

## Ainslee Brown

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**From:** Ainslee Brown  
**Sent:** Thursday, 18 February 2021 10:13 AM  
**To:** Ainslee Brown  
**Subject:** FW: Eastern Bays Shared Path - Applicant's response to Panel's Minute 3 [BUD-LIVE.FID762079]  
**Attachments:** Appendix 1\_ Proposed conditions dated 5 February 2021(60947589.1).docx  
**Importance:** High

**From:** Esther Bennett <[Esther.Bennett@buddlefindlay.com](mailto:Esther.Bennett@buddlefindlay.com)>  
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**Subject:** Eastern Bays Shared Path - Applicant's response to Panel's Minute 3 [BUD-LIVE.FID762079]

Kia ora Anna,

This email, together with the updated conditions **attached**, comprise the Applicant's response to the Panel's Minute 3 dated 29 January 2021. References to "question" numbers correspond to paragraph numbers contained in the Panel's Minute. For example, "Question 6" refers to the Panel's question regarding cross-jurisdictional liaison, contained in paragraph 6 of the Minute.

### ***Applicant's responses to Panel's questions***

#### Question 6 – Cross-jurisdictional liaison

Please refer to the new advice note and table contained in condition GC.5 in the amended set of conditions **attached**.

#### Question 7 – Recommended Condition GC.5 (Management Plan approval process)

Please refer to condition GC.5(a) in the amended set of conditions **attached**. This adds additional clarity to the existing cross-referencing within the conditions.

#### Question 8 - Recommended Condition GC.15 (Infrastructure)

The term “enter into an agreement” contained in condition GC.15 refers to an agreed arrangement that access will be maintained (with the details to be contained in the TMP), and that CentrePort will confirm they are happy with the arrangement. The Applicant also notes that the works at this northern end of the Project area are likely to be undertaken as the last stage so there is time to get an agreement in place. Agreeing access arrangements with the relevant landowners and utility operators would be undertaken as part of detailed design and construction management anyway.

The wording of condition GC.15 was agreed to with CentrePort and CentrePort provided its written approval to the consent. The Applicant agrees it requires 3<sup>rd</sup> party approval (and part of that relates to CentrePort land needing to be utilised too). The Applicant proposes this condition on an *Augier* basis and asks, as it is tied to CentrePort's written approval, that the Panel accepts it on that basis.

#### Question 9 - Recommended Condition GC.7 (CEMP)

Please refer to condition GC.7(bb)(i) in the amended set of conditions **attached**.

#### Question 10 - Recommended Condition GC.8 (CEMP)

Please refer to condition GC.7(bb)(ii)-(iii) in the amended set of conditions **attached**.

The Applicant has included new provisions within the CEMP to include methods to manage any potential dust and noise effects (condition GC.7(cc)). While these were not substantive issues during the process this provides clarity and ensures that such measures will be appropriately developed and in place through the CEMP. Otherwise, in addition to this change condition GC.14, and sections 16 and 17 of the RMA, adequately cover any potential issues. Also, the TMP requirements in condition GC.13 now include measures to monitor its performance (and traffic control) with a feedback loop (condition GC.13(c)).

The Applicant also proposes (picking up from question 9) the addition of two extra monitoring requirements within the CEMP (added as condition GC.7(bb)(ii)-(iii)). These pick up all other monitoring requirements that were not previously captured in a management plan. All monitoring requirements are now captured through a plan.

However the Applicant does not propose a separate monitoring plan, as envisaged by the Panel's question 10. Monitoring requirements for specific matters are contained within the relevant management plan; if those requirements were taken out of the relevant management plan and put into a separate monitoring plan it would require people to look at two plans, rather than one (in that event there would also be the risk of inconsistencies between the two plans). In the Applicant's view, having monitoring contained within the relevant management plan is the most simple and user-friendly approach, especially taking into account contractors who will need to refer to the plan(s).

#### Question 11 - Recommended Condition C.1 (Engineering plans)

Please refer to condition GC.5(d), and condition C.1 in the amended set of conditions **attached**. This adds additional clarity to the provision and aids interpretation of the defined term "Commencement of Construction" which relates to the project in part or whole (as relevant).

#### Question 12 - Recommended condition C.8 (CMA footprint)

Please refer to condition C.8 in the amended set of conditions **attached**.

