

**BEFORE THE GREATER WELLINGTON REGIONAL COUNCIL AND HUTT CITY  
COUNCIL  
EASTERN BAYS SHARED PATH PROJECT**

Under the Resource Management Act 1991

In the matter of applications for resource consents by Hutt City  
Council under section 88 of the Act, to carry out  
the Eastern Bays Shared Path Project

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**REPLY ON BEHALF OF THE APPLICANT**

22 January 2021

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## MAY IT PLEASE THE HEARING PANEL:

### 1. INTRODUCTION

- 1.1 This reply supports the applications for resource consent by Hutt City Council (the "**Applicant**") associated with the construction of:
- (a) a 4.4km shared path along the seaward side of Marine Drive (the "**Shared Path**") between Point Howard and Sunshine Bay, and a further section at Windy Point (the "**Project area**"); and
  - (b) further built components including replacement seawalls and revetment structures in the Project area.
- 1.2 Together, these components comprise the "**Project**".
- 1.3 The applications for the Project were heard before a panel of independent commissioners (the "**Panel**") on 15 to 17 December 2020. Counsel provided extensive opening legal submissions on behalf of the Applicant and summarised them, and answered questions from the Panel, at the commencement of the hearing. This reply does not repeat those submissions but relies on them and should be read in conjunction with them.<sup>1</sup> Instead, this reply focusses on matters raised during the hearing by the Panel, Greater Wellington Regional Council ("**GWRC**"), Hutt City Council (in its capacity as consenting authority) ("**HCC**") and submitters. It also responds to specific matters raised in the Panel's *Minute 2* received on 21 December 2020.
- 1.4 The Applicant's principal submission is that the Project will create a safe and integrated walking and cycling facility which will improve connectivity and community health and wellbeing, while at the same time providing improved resilience (through the proposed replacement seawalls and revetment structures) to commence the response to climate change and sea level rise effects along the Eastern Bays. In doing so, the Project will promote the sustainable management purpose of the Resource Management Act 1991 ("**RMA**").
- 1.5 In terms of effects more broadly, the Panel heard the evidence of the Applicant's, GWRC's and HCC's expert witnesses during the hearing and has now been provided with:
- (a) a joint statement of evidence on behalf of Dr John Cockrem and Dr Roger Uys in relation to variable oystercatchers (**Appendix 2**);<sup>2</sup> and

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<sup>1</sup> The Applicant's opening legal submissions have been provided to the Panel and are available at [Opening-legal-submissions-for-Applicant-14-Dec-2020.pdf \(gw.govt.nz\)](https://www.gw.govt.nz/~/media/14-12-2020-Opening-legal-submissions-for-Applicant-14-Dec-2020.pdf)

<sup>2</sup> This is provided in response to the Panel's direction at paragraph 12 of *Minute 2* that Dr Cockrem provide a rebuttal statement. This is discussed further below in this reply.

(b) an email sent from Jamie Povall in response to Catherine Hamilton's email relating to road barriers and bus stops (**Appendix 3**).<sup>3</sup>

- 1.6 A significant development since the end of the hearing is that agreement has been reached between Dr Cockrem and Dr Uys in relation to effects on kororā / little penguins and oystercatchers in particular, and agreement among the planners for the Applicant, GWRC and HCC as to the proposed conditions (attached in **Appendix 1**). Resolving these matters has significantly simplified these submissions and allows a unified position as to the effects of the Project, and the proposed conditions (should it be granted), to be provided to the Panel.
- 1.7 On the basis of the evidence before it, the Panel can (and it is submitted should) draw the conclusion that any potential adverse effects of the Project will be no more than minor (or will be avoided) and will be appropriately monitored and managed through robust conditions. Moreover, as canvassed extensively in the Applicant's opening submissions (and touched on below in section 2), the Project will generate a number of significant social, cultural, recreational, economic and health and safety benefits for the Eastbourne community and the wider district and region.
- 1.8 As directed in the Panel's *Minute 2*, a joint set of updated conditions is attached to this reply as **Appendix 1** showing, in tracked changes, the agreed changes (agreed between the councils and the Applicant) that have been made since the commencement of the hearing. As mentioned, the Applicant and the councils agree on all proposed changes to the conditions.
- 1.9 This reply addresses the following particular areas that arose during or after the hearing:
- (a) section 2: positive effects and catch-all matters;
  - (b) section 3: design features of the Project, including:
    - (i) design life of the seawall;
    - (ii) the staged, bay-specific design process;
    - (iii) safety barriers; and
    - (iv) path width;
  - (c) section 4: ecological matters, specifically:
    - (i) seagrass;

