpath that will be formed with a permeable surface. These works do not require resource consent from the Regional Council as the definition of earthworks in the PNRP-AV excludes:

(e) repair or maintenance of existing roads and tracks, and airfield runways

(h) repair, sealing or resealing of a road, footpath, driveway

The proposed earthworks also include trenching to install new services. Like the above, these works do not require resource consent from the Regional Council as the definition of earthworks in the PNRP-AV excludes:

(c) thrusting, boring, trenching or mole ploughing associated with pipe laying and maintenance

As noted in Section 3 above, the Masterplan resource consent includes conditions that seek to manage effects arising through the earthworks and construction phases of development. These conditions relate to matters administered by the territorial authority and include nuisance effects such as noise and dust. The conditions also include a requirement to prepare an Earthworks and Construction Management Plan (“ECMP”).

An ECMP that relates to matters administered by Regional Council is attached as **Appendix Five** of this application. The Applicant requests that a finalised ECMP is prepared and provided to the Regional Council for certification after the earthworks contractor has been appointed. The finalised ECMP will include the information included in the attached ECMP but will also finalise the erosion and sediment control measures to suit the selected contractor’s specific methodology, including the potential staging of works.

5.1.1 GENERAL EARTHWORKS DETAILS

General earthworks details are as follows:

- Total earthworks area: 46,125m²;
- Total cut volume: 18,500m³; and,
- Total fill volume: 9,700m³.

5.1.2 EARTHWORKS STAGING

The staging of earthworks will be finalised by the contractor when the final construction methodology is confirmed. The ECMP provided in this application assumes the maximum likely earthworks exposure for the design, type and size erosion and sediment control devices proposed.

5.1.3 VEGETATION CLEARANCE

Application drawing 1098-01-SK103 Rev P1 illustrates the extent of works within the escarpment area. This escarpment is predominantly vegetated, so the total area of vegetation clearance, being 6,450m² (6,020m² in the North Bay and 430m² in the South Bay), corresponds with the total area of earthworks within the escarpment area.

There will be 30m² of vegetation clearance (being 15m² on either side of the existing stream) within five metres of the identified intermittent stream. The Freshwater Ecology Memorandum attached in **Appendix Six** provides a description of the riparian vegetation as follows:

The riparian vegetation was showing the effects of land use changes, comprised of a mix of early regenerating native shrubs, dominated by kawakawa, rangiora and māhoe, and exotic weed species, broom, gorse, and Montbretia, and surrounded by pine. The ground was a mix of bare ground and leaf litter and pine needles.

A species list of vegetation is provided in Appendix 3 of the memorandum.

The Applicant confirms acceptance with the imposition of the following condition (or similar) that requires restoration planting of the impacted margins of the intermittent stream:

Riparian Planting

The consent holder shall submit a Landscape Planting Plan to the Manager, Environmental Regulation, Wellington Regional Council for approval at least 20 days prior to commencement of planting works. Planting in relation to this consent shall not commence until approval has been obtained.

The planting plan shall include, but not be limited to:

- *The minimum riparian buffer of 5 metres across the stream banks.*
- *A detailed plan of the proposed planting, including location and extent of the proposed planting.*
- *The native species that are proposed to be planted, the size of the plants and the density of planting (these species shall be eco-sourced and appropriate to the locality).*
- *A detailed timeline for proposed planting.*
- *Details of pre-planting site preparation (clearing, mulching, fertilising).*
- *Details of the ongoing maintenance of the planting including, but not limited to, the replacement of plants and eradication of pest plants.*

The final Planting Plan shall be developed in accordance with Greater Wellington Regional Council's 'Restoration Planting: A guide to restoration planting projects in the Wellington Region, 2004'.

Note: For the purpose of this condition, eco-sourcing refers to plants that have been sourced and propagated from those that grow naturally in the same ecological district.

5.1.4 EROSION AND SEDIMENT CONTROL

OBJECTIVES

The ECMP attached in **Appendix Five** of this application sets out the objectives for controlling erosion and sediment within the development site. The primary objective identified is to:

“reduce the rate of erosion and minimise the amount of sediment discharged from exposed land, while providing practical measures to reduce the total amount of sediment leaving the site”.

The principles of control that will be applied include:

- Completing all works within the minimum time practicable;
- Segmentation of catchments to limit the extent of impact;
- Stabilisation of exposed areas as soon as practicable; and,
- Perimeter controls for the diversion of clean water.

The methods of sediment runoff control that will be applied include:

- Topsoil bunds;
- Sediment Retention Ponds (“SRPs”);
- Decanting Earth Bunds (“DEBs”);

- Silt fences; and,
- Filter socks.

Details of the proposed measures are illustrated on the application drawings attached in **Appendix Three**, discussed in further detail in the ECMP, and summarised in the following sections.

EROSION CONTROL

The following erosion control measures will be implemented:

- Stabilised construction entrances will limit the transfer of sediments from the site onto the local road environment; and,
- Temporary surface roughening and contour drains will be used across the extent of the earthworks area to minimise the erosion effects of rainfall and surface water scouring and in order to control the movement of silt to the proposed bunds and pond areas.

For the main entrances to the excavation works area, wheel washes will also be utilised to ensure that no site debris or sediment is tracked onto Shelly Bay Road. If sediment is tracked onto the road, then street sweepers and water trucks will be used to clean the road. Sediment washed from the road towards the CMA will be captured with silt fences and filter socks to prevent it entering the harbour.

It is proposed that stormwater and sediment laden water flow management is reviewed as works progress and appropriate methods be applied as required, in consultation with the engineer and Regional Council monitoring and enforcement officers.

SEDIMENT CONTROL

Detailed in Section 8.4 of the ECMP, diversion channels and earth bunds will intercept sediment laden runoff, diverting flow to the sediment control devices including DEBs and SRPs. These devices will discharge to land before entering stabilised artificial watercourses or reticulated stormwater systems. Emergency or 'wet-weather overflow' discharges are possible in significant storm events. The design of these devices includes stabilised emergency spillways (with erosion protection) in the event of these. These are designed for 1% AEP (1 in 100-year storms), and although the discharge may not be fully treated, the provision of additional / secondary protection including silt fences around the perimeter of the site and double silt fences adjacent to the CMA, will significantly reduce the potential for silt discharges beyond the extent of the works areas.

Clear water diversions are required to ensure that clean, external runoff does not run across the earth worked areas and is not contaminated by exposed soil on the site, and these have been designed in accordance with Regional Council guidelines. Where possible these diversions have been positioned parallel to contour lines (i.e at a gentle gradient), however the steep nature of the eastern portion of the development site has meant that there are some diversions with grades significantly steeper than 2%. Where grades are steeper than 2% the diversions will be lined with filter fabric and have rock dams installed to control water velocity.

Silt fences will be constructed to contain silt laden runoff within the earthworks area, including along the western boundary being adjacent to the coastal edge, and along the current lower extents of the site. They will be designed and located to filter out larger soil particles and to slow the runoff to enable finer particles to settle before discharging.

Stormwater inlet protection such as silt socks, sandbags, silt fences and catchpit filters will provide a barrier across/around catchpits to intercept and filter sediment laden runoff before it enters the stormwater system thereby preventing sediment laden flows from entering receiving environments. These protections will be applied to the existing catchpits along Shelly Bay Road during bulk earthworks and roading upgrades, and during later stages of building construction, including new stormwater services installations.

Application drawings 1098-01-230 to 1098-01-233 appended to the ECMP in **Appendix Five** illustrate the proposed locations of all sediment and control devices. Standard details for each of these devices are illustrated on application drawings 1098-01-235 to 1098-01-237.

SIZING OF SEDIMENT CONTROLS

In accordance with Regional Council guidelines, the proposed SRPs and DEBs have been sized to accommodate the volume based on 2% of the treatment area. Wet weather overflows in an event exceeding this will be contained within the fenced and bunded excavation works area where possible, to minimise the extent of untreated sediment being discharged. Sizing of the sediment controls is detailed in Section 8.6 of the ECMP and summarised below.

For Catchment A1, a SRP will be constructed to control any sediment run off for the area. Sized in accordance with the Regional Council guidelines, the catchment area of earthworks is 1.8ha and using 2% for the SRP volume gives a minimum requirement of 360m³. The proposed SRP will be 27m x 9m x 1.5m deep, achieving a total storage of 364.5m³, exceeding the volume required in the guidelines.

For Catchment B1, the catchment area of earthworks is 1.32ha and using 2% for the SRP volume gives a minimum requirement of 264m³. The proposed SRP will be 25m x 7.5m x 1.5m deep, achieving a total storage of 281.25m³, exceeding the volume required in the guidelines.

For Catchment B2, the project engineers propose to construct a DEB to control any sediment run off for the area and it too has been sized in accordance with the Regional Council guidelines. The catchment area of earthworks is 2,550m², and using 2% for the DEB volume gives a minimum requirement of 51m³. The proposed DEB will be 14m x 4m x 1m deep, achieving 56m³, exceeding the volume required in the guidelines.

For Catchment C2, the project engineers propose to construct a DEB to control any sediment run off for the area. This catchment area of earthworks is 2,450m² and, using 2% for the DEB volume gives a minimum requirement 49m³. The proposed DEB will be 13m x 4m x 1m deep, achieving 52m³, exceeding the volume required in the guidelines.

Catchments A2, A3 and B3 incorporate the northern extent of the existing Shelly Bay Road where minor road trimming and footpath/ parking construction will be undertaken. These areas are intended to be constructed as “cut and cover” operations, with further protection provided by bunding and silt fences, as necessary. As noted in this application, these works do not fall under the definition of earthworks in the PNRP-AV and therefore the works and associated controls do not require approval from the Regional Council.

SITE STABILISATION

As further detailed in Section 8.5 of the ECMP, compaction standards are set out in NZS4431 and NZS4402. Where this is not applicable the requirements will be specified by the Geotechnical Engineer.

The Contractor will be required to arrange regular control tests to ensure that adequate compaction has been attained over the entire area where fill materials are placed. The frequency of testing will conform with NZS4431 and control testing in accordance with NZS4402.

On completion of subgrade formation, inspections will be carried out by the Supervising Engineer and Geotechnical Engineer to determine compliance for shape, grade, strength and uniformity.

Site stabilisation will be via grass seed/hydroseeding for landscaped areas and metal aggregate or straw mulch for roading and building platform areas. The Applicant confirms acceptance with the imposition of the Regional Council's standard conditions in relation to progressive site stabilisation.

EROSION AND SEDIMENT CONTROL MONITORING

The ECMP outlines that regular monitoring will be undertaken by the Contractor and a suitably qualified Engineer for the duration of the works. It is proposed that monitoring will consist of checking the integrity of the earth bunds and retaining and will involve:

- Daily inspections by the Contractor;
- Weekly inspections by the Engineer;
- Monthly audits by the Engineer; and,
- Inspections at times of heavy rainfall by the Contractor and the Engineer.

The monitoring, maintenance and reporting of the erosion and sediment control measures are an essential part of the construction phase to minimise any adverse environmental impact. To this end, it is anticipated that, should consent be granted, the Regional Council will impose its standard monitoring conditions.

5.1.5 ACCIDENTAL DISCOVERY

The Applicant accepts the imposition of a consent condition requiring that the requirements of the Accidental Discovery Protocol be met through the construction period. The protocol sets out the procedures that must be followed in the event that taonga, burial sites / koiwi, or archaeological sites are encountered.

Prior to the commencement of works on site, a copy of the protocol will be made available to all contractors working on the site and stored in the site office.

5.1.6 OTHER MEASURES TO MANAGE EARTHWORKS AND CONSTRUCTION ACTIVITIES

CONTAMINATION

As noted in Section 4 above, parcels of land within the site are identified on the Regional Council's SLUR as being contaminated. A PSI prepared by AECOM is attached in **Appendix Nine**. The assessment undertaken in the PSI identifies potential sources of contamination associated with previous land uses occurring on the site. Therefore, there is the chance that contaminated material could be encountered during the excavation activities proposed in this application.

An SAP has been prepared to identify additional areas of testing in order to address the areas of concern identified in previous site investigations (refer **Appendix Fourteen**). The SAP outlines that, soil contamination, if present, is expected to be associated with the historic transformer location, former fuel storage areas, maintenance yard and slipway and the perimeters of buildings (asbestos and lead). Potential contamination within the CMA has been excluded from assessment as site works within the CMA are being addressed in a separate consent. Table 1 of the SAP summarises the areas of concern and Figure 3 identifies the proposed sampling locations.

Several factors, including Central Government's response to the COVID-19 pandemic and the recent Delta Variant outbreak (being a level 4 lockdown), has meant that the site investigations detailed in the SAP have not been undertaken. Therefore, it is requested that the Regional Council impose a condition on the consent that requires additional site investigations to be undertaken in accordance with the SAP.

In addition to the SAP, a CSMP has been prepared to provide a site management strategy for the proposed earthworks. The CSMP has the following objectives (refer Section 1.2 – Purpose of the document attached in **Appendix Thirteen**):

- *Soil handling measures to reduce human health risks from exposure due to ingestion, inhalation, dermal exposure or from contact interaction with the soil profile, groundwater flow or surface water flows;*

- *Safe excavation of soil to remove harm to site workers and prevention of migration of contaminants off-site;*
- *Process for identifying the presence of contamination during earthworks and management procedures; and*
- *If soil to be removed from site, responsible haulage and disposal of impacted material to the appropriate facility through good practice and waste tracking.*

The SAP is appended to the CSMP and the CSMP notes that the procedures and methods outlined in the document should be reassessed against the results of the testing identified in the SAP and updated if required. To ensure a robust framework is imposed to control the further testing and to ensure appropriate mitigation and management procedures are put in place in response to that testing, the Applicant requests the inclusion of the following consent conditions (or similar):

1. *The consent holder shall undertake soil sampling in accordance with the Soil Analysis Plan, after demolition and prior to bulk earthworks, or at another time to the agreement of the Manager, Environmental Regulation, Wellington Regional Council.*

Note: The soil sampling shall focus contaminants and their risk to entering surface and groundwater.

2. *The consent holder shall prepare a finalised Contaminated Soils Management Plan ("CSMP") to the Manager for certification at least 10 working days prior to the commencement of bulk earthworks. The CSMP shall include, but not be limited to the following information:*
 - a) *The identification of any contaminants detected in the soil sampling required by condition 1,*
 - b) *Details of appropriate measures to avoid, remedy and mitigate adverse effects of contaminated land on the environment, namely water quality, including proposed discharge locations and quality limits for any contaminants found to be present;*
 - c) *Details explaining why proposed limits are appropriate for the receiving locations and environment to ensure adverse effects are no more than minor.*
 - d) *Sediment control measures in line with the Earthworks and Construction Management Plan.*
 - e) *Identification of stockpile areas that are clear from stormwater run-off and isolated from sensitive receptors, such as watercourses, drains, soakage areas, and the general public.*
 - f) *Restrictions on the discharge of groundwater ponded surface water to stormwater unless testing confirms that contaminants are within the regional council permitted stormwater discharge concentrations.*
 - g) *Contaminated soil disposal locations.*
 - h) *The roles and responsibilities and contact details for the parties involved in implementing the Plan, including the identification of a suitably qualified and experienced practitioner (SQEP) to advise on contamination aspects.*
3. *The consent holder shall update the submitted Contaminated Soils Management Plan (CSMP) to the Manager for certification at least 5 working days prior to the commencement of earthworks.*
4. *The CSMP shall be prepared by a suitably qualified and experienced person (SQEP).*

DEWATERING

As noted in Section 4 above the Preliminary Geotechnical Assessment Report attached as **Appendix Twelve** outlines that, based on trial pits and groundwater measurements taken in several boreholes, groundwater was measured at depths of 0.7m to 1.9m. The assessment also noted that, due to the proximity of the site to the CMA, it is anticipated that the groundwater level close to the foreshore will be related to the sea level and tidal variations and that tidal effects will decrease moving inland.

Section 8.9 of the ESMP identifies the following instances where dewatering may be necessary during earthworks:

- *To dewater trenches, excavations including for the construction of:*
 - *Foundations,*
 - *Stormwater quality devices (i.e., tree pits and rain gardens)*
 - *Wastewater Pump*
 - *Seawall construction and coastal outfalls.*
 - *Lift shaft pits.*
- *To dewater sediment control devices for maintenance, or at the decommissioning stage.*

The ECMP outlines that new dewatering guidelines were included in the Regional Council's "*Erosion and Sediment Control Guide for Land Disturbing Activities in the Wellington Region*" that was reissued in February 2021. The Applicant requests the inclusion of a condition that requires site works to comply with these guidelines.

In addition, the ESMP outlines that prior to commencement of works the risk of encountering contaminated groundwater will be assessed by an appropriately qualified expert and if contamination is indicated, further investigation will be carried out to verify levels of contamination and allow appropriate planning for design of the dewatering system. This is reflected in the condition requested above that requires that the finalised CSMP include the following details:

- a) *Restrictions on the discharge of groundwater ponded surface water to stormwater unless testing confirms that contaminants are within the regional council permitted stormwater discharge concentrations.*

LITTLE BLUE PENGUIN HABITAT

While no works are proposed within the CMA, in order to manage possible impacts on potential little blue penguin habitat, the Applicant requests the imposition of consent conditions that require the following:

1. *From the start of June until the end of February, prior to undertaking earthworks, the consent holder shall either secure the site from access by penguins immediately following a survey by a DOC-approved penguin detector dog, or ensure that no penguins are present in the footprint of works using a DOC-approved penguin detector dog no more than 24 hours prior to the commencement of earthworks.*
2. *If no penguins are detected in the footprint of works, a fence shall be put in place for the duration of the works.*
3. *If penguins are determined to be nesting or moulting in the footprint of works, no disturbance shall occur within 10m of the nest until the end of February, and access to and from the coast from these sites shall be maintained.*
4. *If penguins are observed to be nesting or moulting landward of the footprint of works, access to and from the coast from these sites shall be maintained until the end of February.*
5. *If penguins are detected in the footprint of works, but are determined not to be nesting or moulting by a suitably qualified expert, the penguins may be relocated to a suitable site, if a Wildlife Permit for that purpose is issued by the Department of Conservation.*

5.2 STORMWATER MANAGEMENT

5.2.1 DISCHARGE OF OPERATIONAL STORMWATER

As identified in the Masterplan resource consent, stormwater from the development will discharge via a new network of public stormwater lines ranging in size from 225mm dia to 900mm dia. New stormwater lines are to be constructed, either replacing existing mains or constructing new lines to accommodate the additional runoff generated.