#### Question 13 - Recommended Bird Protection Plan conditions (EM.1 to EM.9)

As the Panel has identified, the difficulty in showing tracked changes is that the changes made to conditions EM.1 – EM.9 are essentially a complete overhaul of the previous conditions in Appendix A to Ms van Halderen's evidence. Therefore, showing the changes does not assist the Panel. Instead, the Applicant has provided a document showing a side-by-side comparison (**attached**) of conditions EM.1 – EM.9 as contained in Appendix A to Ms van Halderen's evidence, against EM.1 – EM.9 as currently proposed. Where explanations are necessary (for example, where the substance of conditions has moved to another condition), this is provided in the document.

As briefly addressed in reply submissions these provisions were substantially rewritten to reflect direct discussions among the experts and with the parties. Key considerations were ensuring avoidance and mitigation of the effects to the satisfaction of the experts. In this respect the provisions must be read as a package (it is not one individual condition that is key but all of them working together). The timing of the protection areas (and pest control) is also important to provide habitat for penguins/shorebirds early in the Project's development (with the oystercatcher protection area being first). This provides habitat for any shorebirds that may be displaced while also providing habitat for the shorebirds to move into during the construction of the Project as a whole.

#### Question 14 - Recommended Condition EM.11 (Seagrass)

Please refer to condition EM.11(iii) and (iv), and EM.11(d) and (e), in the amended set of conditions **attached**.

#### Question 15 - Recommended Condition EM.14 (Beach nourishment)

Please refer to condition EM.14(d), (e) and (f) in the amended set of conditions **attached**.

#### Question 16 - Recommended Condition EM.19 (Seawall and Revetment Habitat Plan)

Please refer to condition EM.19 in the amended set of conditions **attached**.

Question 17 - Recommended conditions LV.1 and LV.2 (the purpose of the LDUP)

Please refer to condition LV.1 in the amended set of conditions **attached**.

The Applicant's approach, based on Mr Kellow's position, is to make it clearer that the certification is not an separate review of the same issues by different experts. Rather it is a review and certification that a robust process, in compliance with the conditions, has been completed. On that basis the Applicant supports Mr Kellow's comments as two (or more) experts can reasonably have different opinions. It is not an opinion argument that occurs during certification but rather that the conditioned process has been robustly followed and requirements achieved.

Question 18 - Recommended condition LV.4 (LUDP Outcomes)

The Applicant does not propose any changes to this condition, and in particular does not propose changes to the hierarchy approach. The reason for this is to minimise the risk of different experts arguing that their discipline is "significant" each time a conflict arises, by front footing such a potential conflict at the outset. The hierarchy reflects Part 2 and streamlines discussions in the face of conflict. It also provides certainty should GWRC/HCC appoint reviewers during the certification process.

Question 19 - Recommended condition LV.7 (Details contained within a BSLUDP)

Please refer to condition LV.7(n) in the amended set of conditions **attached**.

Question 20 - Bird Protection Map 3 (Bishops Park)

Please refer to condition EM.2(d) in the amended set of conditions **attached**.

The intention of the revegetation area is to provide considerable additional habitat should the dog exclusion areas not eventuate due to the bylaw process. It provides, in the experts opinions, additional mitigation that covers that loss of habitat available (and is part of viewing the conditions as a package as explained in relation to Question 13). The purpose of the revegetation area is for the habitat available to shorebirds within it to be enhanced. Presently it provides low value habitat as it is predominantly exotic species (marram grass in particular). The intent is to support the replacement of exotics over time and also to provide additional vegetation screening around those areas. This, along with the use of pest control and signage, will provide habitat more conducive to roosting, nesting and foraging shorebirds and importantly an ecological corridor of shorebird habitat from HW Shortt Park to the north of Bishops Park.

Lastly, for the Panel's information the Te Ara Tupua – Ngā Ūranga ki Pito-One decision (referred to during the hearing) has been released and consent has been granted. That decision is available here:

[Draft Te Ara Tupua decision \(epa.govt.nz\)](https://www.epa.govt.nz/draft-te-ara-tupua-decision)

I trust the information provided above and **attached** assists. Please let me know if you or the Panel has any further questions.

Ngā mihi

Esther

**ESTHER BENNETT | SENIOR ASSOCIATE | BUDDLE FINDLAY**

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