Outlined in Section 2.1 of the Stormwater Discharge Report attached in **Appendix Four**, the overall stormwater concept has been refined as follows:

- *Any areas of existing road (i.e. Shelly Bay Rd between Miramar cutting and main Shelly Bay development area) that are upgraded and/ or provided with a shared pathway will remain as is. That means few catchpits or treatment and stormwater generally sheds off the road through vegetation, towards the CMA (including outflows from the catchpits);*
- *Road runoff within the Shelly Bay Development will drain away from the CMA to raingardens as illustrated on the stormwater plans.*
- *Treatment is proposed for most trafficable areas, and as much of the non-trafficable areas as is practicable. Given the nature of the non-trafficable areas (being predominantly pedestrian areas), contaminant generation levels will be low and are not considered to generate environmental effects that would necessitate stormwater treatment mitigation.*
- *No roofed materials will be zinc or copper in accordance with the conditions of the Masterplan resource consent conditions and therefore it is not necessary to treat runoff from the buildings;*
- *The private areas of roadway and hard stand (i.e. those in and around the buildings) will have coarse sediment traps installed (for example 'Litta Traps' or 'Enviropods') within catchpits and, where practicable, the majority of these areas will be treated. Treatment is not likely to be provided for small areas of the laneway because flows are not able to be directed to the roadway without amending the masterplan concept. The specific areas include short sections of laneway between the vehicle crossing and the internal parking zones which are required to be separately drained and not permitted to discharge onto the road (where they would otherwise have been collected by proposed rain garden features). The project engineers are confident that the discharge will not contain more than 15 milligrams per litre of total petroleum hydrocarbons prior to release (refer condition (ii) of Rule R48).*
- *The existing carpark areas at South and North Bay will remain gravel and semi permeable. Refer application drawing 1098-01-GW805 that notes that "flows from carpark will drain towards rocky coastal planting that will act as filter traps for sediment control prior to runoff entering the coastal management area".*
- *Upstream surface stormwater flows will be passed through/ between the development out to the CMA in designated overland flowpaths (generally will be collected into the proposed stormwater system and discharged) and,*
- *No stormwater detention is proposed due to proximity to the discharge point and that no watercourses will be affected.*

Further details of the proposed stormwater discharges are outlined in Section 2.2 of the Stormwater Discharge Report, and are summarised as follows:

- Stormwater design has been designed to the Wellington Water Regional standards, with the general design to a 10% AEP rainfall level including 20% increase for climate change. This has resulted in a design rainfall intensity (for Tc=10 minutes) of 84.5 mm/hr, based on HIRDS v4.0, RCP6.0.

- There are significant upland catchments in the escarpments above the sites. These in turn however do not result in permanent water flows, but in one gully an intermittent water course has been identified (catchment E2). Runoff from the catchments has been assessed as follows:
 - For the upland catchments a HEC-HMS analysis has been undertaken utilising the recommendations of “*Reference Guide for Design Storm Hydrology*” prepared for Wellington Water by Cardno in 2019. This has included a CN number of 54 applying to the total area, as recommended in the report, and an Initial Abstraction of 21.6mm based on 10% St.
 - For the development lots and public realm catchments a Rational Analysis utilising a C value of 0.95 for impermeable areas.
- A new network feeding to six outfalls is proposed, with pipe sizes ranging from 300mm to 825mm diameter. As the design of the buildings on the development lots is occurring concurrently, it is requested that private connections to these lines be confirmed via conditions of consent.
- The outfalls discharge at rates ranging from 52.17 L/s to 339.25 L/s (refer calculations appended to the Stormwater Report) for the 10% AEP event. As noted in this application, the outfall structures themselves will be subject to a separate application.

The stormwater discharge plans appended to the Stormwater Discharge Report illustrate all proposed pipes, inlets, manholes, outfall locations and overland flow paths.

5.2.2 STORMWATER INLETS

STREAM OVERFLOW STRUCTURE

A new stormwater overflow structure is proposed to replace the structure located at the toe of the intermittent stream. The location of the inlet structure is illustrated on ‘insert 1’ of application drawing 1098-01-GW401-R2 and technical details of the structure are attached to the Stormwater Discharge Report in **Appendix Four**.

As illustrated on the design plan, the structure will include a wingwall and apron to collect any debris so the project engineer has confirmed the full extent of the works area may extend to 3m from the existing structure. The project engineers confirm that the piped stream will essentially be increased in length by approximately three metres.

The construction methodology to install the new structure will include diverting the existing intermittent flow with a non-erodible temporary dam structure. A flume will be installed to convey the water flow down the escarpment as it is progressively excavated, to then be discharged into the remnant existing stormwater line at the lower-level platform. On completion of the structure, the flow will be diverted to the structure and the temporary diversion structure removed. Construction of the new intake structure will include erosion protection to protect the stream channel.

STORMWATER OUTFALLS TO THE COASTAL MARINE AREA

The six proposed outfalls discharging to the CMA will be integrated into the existing seawalls and will therefore be included in the seawall upgrade consent. For reference however, the application drawings appended to the Stormwater Discharge Report in **Appendix Four** illustrate the locations of the proposed outlets and the Stormwater Discharge Report includes outfall details and a preliminary outfall construction methodology.

5.2.3 WATER SENSITIVE URBAN DESIGN

BUILDING MATERIALS

As noted in the background section above, the Masterplan resource consent includes consent notice conditions requiring stormwater treatment solutions to be installed if any buildings containing bare,

unpainted, or untreated materials are proposed. The Applicant has confirmed that future buildings will not include these materials. Therefore, because potential contaminants associated with the new buildings will be significantly reduced, the project engineers consider that treatment of stormwater is necessary for the carparking areas, public spaces and the public road within the development area (i.e., the public realm).

RAINGARDENS AND TREE PITS

Treatment of stormwater from the public realm and the hardstand areas within the development lots will be in the form of raingardens and tree pits. Indicative sizing and locations of the devices are illustrated on the stormwater design plans attached to the Stormwater Report in **Appendix Four**.

As outlined in Section 3.1 of the Stormwater Discharge Report, raingardens will be designed in accordance with WWL's "*Water Sensitive Design for Stormwater: Treatment Device Design Guidelines Dec 2019 v1*" ("the Guideline"). The Guideline requires that devices be sized to a minimum area of 2% of the impervious area to be treated. The proposed stormwater design provides a treatment area more than this for the publicly trafficked area for the modified Shelly Bay Road (within the development site), and the concept satisfies the guidelines for the development lots despite designs not yet being finalised. The development lot concept is based on the current building/layout designs and the development and activities consented under the Masterplan and Design Guide.

The proposed aggregate area of raingardens (excluding tree pits) within the public realm (road within North Bay and South Bay and esplanade) is 159m² for a hardstand area of 5,909m², giving a treatment area of 2.69%. In one low lying location a proprietary "stormfilter" has been included due to difficulties in providing a raingarden successfully, and this is sized to treat an area of 929.69m².

As further detailed in Section 3.2 of the Stormwater Discharge Report, the treated area is limited to the principal trafficked area (both public and private) and eastern footpaths but does not include much of the seaward pedestrian areas due to practical limitations of existing contours, which generally fall to the coast. The stormwater plans included with the Stormwater Discharge Report illustrate individual catchments applying to the respective raingardens (refer to plans 1098-01 GW801 – GW807). In all cases the 2% area is achieved for trafficable areas and in all but a few catchments is achieved for the full area (i.e. trafficked and non-trafficked). In this regard, most sections of the laneways have been included although this may not be supported by WWL as draining occurs across the roadway. Irrespective, the raingardens have been designed to provide this capacity should the design be agreed by WWL.

Treatment of the public areas has been fully designed and detailed in the plans appended to the Stormwater Discharge Report. For these areas the effective treatment area provided by each raingarden is in accordance with the Wellington Water "*Water Sensitive Design for Stormwater: Treatment Device Design Guideline*", 2019. Specific design details of the raingardens include full depth concrete surrounds to maximise the effective areas where possible.

While it is proposed to comply with the minimum provision of 2% for the private development lots including the commercial area, as noted these have not yet been confirmed due to the designs still being developed. Therefore, it is proposed that the provision of suitable treatment for the private development lots be a condition of the discharge permit. in accordance with the options provided in the WSD Guideline.

The public area raingardens have also been designed to provide primary stormwater drainage for events larger than the Water Quality Flow, and therefore a Splay Catchpit is included in the design. This will ensure that higher flow rates, that could otherwise cause damage to the raingardens, are diverted away from the raingardens to the stormwater network. The required water quality raingarden inflow in this instance will be directed to the device utilising a lower-level apron with erosion protection and ensure that the required 200mm minimum storage is provided before diversion occurs.

In addition to treatment via raingardens, tree pits are also proposed that will increase the level treatment by approximately 4m² per combination device over and above the calculations included in the Stormwater Discharge Report. Typical tree-pit details are included in the Stormwater Report.

The tree pit areas have not been included the treatment calculations due to there not currently being a provision for their inclusion within the WSD Guideline. The project engineers understand however that the beneficial use of tree pits is recognised and that their inclusion will be looked on favourably by WWL and will provide effective treatment for an additional area.

5.2.4 STORMWATER ATTENUATION / RETENTION

As noted, the project engineers consider that stormwater attenuation is not necessary for the development as stormwater is discharging directly to the coast (i.e. not via watercourses).

6. REASONS FOR CONSENT

6.1 REGIONAL PLAN ASSESSMENT

The PNRP was notified on 31 July 2015. The submission and hearing process has concluded, and the Council's decisions were released on 31 July 2019. A number of appeals have been lodged with the Environment Court, and so the PNRP remains a proposed plan; although any rules not subject to appeals must, in accordance with s87F of the Act, be treated as operative, and the equivalent rules under previously operative plans treated as inoperative.

Where consent may still be required under the operative plans, reference has been made to the appropriate rules which are considered to apply, and consent is also sought under those rules. An assessment of the proposal against the relevant provisions of the operative and regional plans is provided in **Table Two** below.

TABLE TWO: RULE AND STANDARD ASSESSMENT		
RMA SECTION	RULE / ACTIVITY	COMMENT
PROPOSED NATURAL RESOURCES PLAN (APPEALS VERSION)		
LAND DISTURBANCE		
9 AND 15	R99 (PERMITTED)	<p>As noted, the proposed road upgrade works to the south of South Bay are not subject to assessment against these provisions as the definition of earthworks included in the PNRP specifically excludes <i>“the repair or maintenance of existing roads and tracks”</i> as well as the <i>“repair, sealing or resealing of a road, footpath, driveway”</i>. While the definition also excludes <i>“construction, repair, upgrade or maintenance of pipelines”</i>, trenching works have been included in the earthworks calculations by virtue of the trenching works being located within the excavation works area.</p> <p>Under Rule R99 of the PNRP-AV, the use of land, and the associated discharge of sediment-laden runoff stormwater into water, or onto or into land where it may enter water, from earthworks of up to a total contiguous area up to of 3,000m² per property per 12-month period is a Permitted Activity, provided that conditions are met.</p> <p>The proposal will exceed 3,000m² in area per 12-month period. Therefore, the earthworks and associated discharges of sediment laden stormwater to land where it may enter water requires consent for a Discretionary Activity under Rule R101.</p> <p>For completeness and while not applicable, the project engineer has confirmed that the proposed earthworks will comply with the conditions of Rule R99.</p>
	R101 (DISCRETIONARY)	
VEGETATION CLEARANCE		
9	R100 (PERMITTED)	<p>Vegetation clearance works are proposed at the toe of the escarpment where the existing platforms will be earthworked. Vegetation clearance rules in the PNRP-AV apply to erosion prone land (being land with a pre-existing slope that exceeds 20 degrees). Under Rule R100, vegetation clearance on erosion prone land is a Permitted Activity provided that the conditions are met.</p>
	R100 (DISCRETIONARY)	

TABLE TWO: RULE AND STANDARD ASSESSMENT

RMA SECTION	RULE / ACTIVITY	COMMENT
		<p>As vegetation clearance will be undertaken within 5m of the stream, the proposal does not comply with clause (c) of Rule R100 of the PNRP-AV and Discretionary Activity resource consent is required under Rule R101. All other conditions of R100 will be complied with.</p> <p>The Applicant and its consultants also confirm that the site works will be undertaken to ensure compliance with the relevant 'uses of beds of lakes and rivers general conditions' in Section 5.5.4 of the PNRP-AV.</p>
DISCHARGE OF STORMWATER (OPERATIONAL)		
9	<p>R48A (PERMITTED) <i>[Includes coastal icon so applicable to the CMA]</i></p> <hr/> <p>R52A (RESTRICTED DISCRETIONARY) <i>[Includes coastal icon so applicable to the CMA]</i></p>	<p>The proposal includes the discharge of stormwater to a new piped network that will discharge to the CMA as well as direct stormwater discharges to land that may enter the CMA.</p> <p>Under Rule R48A of the PNRP-AV, the discharge of stormwater into water, or onto or into land where it may enter a surface water body or coastal water, including through an existing local authority stormwater network, from:</p> <ol style="list-style-type: none"> a new urban subdivision or development associated with earthworks up to a total area of 3,000m² per property per 12-month period, or a new urban subdivision or development in an area where a stormwater management strategy in accordance with Schedule N (stormwater strategy) applies is a permitted activity provided the following condition is met: the discharge shall comply with the conditions of Rule R48 except condition R48(c). <p>is a Permitted Activity provided that conditions are met. The new development includes associated earthworks that exceed 3,000m² and therefore the proposal is unable to comply with the above rule. In relation to the R48 conditions:</p> <ul style="list-style-type: none"> The discharge does not originate from industrial or trade premises where hazardous substances are stored; The discharge is from a contaminated site; The discharge will not contain wastewater; The total concentration of total suspended solids in the discharge shall exceed: 100g/m³ where the discharge enters any other fresh or coastal water The discharge will not cause any erosion of the channel or banks of the receiving coastal marine area; The discharge will not give rise to the following effects beyond the zone of reasonable mixing: <ul style="list-style-type: none"> The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials; or Any conspicuous change in the colour or visual clarity, or Any emission of objectionable odour, or Any significant adverse effects on aquatic life. <p>As above, the discharge is from a contaminated site so is unable to comply with all of the relevant conditions in Rule R48.</p> <p>Under Rule R52A of the PNRP-AV, the discharge of stormwater from a new subdivision or development into water, or onto or into land where it may enter a surface water body or coastal water, including through an existing local authority stormwater network, that is not permitted by Rule R48A is a Restricted Discretionary Activity.</p> <p>The matters to which Council have restricted its discretion are as follows:</p> <ol style="list-style-type: none"> <i>Measures to minimise the adverse effects of stormwater discharges in accordance with Policy P73, including the extent to which water sensitive urban design measures are employed;</i>

TABLE TWO: RULE AND STANDARD ASSESSMENT

RMA SECTION	RULE / ACTIVITY	COMMENT
		<p>2. <i>Measures to manage runoff volumes and peak flows in accordance with Policy P79; and,</i></p> <p>3. <i>Requirements of any relevant local authority stormwater network discharge consent.</i></p>
DISCHARGE OF STORMWATER TO LAND		
9	<p>R49 (PERMITTED) <i>[Includes coastal icon so applicable to the CMA]</i></p> <p>R53 (DISCRETIONARY) <i>[Includes coastal icon so applicable to the CMA]</i></p>	<p>It is not clear in the Summary of Decisions documentation whether the 'stormwater to land' provisions apply in addition to the provisions related to stormwater discharge associated with new urban development. For completeness, assessment against the stormwater to land provisions is provided below.</p> <p>Under Rule R49 of the PNRP-AV, the discharge of stormwater onto or into land, including where contaminants may enter groundwater, from an individual property is a permitted activity provided that conditions are met. Condition (a) requires that the discharge is not from, onto or into SLUR Category III land contaminated land. The proposed operational stormwater discharges will comply with all of the conditions of Rule R49 except condition (a).</p> <p>Under Rule R53, the discharge of stormwater, including stormwater that may be contaminated by wastewater, into water or onto or into land where it may enter water, that is not permitted by Rules R48, R48A or R49, or controlled by Rule R50, or a restricted discretionary activity under Rules R51, R52 or R52A is a Discretionary Activity.</p>
DISCHARGE OF WATER THAT MAY CONTAIN SEDIMENT TO THE CMA (RELATES TO POTENTIAL WET-WEATHER OVERFLOWS ONLY)		
15	<p>R42 (PERMITTED) <i>[Includes coastal icon so applicable to the CMA]</i></p>	<p>As noted, detailed in Section 8.4 of the ECMP, diversion channels and earth bunds will intercept sediment laden runoff, diverting flow to the sediment control devices including DEBs and SRPs. These devices will discharge to land before entering stabilised artificial watercourses or reticulated stormwater systems. Emergency or 'wet-weather overflow' discharges are possible in significant storm events. The design of these devices includes stabilised emergency spillways (with erosion protection) in the event of these. These are designed for 1% AEP (1 in 100-year storms), and although the discharge may not be fully treated, the provision of additional / secondary protection including silt fences around the perimeter of the site and double silt fences adjacent to the CMA, will significantly reduce the potential for silt discharges beyond the extent of the works areas. So, while unlikely, during storm events wet-weather overflows from the sediment control devices may discharge to land that may enter the CMA.</p> <p>Under Rule R42, the discharge of contaminants into water, or onto or into land where it may enter water that is not specifically provided for by any other rule in the PNRP is a Permitted Activity provided that the following conditions are met (included only relevant):</p> <p>(a) <i>The contaminant is not a hazardous substance</i></p> <p>(b) <i>Where the discharge may enter a surface water body or coastal water:</i></p> <p>(i) <i>The concentration of total suspended soils in the discharge shall not exceed:</i></p> <ol style="list-style-type: none"> 1. <i>50g/m3 where the discharge enters a site or habitat identified in Schedule A (outstanding water bodies), Schedule C (mana whenua), Schedule F1 (rivers/lakes), Schedule F3 (significant wetlands), or Schedule F4 (coastal sites) or Schedule H1 (contact recreation)</i> 2. <i>100g/m3 where the discharge enters any other water.</i> <p>(ii) <i>The discharge shall not cause any erosion of the channel or banks of the receiving water body or the coastal marine area, and</i></p> <p>(iii) <i>The discharge shall not give rise to the following effects after the zone of reasonable mixing:</i></p> <ol style="list-style-type: none"> 1. <i>A change in the pH of 0.5pH unit, or</i>

TABLE TWO: RULE AND STANDARD ASSESSMENT

RMA SECTION	RULE / ACTIVITY	COMMENT
		<p>2. <i>The production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials, or</i></p> <p>3. <i>Any conspicuous change in the colour or visual clarity, or</i></p> <p>4. <i>Any emission of objectionable odour, or</i></p> <p>5. <i>The freshwater is unsuitable for consumption by farm animals, or</i></p> <p>6. <i>Any significant adverse effects on aquatic life.</i></p> <p>The following is noted:</p> <ul style="list-style-type: none"> • The project engineers outline that, given the level of treatment of water via the sediment control devices, the pH will not change; • The formation of a conspicuous oil or grease film is expected to occur as a result of the proposed discharge. • The discharge will not cause a reduction in water clarity, accordingly it is unlikely that there will be 'any conspicuous change in the colour or visual clarity' • There will be no odour associated with the discharge; • Clause 5 relates to fresh water and is not relevant as it relates to discharge to coastal water; • Given the level of treatment proposed and that the discharge of water that may include some sediment will only occur in significant storm events, it will not result in any adverse effects on coastal water and therefore no significant adverse effects on aquatic life. <p>On this basis the proposed discharge is a Permitted Activity.</p>
DISCHARGE FROM A CONTAMINATED SITE		
15	R55 (PERMITTED)	Under Rule R55, the discharge of a contaminants from contaminated land onto or into land from contaminated land where a contaminant the discharge may enter water is a permitted activity provided that conditions are met.
	R56 (DISCRETIONARY)	<p>The conditions require that a site investigation is completed in accordance with Rule R54, and a Detailed Site Investigation (DSI) has been undertaken, reported and provided to the Regional Council in accordance with Rule R54.</p> <p>A DSI has not been prepared for the site and therefore, the proposal is unable to satisfy Rule R54 and R55 and Discretionary Activity resource consent is required under Rule R56.</p>
REPLACEMENT OF STRUCTURE WITHIN INTERMITTENT STREAM		
13	R112 (PERMITTED)	<p>Under Rule R112, the maintenance, repair, replacement, upgrade or use of a lawfully established structure or part of a structure that is fixed in, on, under or over the bed of a river or lake including any associated disturbance, deposition and diversion is a Permitted Activity provided conditions are met. The conditions include that the including that the new structure adds no more to the existing structure than whichever is the lesser of:</p> <p>i) 5% of the plan or cross-sectional area of the structure in the river or lake bed, or</p> <p>ii) 1m in horizontal projection and 1m in vertical projection</p> <p>The horizontal projection will extend beyond 1 metre so the works are unable to comply with this standard. Therefore, Discretionary Activity resource consent is required under Rule R129.</p>
	R129 (DISCRETIONARY)	
REGIONAL SOIL PLAN FOR THE WELLINGTON REGION		
SOIL DISTURBANCE		
9	RULE 2 (PERMITTED)	For the purposes of the soil disturbance provisions, erosion prone land is defined in the Regional Soil Plan ("RSP") as follows:

TABLE TWO: RULE AND STANDARD ASSESSMENT

RMA SECTION	RULE / ACTIVITY	COMMENT
		<p><i>means any land within Area 1 (see definition) with a slope greater than 23 degrees; and any land within Area 2 (see definition) with a slope greater than 28 degrees. Slope is the angle from horizontal and is measured in degrees to an accuracy no less than that achieved by a hand-held inclinometer or abney level.</i></p> <p>The application site is located in 'Area 2'.</p> <p>Under Rule 2 of the RSP, soil disturbance on erosion prone land that:</p> <p>(1) involves the disturbance of greater than or equal to 1,000m³ of soil, within any 10,000m² area (calculated using a minimum width of 10 m) and within any continuous 12 month period; or</p> <p>(2) involves root raking over an area greater than 10,000m² in any continuous 12 month period</p> <p>Excluding any soil disturbance associated with roading and tracking activities or undertaking works in accordance with conditions on a subdivision consent, is a Restricted Discretionary activity. The proposed works comply with the above conditions and, in addition, are associated with an approved subdivision. Therefore, soil disturbance works are a Permitted Activity.</p>
ROADING AND TRACKING		
9	RULE 1 (PERMITTED)	<p>Roading and tracking is defined in the RSP as follows:</p> <p><i>"means any earthworks associated with the formation of any new road or track, or the upgrade of any existing road or track. Roading or tracking activities include the formation of skid sites and any access way, such as driveways and paths and railway tracks, but excludes any tracking undertaken by a mine or quarry operation which either had a currently valid mining license, or was lawfully established, at 26 April 1997 (the date the Regional Soil Plan was publicly notified)"</i></p> <p>Under Rule 1 of the RSP any roading or tracking activity that is:</p> <p>(1) Located in Area 2, and during any 12 month period, will result in a road or track having a continuous length of new upslope batter extending for greater than 200 metres, with a height greater than 2 metres measured vertically;</p> <p>Excluding any roading or tracking activity that is undertaken in accordance with conditions on a subdivision consent is a Restricted Discretionary Activity.</p> <p>No battering or significant excavations are proposed as part of the road works and therefore these works are a Permitted Activity.</p>
REGIONAL FRESHWATER PLAN FOR THE WELLINGTON REGION		
REMOVAL OF VEGETATION		
9	RULE 40 (PERMITTED)	<p>Under Rule 40 of the Regional Freshwater Plan ("RFP"), the trimming and removal of vegetation, including any associated disturbance, deposition, temporary diversion, is a Permitted Activity provided that conditions are met. Measures employed through the works period will ensure the works comply with these conditions. As such, the removal of vegetation associated with the construction of the outlet structure is a Permitted Activity.</p>
DISCHARGE OF CONTAMINANTS		
15	RULE 1 (PERMITTED)	<p>The discharge of contaminants, or water, into surface water relates to potential wet weather overflows from the SRPs and DEBs where it will be contained within the bunded excavation works area. Under Rule 1 of the RFP, the discharge of contaminants, or water, into surface water, (other than the discharge of stormwater), is a Permitted Activity provided the discharge complies with specified conditions.</p> <p>The project engineers have confirmed that all of the conditions in Rule 1 can be met. Namely:</p>

TABLE TWO: RULE AND STANDARD ASSESSMENT

RMA SECTION	RULE / ACTIVITY	COMMENT
		<ul style="list-style-type: none"> • There is no reason to expect conspicuous oil, grease, films, scums, foams or floatable or suspended material would be discernible, compared to background conditions; • No emission of objectionable odour is expected given the nature of the discharge; • As the waterbody is within an urban environment it is not expected that the water would be consumed by animals; • Given the nature of the discharge (i.e., stormwater) and volume of discharge the project ecologists have concluded that the discharge will have a negligible effect on coastal water and therefore there will be no significant effects on aquatic life; • Measures will ensure no erosion will occur at the point of discharges; and, • The discharge will not alter the natural course of the river or stream. <p>It is requested that conditions of consent (including monitoring conditions) be imposed on the consent to ensure compliance with these conditions. Accordingly, any potential wet weather overflows from the SRPs and DEBs is a Permitted Activity.</p>
DISCHARGE OF STORMWATER		
15	RULE 2 (PERMITTED)	Under Rule 2 of the RFP, the discharge of stormwater into surface water is a Permitted Activity provided that the discharge complies with a number of conditions. The project engineer has confirmed:
	RULE 5 (DISCRETIONARY)	<ul style="list-style-type: none"> • There is no reason to expect conspicuous oil, grease, films, scums, foams or floatable or suspended material would be discernible, compared to background conditions; • No emission of objectionable odour is expected given the nature of the discharge; • As the waterbody is within an urban environment it is not expected that the water would be consumed by animals; • Given the nature of the discharge (i.e., stormwater) and volume of discharge it is anticipated that there will be no significant adverse effects on aquatic life (that is minimal as reported in the background documents referenced in this application); • Measures will ensure no erosion will occur at the point of discharges; and, • The discharge will not alter the natural course of the river or stream. <p>The discharges originate from an area of bulk earthworks greater than 0.3ha and therefore do not comply with condition 3(a). Accordingly, Discretionary Activity resource consent is required under Rule 5 – All Other Discharges.</p>
REPLACEMENT OF STRUCTURE IN INTERMITTENT STREAM		
13	RULE 43 (CONTROLLED) RULE 49 (DISCRETIONARY)	<p>Under Rule 43 of the RFP, the maintenance, repair, replacement, extension, addition to, or alteration of any existing lawful structure or any part of an existing lawful structure that is fixed in, on, under or over the bed of any river or lake, including any associated disturbance, deposition and temporary diversion of water and which adds no more than whichever is the lesser of –</p> <ul style="list-style-type: none"> • 5% to the plan or cross-sectional area of the structure; or • two metres in horizontal projection and one metre in vertical projection; measured from the structure as it was on 25 January 1997 (the date the Proposed Plan was publicly notified); <p>And which disturbs sand, shingle, gravel, or other natural river or lake bed material over an area less than four square metres per lineal metre of structure measured along the length or breadth of the structure, with a maximum disturbance of 200 square metres for any structure, is a Controlled Activity provided that it complies with the applicable standards and terms.</p> <p>The inlet structure will include a wingwall and apron to collect any debris so the project engineer has confirmed the full extent of the works area may extend to 5m from the existing structure. Therefore, the proposed replacement works are</p>

TABLE TWO: RULE AND STANDARD ASSESSMENT

RMA SECTION	RULE / ACTIVITY	COMMENT
		unable to comply with the above parameters and Discretionary Activity consent is required under Rule 49.
REGIONAL PLAN FOR DISCHARGES TO LAND		
15	RULE 2 (DISCRETIONARY)	<p>This rule applies to wet weather overflow discharges of potentially sediment laden stormwater such as the proposed SRPs and DEBs.</p> <p>The discharge of sediment laden stormwater to land is not provided for as a permitted activity under the operative Regional Plan for Discharges to Land, and therefore requires consent for a Discretionary Activity under Rule 2.</p>
REGIONAL COASTAL PLAN FOR THE WELLINGTON REGION		
DISCHARGE OF WATER THAT MAY CONTAIN SEDIMENT TO THE CMA (RELATES TO POTENTIAL WET-WEATHER OVERFLOWS ONLY)		
15	RULE 56 (PERMITTED)	<p>Refer description of potential discharge of sediment to the CMA above.</p> <p>Under Rule 56, the discharge of freshwater (other than stormwater covered under Rule 53) into water in the Coastal Marine Area is a Permitted Activity provided it complies with the following conditions:</p> <p>(1) The discharge (either by itself or when combined with the same, similar or other discharges) will not give rise, after reasonable mixing, to all or any of the following effects:</p> <ul style="list-style-type: none"> • the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials; • any conspicuous change in the colour or visual clarity; • any emission of objectionable odour; • any rendering of fresh water unsuitable for consumption by farm animals; • any significant effects on aquatic life; • any discernible change in temperature. <p>(2) The discharge shall not contain any antibiotics, fungicides, algacides, or synthetic growth stimulants.</p> <p>The project engineer has confirmed that the discharges from the site will comply with the above conditions. The project ecologist has also concluded that the discharges will be minor and temporary in duration. Refer also assessment under Rule R42 in the PNRP-AV section above. On this basis, the proposed discharge is a Permitted Activity.</p>
DISCHARGE OF STORMWATER THE COASTAL MARINE AREA		
15	RULE 53 (PERMITTED)	<p>Any discharge of stormwater onto land or into water in the coastal marine area from any motorway, road, street, railway line, roof, yard, paved surface, breakwater, jetty, wharf, boat shed, or any other structure is a Permitted Activity, provided it complies with the following conditions:</p> <p>(1) <i>The discharge shall adopt the best practicable option to ensure that after reasonable mixing the stormwater discharged will not give rise to all or any of the following effects:</i></p> <ul style="list-style-type: none"> • <i>the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials;</i> • <i>any conspicuous change in the colour or visual clarity;</i> • <i>any emission of objectionable odour;</i> • <i>the rendering of fresh water unsuitable for consumption by farm animals;</i> • <i>any significant effects on aquatic life.</i> <p>(2) <i>The stormwater collection systems and pipelines will be constructed and maintained in an efficient operating condition.</i></p>

TABLE TWO: RULE AND STANDARD ASSESSMENT

RMA SECTION	RULE / ACTIVITY	COMMENT
		<p>(3) <i>The stormwater shall be discharged at a rate that does not cause significant erosion.</i></p> <p>The project engineer has confirmed that the stormwater discharges from the site will comply with the above conditions. The rate of discharge has been calculated and is provided in the Stormwater Discharge Report. Refer also assessment under Rule R42 in the PNRP-AV section above. Therefore, the proposed stormwater discharge is a Permitted Activity.</p>

6.2 OVERALL CONSENT REQUIREMENTS

6.2.1 PROPOSED NATURAL RESOURCES PLAN (APPEALS VERSION)

Approvals are sought under the following PNRP-AV rules:

- **Rule R52A (Restricted Discretionary Activity)** - Discharge permit for the discharge of stormwater from a new subdivision or development into water, or onto or into land where it may enter a surface water body or coastal water, including through an existing local authority stormwater network, that is not permitted by Rule R48A.
- **Rule R53 (Discretionary Activity)** – Discharge permit for the discharge of stormwater into water or onto or into land where it may enter water that is not permitted by Rules R48, R48A or R49, or controlled by Rule R50, or a restricted discretionary activity under Rules R51, R52 or R52A.
- **Rule R56 (Discretionary Activity)** - The use the of land to undertake a detailed site investigation of contaminated land, and or the discharge of a contaminants onto or into land from contaminated land SLUR Category III land where the discharge a contaminant may enter water, that is not permitted by Rule R54 or Rule R55 is a discretionary activity.
- **Rule R101 (Discretionary Activity)** – land use consent for the use of land, and the associated discharge of sediment-laden runoff stormwater into water or onto or into land where it may enter water from earthworks not permitted by Rule R99 or vegetation clearance on erosion prone land that is not permitted by Rule R99 or Rule R100.
- **Rule R101 (Discretionary Activity)** – land use consent for vegetation clearance within 5m of a stream.
- **Rule R129 (Discretionary Activity)** – Replacement of a structure in an intermittent stream.

The proposed discharges of water that may contain sediment to the CMA is a Permitted Activity under the applicable rules of the PNRP-AV.

6.2.2 REGIONAL FRESHWATER PLAN FOR THE WELLINGTON REGION

Approvals are sought under the following RFP rules:

- **Rule 5 (Discretionary Activity)** – the discharge of stormwater that originates from an area of bulk earthworks greater than 0.3ha.
- **Rule 49 (Discretionary Activity)** – the replacement of a stormwater inlet in the bed of a river.

The proposed removal of vegetation is a Permitted Activity under Rule 40 and the proposed discharge of contaminants is a Permitted Activity under Rule 1.

6.2.3 REGIONAL PLAN FOR DISCHARGES TO LAND

Approvals are sought under the following RPDL rules:

- **Rule 2 (Discretionary Activity)** – the discharge of contaminants to land that may enter water. This rule applies to wet weather overflow discharges of potentially sediment laden stormwater from the proposed SRPs and DEBs.

6.2.4 REGIONAL SOIL PLAN

No approvals are required under the RSP as the proposed earthworks and vegetation clearance comply with the vegetation removal and roading and tracking rules.

6.2.5 REGIONAL COASTAL PLAN

No approvals are required under the RCP as the proposed discharges comply with the relevant permitted activity rules and conditions.

6.3 NATIONAL ENVIRONMENTAL STANDARD FOR FRESHWATER

The NES-F sets requirements for carrying out activities that pose risks to freshwater and freshwater ecosystems. There are no wetlands on the site so the standards relating to wetlands are not applicable.

In relation to stream reclamation, the NES-F references the definition of reclamation in the National Planning Standards 2019 as follows:

means the manmade formation of permanent dry land by the positioning of material into or onto any part of a waterbody, bed of a lake or river or the coastal marine area, and:

(a) includes the construction of any causeway; but

(b) excludes the construction of natural hazard protection structures such as seawalls, breakwaters or groynes except where the purpose of those structures is to form dry land.

As the new structure within the intermittent stream will extend up to three metres beyond the footprint of the existing structure, the placement of the new structure in the intermittent structure is considered to be reclamation. Under Clause 57 of the NES-F the reclamation of the bed of any river is a **Discretionary Activity**.

Clause 62 of the NES-F sets out the information required to be provided in relation to the placement of specified structures on the bed of any river. While 'inlet structure' is not specifically listed, the information and plans provided in this application satisfies these requirements.

7. SECTION 95 ASSESSMENT

Under Section 95 of the Act, a consent authority must determine whether a resource consent application should be, or is required to be, notified. The Act includes four-step processes that must be followed for both public and limited notification and includes triggers or precludes notification of applications in certain circumstances.

The following sections follow the processes for public notification (under Section 95A), and limited notification (under Section 95E) and it is this process that the Regional Council will follow to determine notification of the application.

7.1 PUBLIC NOTIFICATION STEPS – SECTION 95A

7.1.1 STEP 1 – PUBLIC NOTIFICATION IS MANDATORY IN CERTAIN CIRCUMSTANCES

Public notification is required under Step 1 in the following circumstances:

Public notification is mandatory in certain circumstances. Is the Applicant requesting public notification?

Is public notification required under s95C?

Is the application made jointly with an application to exchange recreation reserve land under s15AA of the Reserves Act?

The Applicant is not requesting public notification, public notification is not required under Section 95C and the application is not made jointly with an application to exchange recreation reserve land under Section 15AA of the Reserves Act.

7.1.2 STEP 2 – PUBLIC NOTIFICATION IS PRECLUDED IN CERTAIN CIRCUMSTANCES

If public notification is not required under Step 1, it may be precluded in certain circumstances (unless special circumstances apply under Step 4):

Are all activities in the application subject to a rule in a Plan or National Environmental Standard precluding public notification?

Is the application for one or more of the following (but no other) activities?

- *A controlled activity*
- *A boundary activity with a restricted discretionary, discretionary or non-complying activity status*
- *An activity prescribed by regulation made under s360H(1)(a)(i) precluding public notification (if any)*

The activities are not subject to the rules in a Plan or National Environmental Standard precluding public notification, the application is not a controlled activity, a boundary activity or an activity prescribed by regulation made under Section 360H(1)(a)(i) precluding public notification (if any).

7.1.3 STEP 3 – PUBLIC NOTIFICATION IS REQUIRED IN CERTAIN CIRCUMSTANCES

Step 3 sets out criteria for determining whether public notification may be required in certain circumstances:

Is the activity in the application subject to a rule in a Plan or National Environmental Standard that requires public notification?

Does the activity have, or is likely to have, adverse environmental effects that are more than minor in accordance with s95D?

The activity is not subject to a rule in a Plan or National Environmental Standard that requires public notification.

However, consideration must be given to whether or not the activity has, or is likely to have, environmental effects that are more than minor in accordance with Section 95D of the Act.

Under Section 95D, a consent authority that is deciding, for the purpose of Section 95A(8)(b) of the Act, whether an activity will have or is likely to have adverse effects on the environment that are more than minor –

- a) *Must disregard any effects on persons who own or occupy –*
 - (i) *the land in, on or over which the activity will occur; or*
 - (ii) *any land adjacent to that land; and*
- b) *May disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect; and*
- c) *In the case of a restricted discretionary activity, must disregard an adverse effect of the activity that does not relate to a matter for which a rule or national environmental standard restricts discretion; and*
- d) *Must disregard trade competition and the effects of trade competition; and*
- e) *Must disregard any effect on a person who has given written approval to the relevant application.*

No written approvals have been sought as part of this application and it is noted that, for the purposes of determining whether adverse environmental effects are more than minor, any effects on persons who own or occupy the land in, on or over which the activity will occur must be disregarded.

The assessment of the actual and potential environmental effects of the proposal included in Section 8.2 below concludes that the potential adverse effects associated with the proposal will be less than minor. The reasons for this conclusion are summarised in the following points:

- While earthworks activities in general have the potential to adversely affect wider receiving and downstream environments (in this case the CMA), the site is relatively flat and therefore significant landform modification is not necessary to enable the consented Masterplan development. Moreover, the extent of earthworks is largely contained within the area of existing development, thereby limiting excavation works to the toe of the escarpment only.
- With respect to erosion and sediment control, the ECMP outlines the proposed erosion and sediment control measures that will be implemented to appropriately manage associated effects. SRPs, DEBs and silt fences will be constructed to contain sediment and sediment-laden water within the site. If large rain events were to occur, the water that may have some sediment (but won't be sediment laden) may pool but this will be adequately diverted from the CMA. Silt fences provide secondary protection against the discharge of sediment-laden water to the CMA.
- While earthworks have the potential to generate adverse effects, both temporary and permanent, through careful design as well as adherence to mitigation measures that include ESC procedures as set out in the ECMP, such effects will be mitigated to a less than minor extent.
- With respect to effects on water quantity due to increases in impervious surfaces, stormwater pipes and outfalls have been appropriately sized to accommodate stormwater discharges from the upper catchments and the stormwater discharges can comply with the permitted activity conditions in the PNRP-AV, RDLP and the RCP. On this basis, the increase in the quantity of stormwater discharges from the site will not result in any adverse effects on the receiving environment.
- Potential adverse effects associated with the earthworks on the water quality of the CMA has been mitigated as far as reasonably practicable by the proposed sediment control measures. As detailed in Section 8.4 of the ECMP, diversion channels and earth bunds will intercept sediment laden runoff, diverting flow to the sediment control devices including DEBs and SRPs. These

devices will discharge to land before entering stabilised artificial watercourses or reticulated stormwater systems. While emergency or 'wet-weather overflow' discharges are possible in significant storm events, the design of these devices includes stabilised emergency spillways (with erosion protection) in the event of these. These are designed for 1% AEP (1 in 100-year storms), and although the discharge may not be fully treated, the provision of secondary protection such as silt fences required around the perimeter of the site will significantly reduce the potential for silt discharges beyond the extent of the works areas, including into the CMA. Any discharges beyond the site will not be 'sediment laden' but may have some sediment in them, even after flocculation. In this regard, it is acknowledged that the Regional Council guidelines do not envisage the removal of all sediment from discharges but that it is managed to reasonable levels.

- With respect to potential effects on water quality in the CMA, the project ecologist has concluded that such effects will be less than minor.
- With respect to groundwater, any dewatering procedures that are undertaken will comply with the new dewatering guidelines in the "Erosion and Sediment Control Guide for Land Disturbing Activities in the Wellington Region" that was reissued in February 2021. The Applicant requests the inclusion of a condition that requires site works to comply with these guidelines.
- In relation to the possible contamination of groundwater, the ESMP outlines that prior to commencement of works, the risk of encountering contaminated groundwater will be assessed by an appropriately qualified expert and if contamination is indicated, further investigation will be carried out to verify levels of contamination and allow appropriate planning for design of the dewatering system. This is reflected in the condition requested above that requires that the finalised CSMP include details of restrictions on the discharge of groundwater ponded surface water to stormwater unless testing confirms that contaminants are within the regional council permitted stormwater discharge concentrations.
- Stormwater will be managed at source and potential effects are being 'minimised to the smallest extent possible' via the adoption of WSUD measures. While water treatment is not proposed to all impervious surfaces, the non-treated areas are non-trafficable areas. The contaminant levels expected in these areas will be such that adverse effects of the untreated stormwater will be less than minor. It is also noted that, as all stormwater discharging from the site to the CMA is untreated, the stormwater design represents an improvement to the current situation.
- With respect to the proposed stream works, in determining the nature and scale of potential ecological effects, the project ecologist has applied the effects management hierarchy and has made the following conclusion –

Modifying the inlet structure will result in the loss of 3 linear metres of intermittent stream bed. A third to half of this area includes the current apron and rip-rap, and the remainder cobble and bedrock substrate. This will result in a minor alteration to the baseline conditions so that the attributes of the stream on the site will be partially changed, with the loss of a very low proportion of the stream bed of the intermittent stream. This is assessed as a low magnitude of effect within the context of the site.

With the low ecological value of the 3m of intermittent stream and low magnitude of effect, the level of effect is assessed as Very low (refer to EIANZ matrix, Table 3).

This very low level of effect has been achieved through the effects hierarchy by design, to minimise the extent of stream loss, and mitigation of potential adverse ecological effects with the provision of fish passage.

- With respect to managing the proposed impacts on potential little blue penguin habitat, the Applicant has requested the imposition of consent conditions that require adherence to a number of measures should penguins or penguin habitat and nests be found.

- With respect to contamination, proffered conditions to ensure that further testing is undertaken in accordance with the SAP and requiring the CSMP to be updated and finalised to reflect the results of the testing have been included in this application. Subject to adhering to the measures outlined in these conditions, environmental risks associated with potential contamination within the site will be appropriately managed.

For these reasons, as advanced in more detail in Section 8.2 below, the activity will not have and will not be likely to have adverse effects on the environment that are more than minor in terms of Section 95A(8)(b).

7.1.4 STEP 4 – PUBLIC NOTIFICATION IS REQUIRED IN SPECIAL CIRCUMSTANCES

If public notification is not required under Step 3, under Section 95A(9) of the Ac, it may still be warranted where there are special circumstances:

Do special circumstances exist that warrant public notification?

Special circumstances are not defined in the Act, but, as the Court of Appeal has explained, a special circumstance is something outside the common run of things which is exceptional, abnormal or unusual but less than extraordinary or unique.⁸ A special circumstance would be one which makes notification desirable despite the general provisions excluding the need for notification. The Council should be satisfied that public notification may elicit additional information on the aspects of the proposal requiring resource consent.⁹

Moreover, High Court and Court of Appeal decisions have determined that:¹⁰

- The provision involves the exercise of a broad discretion on the part of the Council, based upon its assessment of the factual position and the use of its expertise and judgment;
- The fact that a consent authority has had an indication that people want to make submissions is not a special circumstance;
- The fact that a large development is proposed is not a special circumstance;
- The fact that some persons have concerns about a proposal is not a special circumstance; and,
- Public interest in and of itself does not constitute a special circumstance.

As the High Court has said:¹¹

Further, even major levels of public interest cannot of itself give rise to special circumstances. If that was so, every application where there was any concern expressed by people claiming to be affected would have to be notified.

There are no special circumstances that exist in relation to the application to justify the Regional Council determining public notification is required under special circumstances. Reasons for this include that:

- The application seeks Regional Council approvals for a development that has obtained land use and subdivision approval from the WCC;

⁸ *Far North District Council v Te Runanga-a-iwi o Ngati Kahu* [2013] NZCA 221 at 36–37

⁹ *Far North District Council v Te Runanga-a-iwi o Ngati Kahu* [2013] NZCA 221 at 36–37

¹⁰ *Norman v Tūpuna Maunga o Tāmaki Makaurau Authority* [2020] NZHC 3425 at [325] – [327 and [361]; *Urban Auckland, Society for the Protection of Auckland City and Waterfront v Auckland Council* [2015] NZHC 1382, [2015] NZRMA 235 at [137]; *S & M Property Holdings Ltd v Wellington City Council* [2003] NZRMA 193 (HC) at [48].

¹¹ *Classic Developments NZ Ltd v Tauranga City Council* [2020] NZ HC 945 at [53]

- The development as a whole has been the subject of extensive legal processes and the WCC's resource consent for the development that this proposal assists in facilitating has been approved;
- The consents sought here are for the purpose of preparing the site in a practical sense for a consented development and the works involved do not, of themselves, give rise to special circumstances;
- As a Discretionary Activity overall, the activities proposed do not represent activities that are beyond what is anticipated in the applicable regional plans. It is also noted that many of the activities included are permitted under the proposed and operative plans. The proposal is therefore neither exceptional nor unusual;
- Both the earthworks and stormwater disposal will be undertaken in accordance with Regional Council and WWL guidelines and best practice; and,
- The application and its supporting material have been prepared by a set of qualified professionals, including input by a specialist in earthworks and stormwater management. It is highly unlikely that notification would elicit any additional, relevant information.

Based this assessment, it would not be desirable nor is it considered necessary in all the circumstances above for the Regional Council to notify the application.

7.1.5 PUBLIC NOTIFICATION SUMMARY

It is considered that the Regional Council is not required to publicly notify the application under steps 1 – 4 of Section 95A above.

7.2 LIMITED NOTIFICATION

As determined above, public notification is not required. Therefore, under Section 95B of the Act, a four-step process must then be followed to determine if limited notification is required.

7.2.1 STEP 1 -CERTAIN AFFECTED GROUPS / PERSONS MUST BE NOTIFIED

Under Section 95B, limited notification is mandatory for certain groups/persons. The questions that arise under Section 95B(2) are:

Are there affected protected customary rights groups?

Are there affected customary marine title groups (for accommodated activities)?

Is the proposal on or adjacent to, or may it affect, land that is subject to a statutory acknowledgement and is the person to whom the statutory acknowledgement made affected under Section 95E?

A "Protected customary rights group" is defined in Section 2 of the Act as having the same meaning as that given in Section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011 ("MACA"). Under Section 9(1) of MACA, a protected customary rights group is a group to which a "protected customary rights order" applies. And, under that section, a "protected customary rights order" is an order of the High Court granted in recognition of customary rights. Orders of that sort follow a substantive hearing in the High Court.

A "Customary marine title group" under Section 2 of the Act, has the same meaning as that given in Section 9(1) of MACA. Section 9(1) of MACA defines "customary marine title group" as a group to which a "customary marine title order" has been granted. And, under that section, a "customary marine title

order” is an order of the High Court granted in respect of a customary marine title area. Orders of that sort follow a substantive hearing in the High Court.

Under Section 95F of the Act, a protected customary rights group will be an “*affected protected customary rights group*” if the activity may have adverse effects on the protected customary right, unless the group has given written approval for the activity.

The Marine and Coastal Area Register is a record of customary interests in the marine and coastal area recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and is administered by Te Arawhiti – the Office for Maori Crown Relations. The Regional Council has compiled a list of customary marine title applicants within its boundaries and has provided this on the Regional Council website. The following applications have been made for customary interest in relation to Wellington Harbour:

- Te Atiawa ki te Upoko o te Ika a Maui Potiki Trust - Pipinui Point (Boom Rock) to Mukamuka Iti (Windy Point) including Wellington Harbour. This area extends to 12 nautical miles offshore between these two points.
- Ngati Toa Rangitira - From the mouth of the Whangaehu River to the Turakirae Heads, to the mouth of the Arahura River to the Kaikoura coast.

However, while these groups have made applications, neither group (nor any other party) has been recognised as a protected customary rights group. That is because they are not an applicant group in relation to which protected customary rights have been recognised by order of the Court or via agreement with the Crown and given effect to by Order in Council. Equally, no customary marine titles orders have been made by the Court or by an Act of Parliament for the waters in question, so there is no recognised affected customary marine title group here.

Notwithstanding, the nature of the proposals sought in this particular application in relation to the CMA are not likely to have more than minor adverse effects on the exercise of any public or customary activities in the area.

In terms of Section 95B(3), the proposal is adjacent to an area subject to a statutory acknowledgment. These acknowledgements are as follows:

- Section 29(1) of the Port Nicholson Block Claims Settlement Act 2009 requires the Council to provide the relevant consent documentation to the trustee of the Port Nicholson Settlement Block Trust (Taranaki Whānui) for each resource consent application for an activity within, adjacent to, or directly affecting a statutory area as listed in this Act. This application has been provided to the trustee and regard has been given to the relevant statutory acknowledgment under this Act. At the time of lodgment, no comments have been received. It is understood that under the requirements of this Act, the Regional Council will also send the application to the trustee.
- Section 31(1) of the Ngāti Toa Rangitira Claims Settlement Act 2014 requires the Council to provide the relevant consent documentation to the trustee of the Te Rūnanga o Toa Rangitira Incorporate Trust (Ngāti Toa) for each resource consent application for an activity within, adjacent to, or directly affecting a statutory area as listed in this Act. This application has been provided to the trustee and regard has been given to the relevant statutory acknowledgment under this Act. This application has been provided to the trustee and regard has been given to the relevant statutory acknowledgment under this Act. At the time of lodgment, no comments have been received. It is understood that under the requirements of this Act, the Regional Council will also send the application to the trustee.

7.2.2 STEP 2 - LIMITED NOTIFICATION IS PRECLUDED IN CERTAIN CIRCUMSTANCES

Under Section 95B(5), limited notification to any other persons not referenced in Step 1 is precluded in certain circumstances (unless special circumstances apply under Step 4):

Are all activities in the application subject to a rule in a Plan or National Environmental Standard precluding limited notification?

Is the application for either or both of the following, but no other activities?

- *A controlled activity (other than a subdivision) under the District Plan*
- *An activity prescribed by regulations made under s360H(1)(a)(ii) precluding limited notification (if any)*

There is no preclusion to limited notification of this application under Step 2.

7.2.3 STEP 3 - CERTAIN OTHER PERSONS MUST BE NOTIFIED

Under Section 95B (7)-(9), if limited notification is not precluded under Step 2, limited notification is required for any persons found affected under Section 95E of the Act:

Are any of the following persons 'affected' under Section 95E?

- *For 'boundary activities' an owner of an allotment with an 'infringed boundary' (there are no such activities or owners here)*
- *In the case of any activity prescribed under s360H(1)(b), a prescribed person in respect of the proposed activity. (there is no such activity here.)*

For all other activities, are there any affected persons in accordance with s95E?

AFFECTED PERSONS (S95E)

Under Section 95E(1), a person is an affected person if the consent authority decides that the activity's adverse effects on the person are minor or more than minor (but are not less than minor). Under Section 95E(2) of the Act, the consent authority, in assessing an activity's adverse effects on a person for the purpose of that section:

- May disregard an adverse effect of the activity on the person if a rule or a national environmental standard permits an activity with that effect; and*
- Must, if the activity is a controlled activity or a restricted discretionary activity, disregard an adverse effect of the activity on the person if the effect does not relate to a matter for which a rule or a national environmental standard reserves control or restricts discretion; and*
- Must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11.*

Section 95E(3)(a) of the Act states that those individuals who give written approval to a proposal cannot be an "affected party". No written approvals have been obtained.

Potential adverse effects on the persons / properties will be less than minor for the reasons outlined in Section 9.2 below. Specifically:

- The excavation works area is not directly adjacent to any adjoining properties.
- Procedures and methods included in the ECMP and additional measures proposed in this application will ensure adverse effects associated with the proposed earthworks will not extend

beyond the boundaries of the site, including the CMA. To ensure the effectiveness of the proposed measures, the ECMP also includes monitoring process and measures that will be adhered to for the duration of the works.

- All stormwater infrastructure has been designed to accommodate stormwater flows from upstream properties / catchments.

7.2.4 STEP 4 - LIMITED NOTIFICATION IS REQUIRED UNDER SPECIAL CIRCUMSTANCES

If limited notification is not required under Step 3, it may still be warranted where there are special circumstances:

Do special circumstances exist that warrant notification of any persons to whom limited notification would otherwise be precluded?

For the reasons outlined under Step 4 of the public notification assessment above, there are no special circumstances that warrant limited notification of this application.

7.2.5 LIMITED NOTIFICATION SUMMARY

It is considered that the Regional Council is not required to notify the application to any parties under steps 1 – 4 above.

7.3 NOTIFICATION SUMMARY

Based on the notification assessment above the application does not require public notification under Section 95A or limited notification to any parties under Section 95B.

8. SECTION 104(1) ASSESSMENT

Before making a decision on a Discretionary Activity under Section 104B of the Act, a consent authority must consider the proposal in terms of Section 104 of the Act. Subject to Part 2, when considering an application for resource consent in accordance with Section 104(1) of the Act, the consent authority is required to have regard to:

- a) *Any actual and potential effects on the environment of allowing the activity;*
- b) *Any relevant provisions of a:*
 - i) *National Policy Statement*
 - ii) *New Zealand Coastal Policy Statement*
 - iii) *National Environmental Standard*
 - iv) *Regional Policy Statement or Proposed Regional Policy Statement*
 - v) *Plan or proposed plan*
- c) *Any other matter relevant and reasonably necessary to determine the application*

8.1 PURPOSE AND PRINCIPLES

8.1.1 SECTION 5 - PURPOSE AND PRINCIPLES

Section 5 of the Act states that the purpose of the Act is to promote the sustainable management of natural and physical resources. Section 5(2) states that sustainable management means managing the use, development and protection of natural and physical resources in a manner which enables people and communities to provide for their social, economic and cultural wellbeing, and their health and safety, while:

- a) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- b) *Safeguarding the life-supporting capacity of air, water, soil and ecosystems; and*
- c) *Avoiding, remedying or mitigating any adverse effects of activities on the environment.*

Applying Section 5 of the Act, and the other relevant matters under Part 2 of the Act, can involve the assessment of sometimes conflicting considerations – including the positive and adverse effects of a proposal. Also, the consideration of the matters in Section 5 can often be informed by the direction provided in the objectives and policies in the relevant statutory planning documents, which have been considered in detail in Section 9.4 of this application.

Overall, it is considered that the proposal meets the purpose and principles of the Act. In particular:

- The life supporting capacity of the ecosystems within and adjacent to the excavation works area and development areas will be safeguarded via earthworks design and construction methodologies as well as the proposed mitigation measures outlined in this application and the ECMP;
- The proposal includes the treatment of stormwater discharging from the site where currently all stormwater discharges to the CMA untreated;
- Mitigation measures inherent to the proposal, including erosion and sediment control and stormwater treatment, will safeguard the life-supporting capacity of air, water, soil and ecosystems; and,
- The proposal will facilitate development that will enhance people's enjoyment of the area that will allow for social, cultural and economic wellbeing.

Section 5(2)(c) of the Act requires that the adverse effects on the environment be avoided, remedied or mitigated. This does not however require that there be no residual effects on the environment. The implementation of various mitigation measures seeks to ensure that any potential adverse effects from the earthworks activities on water resources and ecosystems are minimised to a less than minor extent.

Overall, the proposal will promote the sustainable management of natural and physical resources in accordance with Part 2 of the Act.

8.1.2 SECTION 6 - MATTERS OF NATIONAL IMPORTANCE

Section 6 of the Act identifies matters of national importance. In exercising their functions and powers under the Act, consent authorities must recognise and provide for the matters listed. The matters are:

- (a) *the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:*

- (b) *the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:*
- (c) *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) *the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
- (e) *the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
- (f) *the protection of historic heritage from inappropriate subdivision, use, and development:*
- (g) *the protection of protected customary rights:*
- (h) *the management of significant risks from natural hazards.*

SECTION 6(A)

Section 6(a) seeks to preserve the natural character of the coastal environment (including the coastal marine area), wetlands and lakes and rivers and their margins from protect them from inappropriate subdivision, use and development. While the natural character values around the project site and adjacent coastal environment are highly modified, given the various mitigation and monitoring measures proposed including erosion and sediment control and treatment of operational stormwater, it is considered that the proposal does not constitute inappropriate development for the purpose of Section 6(a) of the Act.

SECTION 6(B)

Section 6(b) of the Act seeks to protect outstanding natural features and landscapes from inappropriate subdivision, use and development.

The application site does not lie within a regionally identified Outstanding Natural Feature or Landscape. However, it falls within an area valued for its public open space, natural environment and amenity. The effects of the proposal on these values have been addressed in the application granted by WCC where it was determined that the proposal was not inappropriate with respect to protecting these values.

SECTION 6(C)

Section 6(c) of the Act seeks to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna. Potential effects on ecosystems within the application site have sought to be avoided via containing the majority of earthworks within existing development areas. Moreover, potential effects on adjacent habitats, including within the CMA, will be managed via adherence to the mitigation measures proposed in this application.

SECTION 6(D)

Section 6(d) relates to the maintenance and enhancement of public access to, and along, the CMA, lakes and rivers. During construction it may be necessary to restrict public access within the site for public health and safety and security reasons. However, this will only be undertaken where necessary, and following completion of the works access to the CMA will not be restricted. The Applicant has not sought approval for the exclusive use of any parts of the CMA in this application. Therefore, beyond a moderate and defined period of exclusion for construction purposes, public access arrangements to the CMA will be maintained and enhanced.

SECTION 6(E)

Section 6(e) of the Act relates to the relationship of Māori and their cultural and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. The Cultural Impact Assessment that accompanied the Masterplan resource consent application and that was prepared on behalf of Taranaki Whanui Ki Te Upoko o Te Ika and The Port Nicholson Block Settlement Trust has raised no concerns with respect to Section 6(e) matters. For reference, the CIA is attached in **Appendix Fifteen**.

The Applicant accepts the imposition of a consent condition requiring an Accidental Discovery Protocol be adhered to. The protocol sets out the procedures that must be followed in the event that taonga, burial sites / koiwi, or archaeological sites are encountered.

SECTION 6(H)

Section 6(h) of the Act relates to the management of significant risk from natural hazards. The Masterplan resource consent addresses matters in relation to climate change and inundation. With respect to geotechnical hazards, it is proposed that the earthworks and site stabilisation procedures be overseen by a geotechnical engineer. In relation to this proposal, the climate change and inundation was taken into account in the sizing of the proposed stormwater infrastructure and the design and sizing of sediment control devices including the DEBs and SRPs and the associated catchments of these devices.

8.1.3 SECTION 7 - OTHER MATTERS

Section 7 lists other matters the council must have particular regard to, including:

- a) *Kaitiakitanga*
- aa) *The ethic of stewardship*
- b) *The efficient use and development of natural and physical resources*
- c) *The maintenance and enhancement of amenity values*
- d) *Intrinsic values of ecosystems*
- f) *Maintenance and enhancement of the quality of the environment*
- g) *Any finite characteristics of natural and physical resource*

SECTIONS 7(A) AND 7(AA)

Regarding Sections 7(a) and (aa) of the Act, the Cultural Impact Assessment ("CIA") that accompanied the Masterplan resource consent application and that was prepared on behalf of Taranaki Whanui Ki Te Upoko o Te Ika (Port Nicholson Block Settlement Trust), dated September 2016, and has raised no issues with respect to kaitiakitanga and the ethic of stewardship. For reference, the CIA is attached in **Appendix Fifteen**.

The application site is adjacent to an area subject to a Statutory Acknowledgement being Nga Taonga Nui a Kiwa: Te Whanganui-a-Tara (Wellington Harbour). The application has been sent to the Port Nicholson Settlement Block Trust and Ngāti Toa Rangitira in accordance with the requirements of the acknowledgements.

SECTION 7(B)

Section 7(b) relates to whether a proposal involves the efficient use and development of natural and physical resources. The proposal is considered to be an efficient use of natural and physical resources as it will enable the utilisation of a brownfield site for residential and commercial purposes.

SECTION 7(C)

Section 7(c) relates to the maintenance and enhancement of amenity values. Construction works has the potential to generate adverse effects on amenity values but will be temporary in nature. On this basis, it is considered that particular regard has been given to Section 7(c) of the Act.

SECTIONS 7(D), 7(F) AND 7(G)

Sections 7(d), (f) and (g) of the Act relate to the intrinsic values of ecosystems, the quality of the environment, and the finite characteristics of natural and physical resources. Based on the conclusions reached below in Section 9.2, particular regard has been given to the intrinsic values of ecosystems and to the maintenance of the quality of the environment. In particular, the proposal has been designed to ensure that the ecosystem values of the application site and adjacent sites and areas (including the CMA) will be maintained. In relation to Section 7(g), developable urban land is a finite resource, and this consent will enable the land to be used for the purpose in which consent have been obtained from the territorial authority.

SECTION 8 - THE TREATY OF WAITANGI

Section 8 sets out that all persons exercising functions and power under the Act, in relation to managing the use, development and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). As noted, a CIA has been undertaken on behalf of Taranaki Whānui Ki Te Upoko o Te Ika and The Port Nicholson Settlement Trust, and the proposal was not found to be inconsistent with the principles of the Treaty of Waitangi.

8.1.4 PART 2 SUMMARY

Overall, the proposal will further enable development that makes use of an existing land resource in a modified, underutilised area.

The life supporting capacity of the ecosystems within and adjacent to the site will be safeguarded via earthworks design and construction methodologies. Together the ECMP and the CSMP also provides for adequate mitigation measures to manage potential effects through the earthworks and construction period. The proposal avoids removal of significant indigenous vegetation and will also result in an improvement in treatment stormwater discharging from the site.

Both the earthworks and stormwater management elements of this proposal fall within, and are guided by, the parameters and principles set in the consented Masterplan and Design Guide for the Shelly Bay development. Defining the development concept and undertaking analysis at the masterplan stage, combined with mitigation measures outlined in this proposal, has ensured the integrated management of natural and physical resources.

While not all adverse effects may be fully avoided, remedied or mitigated, the Act is not a 'no-effects statute', and measures are included in the proposed to ensure that adverse effects can be mitigated to an acceptable level.

8.2 ASSESSMENT OF ENVIRONMENTAL EFFECTS

Section 88 and Schedule 4 of the Act require the applicant to assess any actual or potential effects that the proposed activity may have on the environment and the ways in which any adverse effects may be mitigated. Schedule 4 requires that any such assessment shall be in such detail as corresponds with the scale and significance of the actual and potential effects that the activity may have on the environment. This assessment is provided in the following sections.

8.2.1 PERMITTED BASELINE

In terms of effects on the environment, Section 104(2) of the Act has established that the correct approach to defining those effects is by way of reference to those activities permitted by a plan. This forms part of the permitted baseline which has evolved through case law and defines the environment against which a

proposed activity's degree of adverse effect is gauged. The permitted baseline comprises non-fanciful activities and their constituent effects that would be permitted as of right by the application plan/s and the effects of activities enabled by an unimplemented consent.

Section 104(2) of the Act enables the consent authority to disregard adverse effect/s of an activity on the environment if a plan permits an activity with that effect/s.

Of relevance to this application, earthworks comprising an area less than 3,000m² per calendar year are permitted provided the works comply with the relevant permitted activity conditions in Rule R99. Also, if the proposed earthworks were less than 3,000m² then the stormwater discharge for new urban development rule would not apply. The Applicant explored whether the application could be staged in such a way to ensure compliance with these permitted activity rules (and therefore not require consent), however, as the entire development was consented as an integrated master planned development, it was concluded that the same approach for the construction phases was appropriate, including the integration of services and construction of the services network at the time of bulk earthworks.

While it doesn't constitute a 'permitted baseline', it is acknowledged that the vegetation clearance works are permitted under the RSP and would be permitted under the PNRP-AV if clearance was not undertaken within five metres of the intermittent stream.

8.2.2 EXISTING ENVIRONMENT

The effects of an activity are assessed against the 'existing environment'. This includes existing use rights, legally established activities, existing activities carried out under existing consents and resource consents which have been granted where it appears those consents will be implemented. The existing environment is described in Section 3 above.

The Applicant is not aware of any recently granted consents to develop adjacent or nearby sites.

8.2.3 EFFECTS ON THE ENVIRONMENT

Overall, the proposal requires Discretionary Activity resource consent. Accordingly, the Regional Council are not limited in the scope of effects that can be assessed.

Having considered the nature of the proposal the actual and potential effects that warrant consideration are as follows:

- Positive effects;
- Earthworks effects;
- Effects on water quantity;
- Effects on water quality during earthworks;
- Effects on water quality after completion
- Ecological effects;
- Coastal ecology effects;
- Contamination effects;
- Dust effects; and,
- Hazardous substances effects.

The assessment of these effects is provided in the following sections.

POSITIVE EFFECTS

In addition to potential adverse effects, the Act allows consideration of the positive effects of a proposal. The positive effects of the proposal include that it will enable the use of a currently under-utilised site that is zoned for residential and commercial purposes. Also, the proposal results in an improved to stormwater management across the site where currently all stormwater discharges to the CMA untreated.

EARTHWORKS EFFECTS

While the built development outlined in the Masterplan sought to respect the landform and topography, therefore minimising the extent of earthworks, the Masterplan resource consent sought and obtained approval for earthworks to create building platforms, roading, and the public realm. As noted, the earthworks consented under this consent is the same as what is now proposed in this application.

Earthworks are expected to take place over a maximum period of 10 - 12 months and may be staged subject to confirmation by the earthwork's contractor.

While earthworks activities in general have the potential to adversely affect wider receiving and downstream environments (in this case the CMA), the site is relatively flat and therefore significant landform modification is not necessary to enable the consented Masterplan development. Moreover –

- The extent of earthworks is largely contained within the area of existing development, thereby limiting excavation works to the toe of the escarpment only; and,
- There are no adjacent properties within the vicinity of the excavation works area.

As outlined above in the ECMP, it is proposed that regular monitoring will be undertaken by the Contractor and the project Engineer for the duration of the works. It is also envisaged that Regional Council monitoring officers will regularly monitor the works, particularly if the proposed works will be undertaken during the winter works period.

It is intended that the ESC measures will be modified as the works progress. The monitoring, maintenance and reporting of the ESC are an essential part of the construction phase in order to minimise any adverse environmental impact.

Subject to adhering to the measures outlined in the ECMP and erosion and sediment control plans, as well as adherence to Regional Council's standard earthworks consent conditions that are anticipated to be imposed on the resource consent, potential adverse effects associated with the proposed earthworks will be appropriately managed and mitigated to an acceptable level.

Based on the assessment above, while earthworks have the potential to generate adverse effects, both temporary and permanent, through careful design as well as adherence to mitigation measures that include ESC procedures as set out in the ECMP, such effects will be mitigated to such an extent that they will be less than minor.

EFFECTS ON WATER QUANTITY

Any development that increases impervious surfaces has the potential to increase stormwater discharges from the site. It is understood that this is largely the reason why operational stormwater rules were bound to the earthworks rules in the PNRP hearings decision. As part of the consent process for application seeking consent under the earthworks and operational stormwater rules, the Regional Council together with WWL, require that developments achieve hydraulic neutrality and ensure that "*adverse effects of stormwater discharges are minimised to the 'smallest amount reasonably practicable'*"¹²

¹² Refer Policy P73 of the PNRP-AV.

The project engineers state that stormwater attenuation is not necessary for this development as stormwater is discharging directly to the coast (i.e. not via watercourses with associated catchments). It is also acknowledged that the stormwater pipes have been appropriately sized to accommodate stormwater discharges from the upper catchments and the stormwater discharges can comply with the permitted activity conditions in the PNRP-AV, RDLP and the RCP. On this basis, the increase in the quantity of stormwater discharges from the site will not result in any adverse effects on the receiving environment.

EFFECTS ON WATER QUALITY DURING EARTHWORKS

There is the potential, if appropriate measures are not put in place, for a reduction in water quality associated with the release of sediment during bulk earthworks, especially during heavy rainfall events.

Potential effects on the water quality of the intermittent stream during the proposed stream works will be appropriately managed via adherence to the 'uses of beds of lakes and rivers general conditions' included in Section 5.5.4 of the PNRP-AV. These conditions include:

- No discharge of contaminants to water or the stream bed;
- No cleaning or refuelling of machinery or equipment or storage of fuel within 10m of the stream;
- No machinery left in the stream bed overnight; and,
- No erosion or scour of the stream banks.

Potential adverse effects associated with the earthworks on the water quality of the CMA has been mitigated as far as reasonably practicable by the proposed sediment control measures. As detailed in Section 8.4 of the ECMP, diversion channels and earth bunds will intercept sediment laden runoff, diverting flow to the sediment control devices including DEBs and SRPs. These devices will discharge to land before entering stabilised artificial watercourses or reticulated stormwater systems. While emergency or 'wet-weather overflow' discharges are possible in significant storm events, the design of these devices includes stabilised emergency spillways (with erosion protection) in the event of these. These are designed for 1% AEP (1 in 100-year storms), and although the discharge may not be fully treated, the provision of secondary protection including silt fences required around the perimeter of the site and double silt fences adjacent to the CMA will significantly reduce the potential for silt discharges beyond the extent of the works areas, including into the CMA. Any discharges beyond the site will not be 'sediment laden' but may have some sediment in them, even after flocculation. In this regard, the potential discharges comply with the applicable rules in the PNRP-AV (relating to minor discharges) and the RCP. It is acknowledged that the Regional Council guidelines do not envisage the removal of all sediment from discharges but that it is managed to reasonable levels.

The project ecologist has assessed the potential effects of the discharges on coastal water and made the following conclusion:

Provided the ECMP methodologies are well managed, regularly inspected for compliance and adjusted for predicted major rain events, these measures will mitigate potential adverse effects for increased erosion and sedimentation from the works into the coastal environment. Any potential sediment deposition will be minor, mobilised and dispersed quickly, avoiding potential adverse effects of smothering and reducing adverse effects on water quality to very short term and temporary.

With respect to groundwater, any dewatering procedures that are undertaken will comply with the new dewatering guidelines in the "Erosion and Sediment Control Guide for Land Disturbing Activities in the Wellington Region" that was reissued in February 2021. The Applicant requests the inclusion of a condition that requires site works to comply with these guidelines.

In addition, in relation the possible contamination of groundwater, the ESMP outlines that prior to commencement of works, the risk of encountering contaminated groundwater will be assessed by an

appropriately qualified expert and if contamination is indicated, further investigation will be carried out to verify levels of contamination and allow appropriate planning for design of the dewatering system. This is reflected in the condition requested in Section 5.1.6 above that requires that the finalised CSMP include the following details:

- a) *Restrictions on the discharge of groundwater ponded surface water to stormwater unless testing confirms that contaminants are within the regional council permitted stormwater discharge concentrations.*

Based on the above, potential adverse effects on water quality during earthworks will be managed to an acceptable level to ensure they are less than minor.

EFFECTS ON WATER QUALITY AFTER COMPLETION

In relation to the effects of water quality associated with the proposed permanent stormwater discharges from the site, it is acknowledged that all stormwater currently discharges to the CMA via pipes and overland flow is untreated.

Potential adverse effects on water quality after completion of the works will be less than minor for the following reasons:

- While treatment from the building areas is not proposed, the buildings will not contain bare, unpainted or untreated materials that can leach contaminants such as lead, copper and zinc and therefore contaminants from the buildings will be significantly reduced. In the unlikely event that these materials are proposed, conditions on the Masterplan resource consent require treatment to be installed at the time of building construction.
- Once completed, stormwater runoff from trafficable areas will be treated and stormwater runoff from a large area of non-trafficable area will also be treated prior to discharging to the CMA. Given the nature of the non-trafficable areas (being predominantly pedestrian areas), contaminant generation levels will be low and are not considered to generate environmental effects that would necessitate stormwater treatment mitigation for the full area.
- Treatment will be via raingardens that will be designed in accordance with the *'Water Sensitive Design for Stormwater: Treatment Device Design Guideline'* and via tree pits that will adhere to applicable guidance as suggested by WWL.
- Any areas of existing road that are upgraded and/ or provided with a shared pathway will remain as is (i.e. the road to the south of South Bay). That means few catchpits or treatment and stormwater generally sheds off the road through vegetation, towards the CMA (including outflows from the catchpits);
- Road runoff within the Shelly Bay Development (i.e. North Bay and South Bay) will drain away from the CMA to raingardens as illustrated on the stormwater plans. Treatment devices are shown for every catchment that forms part of the development area.
- The existing carpark areas at South and North Bay will remain gravel and semi permeable. Refer application drawing 1098-01-GW805 that notes that "flows from carpark will drain towards rocky coastal planting that will act as filter traps for sediment control prior to runoff entering the coastal management area".
- Upstream surface stormwater flows will be passed through/ between the development out to the CMA in designated overland flowpaths (generally will be collected into the proposed stormwater system and discharged).
- The private areas of roadway and hard stand (i.e. those in and around the buildings) will have coarse sediment traps installed (for example 'Litta Traps' or 'Enviropods') within catchpits and, as noted above, will be treated. Treatment is not provided for small areas of the laneway because

flows are unable to be directed to the roadway without amending the masterplan concept. The specific areas include short sections of laneway between the vehicle crossing and the internal parking zones, which are required to be separately drained and not permitted to discharge onto the road (where they would otherwise have been collected by proposed rain garden features). While treatment is not provided in these small areas, the laneways will only be exposed to low and transient traffic impacts and therefore the contaminant levels will be such that adverse effects on the receiving environment will be less than minor. In this regard, the project engineers are confident that the discharge will not contain more than 15 milligrams per litre of total petroleum hydrocarbons prior to release (refer condition (ii) of Rule R48).

In summary, stormwater will be managed at source and potential effects are being 'minimised to the greatest extent possible' via the adoption of WSUD measures. While water treatment is not proposed to all impervious surfaces, the non-treated areas are non-trafficable areas where contaminant levels will be such that adverse effects of the untreated stormwater will be less than minor.

The project ecologist has undertaken an assessment of the potential effects associated with the discharge of operational stormwater on coastal water and has made the following conclusions:

As the stormwater from the site is either uncontaminated or treated (rain gardens, tree pits, filtration through gravel), and the receiving environment is a high energy rocky coastline where dilution and natural breakdown is maximised, the potential for adverse effects on the water quality of the CMA as assessed as negligible.

Based on the above, potential adverse water quality effects associated with the proposed discharge of operational stormwater will be less than minor.

ECOLOGICAL EFFECTS

The proposal triggers the requirement for consent to reclaim three metres of an intermittent stream to replace an existing inlet structure and to undertake vegetation clearance within five metres of the intermittent stream. Apart from the clearance in proximity of the stream, the proposed vegetation clearance complies with the permitted activity conditions and rules in the relevant regional plans. As outlined in the proposal section above, the Applicant confirms acceptance with conditions that require restoration planting of the impacted margins of the intermittent stream upon completion of the inlet replacement works.

In assessing potential adverse ecological effects associated with the stream works the effects management hierarchy has been applied by the project ecologist. The hierarchy is in the PNRP Schedule G1 (and policy 32 and 41) and is also referenced in the NPS-FM (subclause 3 – 3.21(i)). The references between these planning documents provide some subtle differences, including:

- The NPS-FM seeks to offset more than minor residual adverse effects, while the PNRP seeks to offset significant residual adverse effects; and,
- The NPS-FM directs that where sufficient aquatic offsetting is not possible, compensation is to be provided, and that if neither can be provided the activity must be avoided. The PNRP does not refer to compensation.

In applying this hierarchy, the development has sought to avoid and minimise effects through the project footprint. In this regard, the project has avoided the removal of significant areas of native vegetation as well as significant works within watercourses. As outlined in the application, full avoidance of potential ecological effects has not been achieved given that approximately three metres of intermittent stream needs to be reclaimed in order to replace an existing inlet structure. This is a residual adverse effect of the proposal.

The project ecologist has undertaken an assessment of the ecological values and impact assessment of the modification of the inlet structure. Applying the effects management hierarchy, the assessment of ecological effects makes the following conclusions:

Modifying the inlet structure will result in the loss of 3 linear metres of intermittent stream bed. A third to half of this area includes the current apron and rip-rap, and the remainder cobble and bedrock substrate. This will result in a minor alteration to the baseline conditions so that the attributes of the stream on the site will be partially changed, with the loss of a very low proportion of the stream bed of the intermittent stream. This is assessed as a low magnitude of effect within the context of the site.

With the low ecological value of the 3m of intermittent stream and low magnitude of effect, the level of effect is assessed as Very low (refer to EIANZ matrix, Table 3).

This very low level of effect has been achieved through the effects hierarchy by design, to minimise the extent of stream loss, and mitigation of potential adverse ecological effects with the provision of fish passage.

It is acknowledged that the proposed inlet structure was designed based on advice received from the project ecologist, including enabling fish passage which is currently impeded by the existing structure. Based on the conclusions reached by the project ecologist, all ecological effects associated with the reclamation have been able to be avoided or mitigated. Therefore, no offset or compensation is required.

In summary, while there are slight differences in the hierarchy in the PNRP and the NPS-FM, the proposal is consistent with the effects management hierarchy of both of these documents.

With respect to managing the proposed impacts on potential little blue penguin habitat, the Applicant has requested the imposition of consent conditions that require adherence to a number of measures should penguins or penguin habitat and nests be found.

Based on the above, potential ecological effects associated with the proposal will be less than minor.

COASTAL ECOLOGY EFFECTS

While no works are proposed within the CMA, the proposal includes the possible discharge of sediment to the CMA during earthworks and the discharge of stormwater to the CMA.

With respect to sediment discharges during construction, the project ecologist makes the following conclusions:

Provided the ECMP methodologies are well managed, regularly inspected for compliance and adjusted for predicted major rain events, these measures will mitigate potential adverse effects for increased erosion and sedimentation from the works into the coastal environment. Any potential sediment deposition will be minor, mobilised and dispersed quickly, avoiding potential adverse effects of smothering and reducing adverse effects on water quality to very short term and temporary.

With respect to the discharge of operational stormwater, the project ecologist makes the following conclusions:

As the stormwater from the site is either uncontaminated or treated (rain gardens, tree pits, filtration through gravel), and the receiving environment is a high energy rocky coastline where dilution and natural breakdown is maximised, the potential for adverse effects on the water quality of the CMA as assessed as negligible.

Based on the conclusions of the project ecologist, potential adverse effects on coastal water within the coastal environment of Shelly Bay will be less than minor.

CONTAMINATION EFFECTS

As noted, there are parcels of land within the application site that have been identified as being contaminated. An SAP has been prepared to identify additional areas of testing in order to address the areas of concern identified in previous site investigations. The SAP outlines that, soil contamination, if present, is expected to be associated with the historic transformer location, former fuel storage areas, maintenance yard and slipway and the perimeters of buildings (asbestos and lead). Potential contamination within the CMA has been excluded from assessment as site works within the CMA are being addressed in a separate consent. Table 1 of the SAP summarises the areas of concern and in response to these identified areas, Figure 3 identifies the proposed sampling locations.

Several factors, including Central Government's response to the COVID-19 pandemic and the recent Delta Variant outbreak (being a level 4 lockdown), has meant that the site investigations detailed in the SAP have not undertaken. Therefore, it is requested that the Regional Council impose a condition on the consent that requires additional site investigations to be undertaken in accordance with the SAP.

In addition to the SAP, a CSMP has been prepared to provide a site management strategy for the proposed earthworks and includes the following procedures:

- *Preliminary soil testing;*
- *Soil removal testing;*
- *Appropriate cordoning off of remediation areas (if applicable); and,*
- *Installation of silt fencing.*

The CSMP also includes measures that must be adhered to if unexpected contamination is encountered.

Proffered conditions included in this application will ensure that further testing is undertaken in accordance with the SAP and will require that the CSMP to be updated and finalised to reflect the results of the testing. Subject to adhering to these conditions, environmental risks associated with potential contamination within the site will be appropriately managed. Accordingly, any adverse effects from contamination will be less than minor.

DUST EFFECTS

Potential dust effects arising from the development was addressed in the Masterplan resource consent, however for completeness, an assessment of these potential effects has been included below.

The operation of earthmoving equipment in dry and / or windy conditions may cause airborne dust. Through earthworks design, the potential for adverse effects associated with dust generation will be minimised through the adoption of the following measures:

- Limitations on vehicle access onto all excavated areas;
- Using a portable water spray to dampen dust;
- Covering any stockpiled material which may generate dust in windy dry conditions; and,
- Using wind screens during wind conditions.

It is also proposed that the Contractor will be required to ensure that:

- The volume of water used for dust suppression does not cause surface ponding;
- Watering does not cause surface run-off that would discharge into the CMA or stormwater drains; and,

- Watering does not induce soil erosion.

Based on the proposed measures detailed above, potential adverse effects associated with the generation of dust will be appropriately managed to an acceptable level and will be less than minor.

HAZARDOUS SUBSTANCES

The proposed earthworks may require the storage and use of potentially hazardous substances, such as diesel, oil and concrete. The use and handling of these substances will be undertaken in a manner that complies with all relevant requirements of the Hazardous Substances and New Organisms Act 1996.

To reduce the risk of spills, an appropriate location for re-fuelling and a suitable storage area will be decided with the appointed contractor prior to the commencement of earthworks and construction. The fuel storage location will not be located within the vicinity of the CMA.

Overall, it is considered that any potential adverse effects associated with the storage and use of hazardous substances can be appropriately avoided or mitigated and, accordingly, those effects will be less than minor.

ADVERSE EFFECTS ASSESSMENT SUMMARY

Overall, it is considered that the proposal has initially avoided potential adverse effects through site design and location and also includes a number of mitigation measures that will appropriately mitigate potential adverse effects on the environment to such an extent that those effects will be less than minor.

8.3 SECTION 104(1) (AB)

This application does not seek to propose any measures to ensure positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity. No measures are necessary as the effects on the environment will be less than minor.

8.4 SECTION 104(1) (B) - RELEVANT PLANNING DOCUMENTS

8.4.1 THE NEW ZEALAND COASTAL POLICY STATEMENT 2010

The proposal seeks the necessary permits to discharge treated stormwater and water that may contain sediment to the CMA. A consent authority, when considering an application for a resource consent, must, subject to Part 2 of the Act, have regard to, amongst other things, the relevant provisions of the New Zealand Coastal Policy Statement (“NZCPS”). The purpose of the NZCPS is to state policies in order to achieve the purpose of the Act in relation to the coastal environment of New Zealand. The PRNP-AV has given effect to the NZCPS through its objectives, policies and rules.

An assessment of the objectives and policies of the NZCPS that are relevant to the proposal is provided in **Table Three** below. It is noted that the Masterplan development was assessed against the NZCPS in the WCC consent application, and therefore the assessment below is confined to an assessment of the activities included in this proposal being discharges and earthworks.

TABLE THREE: NZCPS OBJECTIVES AND POLICIES

PROVISION	COMMENT
<p>Objective 1</p> <p><i>To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by:</i></p> <ul style="list-style-type: none"> • <i>maintaining or enhancing natural biological and physical processes in the coastal environment and recognising their dynamic, complex and interdependent nature;</i> 	<p>The CMA adjacent to the site has not been identified as a significant natural ecosystem nor has the water quality of the CMA been determined to be deteriorated.</p> <p>Notwithstanding, the proposed discharges to the CMA have been assessed by the project ecologist where it has been concluded that the</p>

TABLE THREE: NZCPS OBJECTIVES AND POLICIES

PROVISION	COMMENT
<ul style="list-style-type: none"> protecting representative or significant natural ecosystems and sites of biological importance and maintaining the diversity of New Zealand's indigenous coastal flora and fauna; and maintaining coastal water quality, and enhancing it where it has deteriorated from what would otherwise be its natural condition, with significant adverse effects on ecology and habitat, because of discharges associated with human activity 	<p>proposed stormwater discharges will have a negligible effect on coastal water quality.</p>
<p>Objective 2</p> <p>To preserve the natural character of the coastal environment and protect natural features and landscape values through:</p> <ul style="list-style-type: none"> recognising the characteristics and qualities that contribute to natural character, natural features and landscape values and their location and distribution; identifying those areas where various forms of subdivision, use, and development would be inappropriate and protecting them from such activities; and encouraging restoration of the coastal environment. 	<p>No outstanding natural features, outstanding natural landscapes or areas with outstanding natural character have been identified in this coastal environment. Significant adverse effects have been avoided, and mitigation measures have been incorporated into the proposal design to mitigate any potential adverse effects on the coastal environment.</p> <p>The proposed discharges will not impact on the natural character of the coastal environment. The natural features and landscape values of the site were considered under the Masterplan resource consent.</p>
<p>Objective 3</p> <p>To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment by:</p> <ul style="list-style-type: none"> recognising the ongoing and enduring relationship of tangata whenua over their lands, rohe and resources; promoting meaningful relationships and interactions between tangata whenua and persons exercising functions and powers under the Act; incorporating mātauranga Māori into sustainable management practices; and recognising and protecting characteristics of the coastal environment that are of special value to tangata whenua. <p>Policy 2</p> <p>The Treaty of Waitangi, tangata whenua and Māori heritage</p>	<p>The post settlement governance entities that have an interest in and statutory acknowledgements from the Crown in relation to Wellington Harbour are the Port Nicholson Block Settlement Trust and Te Rūnanga o Ngāti Toa.</p> <p>As noted, PNSBT have been consulted since the initial stages of the projects development (being the Masterplan stage) As a result of this consultation, a CIA was prepared by iwi to inform the WCC resource consent application. The CIA documents Māori cultural values, interests and associations with an area, and the potential impacts of the development and related activities, on these values.</p> <p>Te Rūnanga o Ngāti Toa have been provided a copy of the application and, at the time of writing, no comment has been received.</p>
<p>Objective 4</p> <p>To maintain and enhance the public open space qualities and recreation opportunities of the coastal environment by:</p> <ul style="list-style-type: none"> recognising that the coastal marine area is an extensive area of public space for the public to use and enjoy; maintaining and enhancing public walking access to and along the coastal marine area without charge, and where there are exceptional reasons that mean this is not practicable providing alternative linking access close to the coastal marine area; and recognising the potential for coastal processes, including those likely to be affected by climate change, to restrict access to the coastal environment and the need to ensure that public access is maintained even when the coastal marine area advances inland. <p>Policy 19</p> <p>Walking access</p>	<p>The proposed discharges will not impact on the public open space qualities and recreational opportunities of the coast environment. The relationship of the consented development to the coastal environment, including activation of public spaces was addressed in the Masterplan resource consent.</p> <p>The proposed works will likely include intermittent restrictions to some areas of the coast. This will be temporary and will only be undertaken in instances where public health and safety needs to be protected.</p>
<p>Objective 6</p> <p>To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that:</p>	<p>The proposed works are associated with a consented development that seeks to enable people and communities to provide for their social, economic and cultural well-being.</p>

TABLE THREE: NZCPS OBJECTIVES AND POLICIES

PROVISION	COMMENT
<ul style="list-style-type: none"> • <i>the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;</i> • <i>some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities;</i> • <i>functionally some uses and developments can only be located on the coast or in the coastal marine area;</i> • <i>the coastal environment contains renewable energy resources of significant value;</i> • <i>the protection of habitats of living marine resources contributes to the social, economic and cultural wellbeing of people and communities;</i> • <i>the potential to protect, use, and develop natural and physical resources in the coastal marine area should not be compromised by activities on land;</i> • <i>the proportion of the coastal marine area under any formal protection is small and therefore management under the Act is an important means by which the natural resources of the coastal marine area can be protected; and</i> • <i>historic heritage in the coastal environment is extensive but not fully known, and vulnerable to loss or damage from inappropriate subdivision, use, and development.</i> 	<p>Based on the assessments provided in this application and accompanying technical reports it is considered that the proposal is appropriate and will protect the values of the coastal environment.</p> <p>The CMA adjacent to the site is not under any formal protection and there are no coastal features that have been identified in regional plans as having historical significance.</p>
<p>Policy 3 <i>Precautionary approach</i></p>	<p>A precautionary approach is not necessary for the purposes of this application as the potential effects on the coastal environment are certain and understood. Also, none of the potential effects of the proposal are considered to be significant.</p>
<p>Policy 6 <i>Activities in the coastal environment</i></p>	<p>The proposal has given appropriate consideration to the rate at which built development and the associated public infrastructure should be enabled to provide for the reasonably foreseeable needs of population growth and has done so without compromising the other values of the coastal environment.</p> <p>The Masterplan development has sought to consolidate activities within the area of existing development.</p>
<p>Policy 11 <i>Indigenous biological diversity</i></p>	<p>Policy 11 provides direction on protecting indigenous biological diversity and in particular, seeks to identify and avoid adverse effects on rare and threatened species.</p>
<p>Policy 21 <i>Enhancement of water quality</i></p>	<p>Policy 21 is not relevant to the proposal. The quality of water in the coastal environment has not been assessed as having deteriorated such that it is having a significant adverse effect on ecosystems, natural habitats, or water based recreational activities, or is restricting existing uses.</p>
<p>Policy 22 <i>Sedimentation</i></p>	<p>This policy requires that subdivision, use or development will not result in a significant increase in sedimentation in the CMA or other coastal water and seeks to reduce sediment loadings in runoff and in stormwater systems through controls on land use activities.</p>

TABLE THREE: NZCPS OBJECTIVES AND POLICIES

PROVISION	COMMENT
	<p>For the reasons identified in this application, including the design of the SRPs and DEBs and secondary silt fence protection, the proposal will not result in a significant increase in sedimentation. Sediment will be reduced from water as much as practicable and in line with GWRC guidelines.</p> <p>With respect to sediment loadings in stormwater systems, the proposed WSUD devices and measures have sought to reduce sediment and contaminant loadings.</p>
<p>Policy 23 <i>Discharge of contaminants</i></p> <p>Includes:</p> <p>(4) <i>In managing discharges of stormwater take steps to avoid adverse effects of stormwater discharge to water in the coastal environment, on a catchment by catchment basis, by:</i></p> <p>(a) <i>avoiding where practicable and otherwise remedying cross contamination of sewage and stormwater systems;</i></p> <p>(b) <i>reducing contaminant and sediment loadings in stormwater at source, through contaminant treatment and by controls on land use activities;</i></p> <p>(c) <i>promoting integrated management of catchments and stormwater networks; and</i></p> <p>(d) <i>promoting design options that reduce flows to stormwater reticulation systems at source.</i></p>	<p>Policy 23(1) requires that, in managing discharges to water in the coastal environment, particular regard be had to the sensitivity of the receiving environment and the capacity of the receiving environment to assimilate the contaminants.</p> <p>The proposal is consistent with this policy for the following reasons:</p> <ul style="list-style-type: none"> • Infrastructure design will ensure there is no cross contamination of sewage and stormwater systems; • Contaminant load has been significantly reduced via the implementation of WSUD measures including rain gardens • The project ecologist has concluded that any potential sediment deposition during the earthworks period will be “<i>minor, mobilised and dispersed quickly, avoiding potential adverse effects of smothering and reducing adverse effects on water quality to very short term and temporary</i>”. • The project ecologist has concluded that the potential for adverse effects on the water quality of the CMA due to the discharge of stormwater will be negligible.
<p>Policy 25 <i>Subdivision, use and development in areas of coastal hazard risk</i></p>	<p>This policy sets out how activities in areas potentially affected by coastal hazards over at least the next 100 years are to be managed.</p> <p>The proposal includes measures to mitigate the effects of climate change and sea level rise.</p>

8.4.2 NATIONAL POLICY STATEMENT FOR URBAN DEVELOPMENT

The National Policy Statement on Urban Development 2020 (“the NPS-UD”) came into effect on 20 August 2020 and replaced the National Policy Statement on Urban Development Capacity 2016. The NPS-UD applies to:

- a) *All local authorities that have all or part of an urban environment within their district or region (i.e. tier 1, 2 and 3 local authorities); and,*
- b) *Planning decisions by any local authority that affect an urban environment.*

The NPS-UD applies to both regional and local authorities and Wellington Regional Council is identified as a Tier 1 Local Authority. The Regional Council, in its regulatory capacity, has not yet responded to the NPS-UD and the current provisions of the Regional Policy Statement do not reflect this new and directive higher level planning document.

The objectives of the NPS-UD include:

- *O1 – New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future.*
- *O2 – Planning decisions improve housing affordability by supporting competitive land and development markets.*
- *O4 – New Zealand's urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations.*

Also, policies P1 and P2 apply to all planning decisions, including resource consent applications so as to contribute to well-functioning urban environments.

Policy 6(b) acknowledges that planning decisions (including decisions on resource consents) under the NPS-UD may involve changes to urban areas that result in a detraction of amenity values in the local area. However, the NPS-UD promotes these changes lead to improved amenity values for the wider residential community and future generations. To this extent the NPS-UD confirms that such a detraction in localised amenity values is not an adverse effect.

Policies 6(c) and 6(d) also require planning decisions to have particular regard to the benefits of urban developments that create well-functioning urban environments and that provide development capacity as envisaged by the NPS-UD.

The proposal assists in facilitating the development of a site for both residential and commercial purposes and will therefore assist in providing benefits for the social, economic and cultural wellbeing of the city.

8.4.3 NATIONAL POLICY STATEMENT FOR FRESHWATER MANAGEMENT

The NPS-FM sets a framework for carrying out activities that pose risks to freshwater and freshwater ecosystems. The NPS-FM recognises te mana o te wai (the integrated and holistic well-being of water) and sets out objectives and policies that direct local government to manage water in an integrated and sustainable way.

The NPS-FM requires that an assessment of effects includes an assessment of how potential adverse effects have been avoided, or will be remedied, mitigated, offset, or compensated.

The effects management hierarchy referenced in the NPS-FM (subclause 3 – 3.21(i) is also reflected in the PNRP Schedule G1 (and policy 32 and 41). The references between these planning documents provide some subtle differences, including:

- The NPS-FM seeks to offset more than minor residual adverse effects, while the PNRP-AV seeks to offset significant residual adverse effects; and
- The NPS-FM directs that where sufficient aquatic offsetting is not possible, compensation is to be provided, and that if neither can be provided the activity must be avoided. The PNRP-AV does not refer to compensation.

The proposal aligns with the NPS-FM for the following reasons:

- While the policies in relation to Te Mana o te Wai require regional councils to engage with mana whenua to determine these principles, the effects of the works which relate primarily to the control of stormwater and sediment have also been minimised. Consequently, the health of freshwater will be protected in a manner that is consistent with Te Mana o te Wai.

- While Policy 3 is directed to local authorities, the proposal is consistent with this policy insofar as it has been designed and planned in an integrated manner, recognising potential impacts of the proposal on water quality in the receiving environment and implementing appropriate measures to avoid and minimise such impacts. These include a range of management techniques relating to the control of erosion and sediment discharges from earthworks in order to maintain freshwater quality, and the use of raingardens and rain tanks to control stormwater quality and discharge rates to ensure freshwater is not adversely affected by stormwater from the site.
- The proposal has been designed to achieve hydraulic neutrality and the design of the stormwater system for the site has taken account of climate change impacts. Therefore, the proposal has been designed to take into account public stormwater infrastructure and avoid adverse effects on it.
- The ECMP includes measures that will be undertaken to monitor the effects of the proposal on receiving environments.
- The intermittent stream where works are proposed has been assessed by the project ecologist as having low ecological value. This, together with the assessment of the magnitude of effect has determined an overall level of effect as 'very low'. This very low level of effect has been achieved through the effects hierarchy by design, to minimise the extent of stream loss, and mitigate potential adverse ecological effects with the provision of fish passage. Also, while there are slight differences in the hierarchy in the PNRP and the NPS-FM, the proposal is consistent with the effect's management hierarchy of both of these documents.

8.4.4 NATIONAL ENVIRONMENTAL STANDARDS FOR FRESHWATER

The NES-F sets requirements for carrying out certain activities within and adjacent to freshwater and freshwater ecosystems. The NES-F contains regulations that deal with regional functions only, i.e., there are no district plan rules under Section 9(1)6. The regulations cover matters under Section 9(1), Section 13, Section 14 and Section 15 of the Act.

This application seeks Discretionary Activity resource consent is sought for stream reclamation and the potential effects associated with the works have been assessed using the effects mitigation hierarchy outlined in the NPS-FW.

8.4.5 THE NATIONAL ENVIRONMENTAL STANDARD FOR ASSESSING AND MANAGING CONTAMINANTS IN SOIL TO PROTECT HUMAN HEALTH

The NES-CS applies to land where there is evidence of contamination or if a HAIL activity has occurred in the past. The Masterplan resource consent appropriately addressed the applicable provisions of the NES-CS.

8.4.6 THE REGIONAL POLICY STATEMENT FOR THE WELLINGTON REGION

The Regional Policy Statement for the Wellington Region ("the RPS") sets out the framework and priorities for resource management in the Wellington region. The RPS identifies the regionally significant issues around the management of the regions natural and physical resources and sets out what needs to be achieved (objectives) and the way in which the objectives will be achieved (policies and methods).

The RPS objectives and policies that are relevant to this application, and an assessment of the proposal against these provisions is provided in **Table Four** below.

TABLE FOUR: RPS OBJECTIVES AND POLICIES

REF	PROVISION	COMMENT
COASTAL ENVIRONMENT		
Objective 3	Habitats and features in the coastal environment that have significant indigenous biodiversity values are protected; and Habitats and features in the coastal environment that have recreational, cultural, historical or landscape values that are significant are protected from inappropriate subdivision, use and development.	Based on the conclusions reached by the project ecologist with respect to the potential effects of the proposed discharges on the coastal environment, the proposal is not considered 'inappropriate'.
Policy 24	Protecting indigenous ecosystems and habitats with significant indigenous biodiversity values	
Objective 6	The quality of coastal waters is maintained or enhanced to a level that is suitable for the health and vitality of coastal and marine ecosystems.	The project ecologist has concluded that potential effects associated with the proposed discharges on coastal water quality will be less than minor.
Policy 5	Maintaining and enhancing coastal water quality for aquatic ecosystem health.	
Policy 40	Safeguarding aquatic ecosystem health in water bodies.	
Objective 7	The integrity, functioning and resilience of physical and ecological processes in the coastal environment are protected from the adverse effects of inappropriate subdivision, use and development	Based on the conclusions reached by the project ecologist with respect to the potential effects of the proposed discharges on the coastal environment, the proposal is not considered 'inappropriate'.
Policy 37	Safeguarding lifesupporting capacity of coastal ecosystems.	
Objective 8	Public access to and along the coastal marine area, lakes and rivers is enhanced (objective 8 is shared for the coastal environment and fresh water).	The proposed discharges will not impact on the public open space qualities and recreational opportunities of the coast environment. The relationship of the consented development to the coastal environment, including activation of public spaces was addressed in the Masterplan resource consent. The proposed works will likely include intermittent restrictions to some areas of the coast. This will be temporary and will only be undertaken in instances where public health and safety needs to be protected.
Policy 53	Public access to and along the coastal marine area, lakes and rivers.	
FRESHWATER		
Objective 12	Objective 12 The quantity and quality of fresh water: (a) meet the range of uses and values for which water is required; (b) safeguard the life supporting capacity of water bodies; and (c) meet the reasonably foreseeable needs of future generations.	This objective aims to ensure that the quality and quantity of freshwater meets a range of uses and values, supports the life supporting capacity of water bodies, and meets reasonably foreseeable needs of future generations. Sediment and erosion control measures will be implemented on site to treat sediment laden stormwater from earthworks.
Policy 40	Safeguarding aquatic ecosystem health in water bodies – consideration	Policy 40 requires that aquatic ecosystem health in water bodies be maintained or enhanced. Given the proposed sediment controls, the proposal will not adversely affect aquatic ecosystem health.
Policy 41	Minimising the effects of earthworks and vegetation disturbance – consideration	Policy 41 relates to minimising the effects of earthworks and vegetation disturbance. The potential adverse effects associated with earthworks have been minimised through the proposed earthworks design,

TABLE FOUR: RPS OBJECTIVES AND POLICIES

REF	PROVISION	COMMENT
		methodology, site management and erosion and sediment control measures.
Policy 42	Minimising contamination in stormwater from development – consideration	The measures included in the CSMP seek to minimise contamination in stormwater.
Policy 48 & 49	These policies relate to the principles of the Treaty of Waitangi and matters of significance to tangata whenua.	The principles of the Treaty of Waitangi and matters of significance to tangata whenua have been recognised.
Objective 13	The region's rivers, lakes and wetlands support healthy functioning ecosystems.	Subject to adherence to the construction methodologies and ESC measures included in the ECMP, the ecological function of water bodies will be protected.
Policy 43	Protecting aquatic ecological function of water bodies – consideration	
Objective 8	Public access to and along the coastal marine area, lakes and rivers is enhanced (objective 8 is shared for the coastal environment and fresh water).	While some areas of the site will be restricted through the construction period, such restrictions will only be temporary and are to ensure there are no risks to public health and safety.
Policy 53	Public access to and along the coastal marine area, lakes and rivers – consideration	

NATURAL HAZARDS

Objective 19	The risks and consequences to people, communities, their businesses, property and infrastructure from natural hazards and climate change effects are reduced.	The Masterplan resource consent addresses matters in relation to climate change and inundation and with respect to geotechnical hazards, it is proposed that the earthworks and site stabilisation procedures be overseen by a geotechnical engineer. Further, climate change and inundation was taken into account in the sizing of the proposed stormwater infrastructure.
Policy 51	Minimising the risks and consequences of natural hazards – Consideration	
Objective 20	Hazard mitigation measures, structural works and other activities do not increase the risk and consequences of natural hazard events.	The proposed earthworks and stormwater discharges will not increase the risk and consequences of natural hazard events. In this regard, stormwater infrastructure has been appropriately designed to take into account climate change.
Policy 52	Minimising adverse effects of hazard mitigation measures – consideration	Located at the bottom of a catchment, the proposed stormwater disposal strategy is not likely to generate or exacerbate flood hazard effects on any adjacent sites.

REGIONAL FORM, DESIGN AND FUNCTION

Objective 22	<p>A compact well designed and sustainable regional form that has an integrated, safe and responsive transport network and:</p> <ul style="list-style-type: none"> (a) a viable and vibrant regional central business district in Wellington city; (b) an increased range and diversity of activities in and around the regionally significant centres to maintain vibrancy and vitality; (h) integrated public open spaces; (i) integrated land use and transportation; (k) efficiently use existing infrastructure (including transport network infrastructure); and (l) essential social services to meet the region's needs. 	The proposal is for development which does not significantly change the current regional, urban or rural form.
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TABLE FOUR: RPS OBJECTIVES AND POLICIES

REF	PROVISION	COMMENT
SOILS AND MINERALS		
Objective 29	Land management practices do not accelerate soil erosion	The location of the proposed works that are largely confined to already developed areas, together with measures employed during the construction period, will ensure that soils maintain those desirable physical, chemical and biological characteristics that enable them to retain their ecosystem function and range of uses.
Objective 30	Soils maintain those desirable physical, chemical and biological characteristics that enable them to retain their ecosystem function and range of uses	

8.4.7 PROPOSED NATURAL RESOURCES PLAN - APPEALS VERSION

For the Wellington region, the statutory context for managing stormwater is found primarily in the PNRP-AV for the Wellington region and all discharges from council stormwater networks must be managed in accordance with a discharge permits granted under this plan. Through stormwater discharge permits, the Regional Council require the implementation of Water Sensitive Urban Design (“WSUD”) as well as ensuring that the development achieves hydraulic neutrality (i.e. post development flows do not exceed pre-development flows). These requirements are guided by the policy framework supporting the stormwater rules. Under Rule R52A of the PNRP-AV, matters that Council have restricted its discretion include:

1. *Measures to minimise the adverse effects of stormwater discharges in accordance with Policy P73, including the extent to which water sensitive urban design measures are employed;*
2. *Measures to manage runoff volumes and peak flows in accordance with Policy P79.*

An assessment of the proposal against the relevant objectives and policies of the PNRP-AV is provided in **Table Five** below.

TABLE FIVE: REGIONAL PLAN OBJECTIVES AND POLICIES

PROVISION	COMMENT
PROPOSED NATURAL RESOURCES PLAN (APPEALS VERSION)	
Objective O3	Mauri particularly the mauri of fresh and coastal waters is sustained and, where it has been depleted, natural resources and processes are enhanced to replenish mauri.
Objective O4	The intrinsic values of fresh water and marine ecosystems are recognised and the life supporting capacity of water is safeguarded.
Objective O10	Public access to and along the coastal marine area and rivers and lakes is maintained and enhanced, other than in exceptional circumstances, in which case alternative access is provided where practicable.
	The proposal recognises the mauri and intrinsic values of nearby freshwater. The life supporting capacity of freshwater will be safeguarded through the implementation of erosion and sediment controls to prevent discharges of sediment laden run-off to waterbodies.
	During construction it may be necessary to restrict public access within the application site for public health and safety and security reasons. However, following completion of the works access will not be restricted i.e., the Applicant has not sought approval for the exclusive use of any parts of the reserves. Therefore, beyond a moderate and defined period of exclusion for construction purposes, public access arrangements to the CMA will be maintained and enhanced.

TABLE FIVE: REGIONAL PLAN OBJECTIVES AND POLICIES

PROVISION		COMMENT
Objective O20	The hazard risk, and residual hazard risk from natural hazards and adverse effects of climate change, on people, the community and infrastructure are acceptable.	Section 2 of the consented Design Guide includes design guidance to ensure future buildings are raised to provide for the effects of climate change and sea level rise. The Masterplan resource consent includes a consent notice condition that requires buildings to be raised above a certain Relative Level ("RL").
Objective O23	The quality of groundwater, water in surface water bodies, and the coastal marine area is maintained or improved.	The proposal maintains the quality of water within, and safeguards the biodiversity, aquatic ecosystem health and mahinga kai associated with adjacent or nearby waterbodies.
Objective O25	Biodiversity, aquatic ecosystem health and mahinga kai in fresh water bodies and coastal marine area are safeguarded such that: (a) Water quality, flows, water levels and aquatic and coastal habitats are managed to maintain biodiversity, aquatic ecosystem health and mahinga kai; and (b) Where an objective in Tables 3.4, 3.5, 3.6, 3.7 or 3.8 is not met, a fresh water body or coastal marine area is improved over time to meet that objective	
Objective O44	The adverse effects on soil and water from land use activities are minimised.	Erosion and sediment controls will be implemented on site to minimise soil erosion and sediment laden run-off entering adjacent or nearby surface waterbodies from earthworks.
Objective O47	The amount of sediment-laden runoff entering water is reduced minimised.	
Objective O48	The adverse quality and quantity effects of stormwater discharges from the stormwater networks and urban land uses are improved over time.	As noted, currently all stormwater from the site discharges to the CMA untreated. The proposal includes WSUD devices to treat stormwater from the public realm and parking areas.
Policy P17	The mauri of fresh and coastal waters shall be recognised as being important to Māori and is sustained and enhanced, including by: (a) managing the individual and cumulative adverse effects of activities that may impact on mauri in the manner set out in the rest of the Plan, and (b) providing for those activities that sustain and enhance mauri, and (c) recognising and providing for the role of kaitiaki in sustaining mauri.	The mauri of freshwater and cultural relationship of Maori with water has been recognised.
Policy P19	The cultural relationship of Māori with air, land and water shall be recognised and the adverse effects on this relationship and their values shall be minimised.	
Policy P31	Biodiversity, aquatic ecosystem health and mahinga kai shall be maintained or restored by managing the effects of use and development on physical, chemical and biological processes to: <i>[refer further detail in policy]</i>	Aquatic ecosystem health will be maintained.
Policy P66	National Policy Statement for Freshwater Management requirements for discharge permits. When considering any application for a discharge consent the consent authority shall have regard to the following matters:	The proposal is consistent with the NPS-FM and this policy for the reasons outlined in Section 8.4.2 above.

TABLE FIVE: REGIONAL PLAN OBJECTIVES AND POLICIES

PROVISION	COMMENT
<p>(a) the extent to which the discharge would avoid contamination that will have an adverse effect on the life-supporting capacity of fresh water including on any ecosystem associated with fresh water, and</p> <p>(b) the extent to which it is feasible and dependable that any more than minor adverse effects on fresh water, and on any ecosystem associated with fresh water, resulting from the discharge would be avoided, and</p> <p>(c) the extent to which the discharge would avoid contamination that will have an adverse effect on the health of people and communities as affected by their contact with fresh water, and</p> <p>(d) the extent to which it is feasible and dependable that any more than minor adverse effects on the health of people and communities as affected by their contact with fresh water resulting from the discharge would be avoided</p>	
<p>Policy P67</p> <p>Minimising discharges to water or land.</p> <p>Discharges of contaminants to water or land will be minimised by adopting the following hierarchy:</p> <ul style="list-style-type: none"> (a) Avoiding the production of the contaminant (b) Reducing the amount of contaminants, including by reusing, recovering or recycling contaminants (c) Minimising the volume or amount of the discharge (d) Discharging to land is promoted over discharging direct to water including using land based treatment, constructed wetlands or other systems to treat contaminants 	<p>The proposal seeks to minimise the discharges through the implementation of erosion and sediment controls.</p>
<p>Policy 73</p> <p>Minimising adverse effects of stormwater discharges</p> <p>The adverse effects of stormwater discharges shall be minimised to the smallest amount reasonably practicable, including by:</p> <ul style="list-style-type: none"> (a) using good management practice, and (b) taking a source control and treatment train approach to new activities and land uses, and (c) Implementing water sensitive urban design in new subdivision and development, and (d) progressively improving existing stormwater, wastewater, road and other public infrastructure, including during routine maintenance and upgrade 	<p>Policy P73 directs that the adverse effects of stormwater discharges shall be minimised to the 'smallest amount reasonably practicable' and that this should be implemented in new developments by way of Water Sensitive Urban Design ("WSUD").</p> <p>The stormwater plans illustrate that stormwater is being managed at source and potential effects are being 'minimised to the smallest extent possible' via the adoption of WSUD measures. While water treatment is not proposed to all impervious surfaces, the non-treated areas are either non-trafficable areas or areas that are exposed to low traffic effects. The contaminant levels expected in these areas will be such that adverse effects of the untreated stormwater will be less than minor. The project engineers have designed the stormwater concept to, treat as much stormwater as possible without necessitating a change to the consented masterplan. It is also noted that, as all stormwater discharging from the site to the CMA is untreated, the stormwater design represents a significant improved to the current situation.</p>
<p>Policy P79</p> <p>Managing land use impacts on stormwater</p> <p>Land use, subdivision and development, including stormwater discharges, shall be managed so that runoff volumes and peak flows:</p> <ul style="list-style-type: none"> (a) avoid or minimise scour and erosion of stream beds, banks and coastal margins, and 	<p>Through this policy the Regional Council require that all new developments achieve hydraulic neutrality, being that post development flows do not exceed pre-development flows. While stormwater flows from the site will increase as a result of the project, it was agreed with Regional Council that as the site is located at the bottom of catchment/s stormwater retention is not required.</p>

TABLE FIVE: REGIONAL PLAN OBJECTIVES AND POLICIES

PROVISION		COMMENT
	(b) do not increase cause new or exacerbate existing risk to human health or safety, or increase exacerbate the risk of inundation, erosion or damage to property or infrastructure, including by retaining, as far as practicable, pre-development hydrological conditions hydrographs and overland flow paths in new subdivision and development.	Notwithstanding, the outfall structures and secondary overland flow paths will be designed to ensure no scour or erosion of the coastal margins occurs. Moreover, at the bottom of a catchment, stormwater discharges will not – a) Increase or exacerbate existing risk to human health or safety; b) Increase or exacerbate the risk of inundation; and, c) Cause erosion or damage to property of infrastructure.
Policy P98	Accelerated soil erosion Land use activities, erosion and associated discharges Earthworks, vegetation clearance and plantation forestry harvesting activities that have the potential to result in significant accelerated soil erosion, or to lead to off-site discharges of silt and sediment to surface water bodies, shall use measures, including good management practice, to: a) minimise the risk of accelerated soil erosion, and b) control silt and sediment runoff, and c) ensure the site is stabilised and vegetation cover is restored.	The proposal is consistent with Policy P98 for the reasons outlined in the assessment of potential earthworks effects in Section 9.2 above. Namely <ul style="list-style-type: none"> • The erosion and sediment control measures will minimise sediment laden water discharges from the site; and, • The proposed site stabilisation methods and anticipated conditions to be imposed by Regional Council will ensure that the areas of exposed material will be significantly reduced.

8.4.8 REGIONAL PLAN FOR DISCHARGES TO LAND

The relevant objectives and policies of the Regional Plan for Discharges to Land are assessed in **Table Six** below.

TABLE SIX: REGIONAL PLAN OBJECTIVES AND POLICIES

PROVISION		COMMENT
REGIONAL PLAN FOR DISCHARGES TO LAND		
Objective 4.1.3	Any adverse effects from discharging solid contaminants to land are avoided, remedied or mitigated.	The adverse effects of discharges of sediment laden stormwater during earthworks will be managed through the implementation of erosion and sediment controls which will ensure that the effects of such discharges will be no more than minor.
Objective 4.2.11	To allow the temporary discharge of solid contaminants onto land, provided that any adverse effects on water quality, soils and amenity values can be avoided, remedied or mitigated.	The proposal will be allowed to temporarily discharge solid contaminants to land as the effects are minimised through erosion and sediment controls.
Objective 4.2.19	To allow discharges of liquid contaminants to land which are not likely to have adverse effects on soil, water quality and amenity values, particularly where the effects of the contaminants would be greater if they were discharged directly into water.	The proposal will discharge to land instead of directly to surface water. The implementation of erosion and sediment controls will ensure that there are no adverse effects on soil, water quality and amenity values as a result of discharging to land.

8.4.9 REGIONAL FRESHWATER PLAN

The relevant objectives and policies of the Regional Freshwater Plan are assessed in **Table Seven** below.

TABLE SEVEN: REGIONAL PLAN OBJECTIVES AND POLICIES		
PROVISION		COMMENT
REGIONAL FRESHWATER PLAN		
GENERAL OBJECTIVES AND POLICIES		
Objective 4.1.2	The mauri of water bodies and lake beds is protected.	The potential adverse effects of the use and development of freshwater resources have been adequately mitigated to an appropriate level. Mitigation measures proposed in the application will ensure the life-supporting capacity of water and aquatic ecosystems is safeguarded;
Objective 4.1.5	The life-supporting capacity of water and aquatic ecosystems is safeguarded from the adverse effects of any subdivision, use and development.	
Objective 4.1.12	The adverse effects of the use and development of freshwater resources are avoided, remedied, or mitigated.	
Policy 4.2.11	To avoid, remedy or mitigate the adverse effects of the use and development of water bodies and river and lake beds on aquatic habitats and freshwater ecosystems by having regard to: <ul style="list-style-type: none"> • the maintenance of biological and physical processes; and • the maintenance of habitat for feeding, breeding and sheltering aquatic life; and • the maintenance of the diversity of aquatic life; and • the maintenance of the ability of fish to disperse and migrate; and • the times which will least affect feeding, spawning, dispersal or migratory patterns of fish and other aquatic species; and • the prevention of irreversible adverse effects. 	Subject to adherence to the mitigation measures proposed, along with installation of all stormwater treatment devices, it is unlikely there will be significant or prolonged decreases in water quality. The new outfall structures will be designed to mitigate potential effects of erosion, scour and flooding.
WATER QUALITY AND DISCHARGES TO FRESHWATER		
Objective 5.1.1	The quality of fresh water meets the range of uses and values for which it is required while the life supporting capacity of water and aquatic ecosystems is safeguarded.	Mitigation measures proposed in this application will ensure the life-supporting capacity of water and aquatic ecosystems is safeguarded;
Objective 5.1.2	The quality of fresh water has the potential to meet the reasonably foreseeable needs of future generations.	Mitigation measures proposed in this application will ensure that the quality of fresh water still has the potential to meet the reasonably foreseeable needs of future generations.
Policy 5.2.14	To encourage the treatment of stormwater discharges to reduce the adverse effects of such discharges on the receiving water body.	WSUD measures included in this proposal, including rain gardens and tree pits will treat stormwater so as to reduce the potential adverse effects of the discharges on the receiving water body.

8.5 OTHER MATTERS

Section 104(1)(c) specifies that the consent authority must, subject to Part 2, have regard to “*any other matter the consent authority considers relevant and reasonably necessary to determine the application*”. There are no other matters considered relevant to this application.

8.6 SECTION 104(1) ASSESSMENT SUMMARY

It has been demonstrated that the proposal is consistent with sections 104(1) of the Act, as the actual and potential effects have been assessed as less than minor under Section 104(1)(a), and the proposal is considered consistent with the provisions of the Regional Policy Statement, regional plans and proposed regional plans under Section 104(1)(b).

9. SECTION 105(1) ASSESSMENT

Under Section 105(1) of the Act, if any application is for a discharge permit or coastal permit to do something that would contravene Section 15 or Section 15B, the consent authority must, in addition to the matters in Section 104(1), have regard to:

- a) *the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and*
- b) *the applicant's reasons for the proposed choice; and*
- c) *any possible alternative methods of discharge, including discharge into any other receiving environment.*

With respect to point a), a discharge permit is sought to discharge operational stormwater to the CMA and potential wet weather overflows during earthworks. The nature of the discharge and the sensitivity of the environment is addressed in this application and supporting ecology assessment. The potential effects associated with the discharges on the receiving environment (being the CMA) have been appropriately considered and assessed in this application where they have been determined to be less than minor.

Located adjacent to the CMA, the discharge of stormwater to the CMA was considered by the project engineer to be the best practicable option. An alternative method may be the direct discharge to land (i.e. not via WSUD devices and a piped network) that would enter the CMA however this would result in the uncontrolled discharge of untreated stormwater and therefore would still result in a discharge to the CMA albeit of contaminated stormwater. Also, given constraints of the surrounding environment, a discharge to a different environment would not be practicable.

10. SECTION 107 ASSESSMENT

Section 107 of the Act prevents discharge permits to authorise the discharge of water or contaminants into water (or onto land in circumstances that may result in it entering water) being granted in certain circumstances.

The assessment of effects associated with the discharges concludes that the effects associated with the proposed discharges will be less than minor. In terms of the Section 107 considerations, the discharges will not (after reasonable mixing) give rise to:

- The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials;
- Any conspicuous change in the colour or visual clarity;
- Any emission of objectionable odour;
- The rendering of fresh water unsuitable for consumption by farm animals; or

- Any significant adverse effects on aquatic life.

The proposal meets the Section 107 test, such that the applications for discharge permits are able to be granted for the following reasons:

- The potential for significant adverse effects from sediment discharges is low. Any adverse effects experienced will be temporary and less than minor in nature, as earthworks will be limited in extent and well contained given the constrained nature of the site and through the application of the range of erosion and sediment control measures outlined in the ECMP;
- The potential for effects on receiving waters associated with conspicuous oil or grease films, scums or foams, or floatable or suspended materials or odour both through construction and operation is limited;
- Once completed, all stormwater runoff from the roading, access, parking and public realm areas will be treated prior to discharging to the CMA.

Overall, it is considered that the requested discharge permits can be granted.

11. SECTIONS 123 AND 125 - CONSENT DURATION AND LAPSE PERIODS

Section 123 of the Act defines the period for which consents may be granted. Under Section 123(b) the period for which any land use consent is granted is unlimited unless otherwise specified in the consent. Section 123 goes on to set an upper limit of 35 years for discharge and water permits but section 123(d) limits discharge and water permits to five years unless an alternative duration is specified in the consent.

Under Section 125, a resource consent lapses on the date specified in the consent, or, for discharge permits, water permits and land use consents, five years after the consent commences if no date is specified. It is requested under Section 123(b) that the duration of the resource consents related to land use 'construction' activities is seven years. Similarly, it is requested that the duration of resource consents related to the 'operational' aspects (i.e., discharge and water permits) is 35 years, as provided by section 123(d) of the Act.

12. CONCLUSION

The Applicant, Shelly Bay Taikuru Limited, seeks land use consents and discharge permits from the Greater Wellington Regional Council ("the Regional Council") to undertake earthworks to facilitate the Shelly Bay Masterplan development at Shelly Bay, Wellington.

Resource consents and discharge permits are required under the PNRP-AV and regional rules that are still operative for the following:

- Discharge permit for operational stormwater;
- Land use consent for earthworks exceeding 3,000m² associated within new urban development;
- Discharge permit and resource consent for works associated with the replacement of an existing structure in the bed of an intermittent stream;
- Discharge permit for discharges from a contaminated site;

- NES-FW resource consent for the reclamation of a portion of an intermittent stream associated with the replacement of an inlet structure; and,
- Land use consent for vegetation clearance.

The notification assessment provided in this application concludes that the application does not need to be publicly notified by the Regional Council and written approvals are not required from any parties.

The assessment of environmental effects included in this application confirms that potential adverse effects will be less than minor. The proposal is also consistent with the NZCPS, NPS-FW NPS-UD, the RPS and the relevant objectives, policies of the PNRP-AV and operative regional plans. Therefore, it is appropriate that consent be granted subject to fair and reasonable conditions.

13. LIMITATIONS

This report:

- Is for the use by the Shelly Bay Taikuru Limited and the Greater Wellington Regional Council only and must not be used or relied upon by any other person or entity or for any other project; and,
- Has been prepared for a specific project described to use and its extent is limited to the scope of work agreed between the client and [REDACTED] Limited.

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