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<sup>3</sup> This is provided in response to the Panel's direction at paragraph 6 of *Minute 2* that the Applicant and HCC provide a statement of advice about the outcome of discussions between Ms Hamilton and Mr Povall. This is discussed further below in this reply.

- (ii) variable oystercatchers;
  - (iii) kororā / little penguins; and
  - (iv) conditions related to ecological matters;
- (d) section 5: matters outside scope, in particular speed limits and pedestrian crossings;
- (e) section 6: matters raised at paragraph 12 of the Panel's *Minute 2*<sup>4</sup>, namely:
- (i) the meaning of the word "avoid" in relevant planning documents, including the relevance of minor or transitory effects;
  - (ii) any issues concerning the Environment Court Code of Conduct;
  - (iii) commentary on the status of road barriers and bus stops (whether they are permitted or non-complying); and
  - (iv) a summary of the consents being sought, including in relation to the Hutt Aquifer Protection Zone, which non-complying activities are triggered, and the scope of permitted activities;
- (f) section 7: comments on the applicability of the PNRP deposition rule R205; and
- (g) section 8: conditions generally.

1.10 The Panel has requested<sup>5</sup> a rebuttal statement from Dr Cockrem to Dr Uys' evidence tabled at the hearing on 17 December 2020. As above, in lieu of a rebuttal statement of evidence from Dr Cockrem, Dr Cockrem and Dr Uys have prepared a joint statement of expert evidence to assist the Panel and that is provided as **Appendix 2** to this reply.

1.11 The Panel has also requested a jointly confirmed statement from Mr Povall and Ms Hamilton confirming the outcome of their discussions regarding safety barriers. That statement is provided in the form of an email sent by Mr Povall to Anna McLellan, Shannon Watson and Dan Kellow<sup>6</sup> following discussions with Ms Hamilton (including the discussion that took place during the hearing). Ms Hamilton was provided with a copy of the email in draft form and her comments have been incorporated. That email is attached as **Appendix 3** to this reply.

1.12 Lastly, at paragraph 7 of *Minute 2* the Panel directed the Applicant to provide an electronic copy of the wall map that was displayed at the

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<sup>4</sup> Issued on 21 December 2020.

<sup>5</sup> Third bullet point, paragraph 12, *Minute 2*.

<sup>6</sup> To be provided to the Panel.

hearing. Counsel understand an electronic copy of the map was provided to the Panel during the hearing, however for ease of access this is provided again as **Appendix 4**.

## **2. POSITIVE EFFECTS AND CATCH-ALL MATTERS**

- 2.1 As explained in opening submissions, central to the RMA's sustainable management purpose is the need for resources to be managed in a way that *"enables people and communities to provide for their social, economic and cultural well-being and for their health and safety."*<sup>7</sup> With its multitude of positive effects (outlined below and described in more detail in opening submissions), the Project aligns with that sustainable management purpose and will represent an important opportunity for the people of Eastbourne and the broader Wellington region. As submitter Virginia Horrocks described it during the hearing, the Shared Path has been *"a dream for Eastbourne for 20 years."*<sup>8</sup>
- 2.2 The Project's benefits are many and varied, including increased community uptake in physical recreation, reduced reliance on private vehicles, reduced congestion on the roads, improved connectivity to the water and throughout Eastbourne, Hutt City and the wider Wellington region, improved resilience from wave overtopping and a response to ongoing sea level rise, and economic benefits for the region resulting from improved tourism and recreation – to name a few.
- 2.3 Connectivity lies at the heart of the Project, and the increased connections generated by the Project will have flow-on social, economic and recreational benefits, as described in the evidence of Simon Cager.<sup>9</sup> The Project will enhance connections both within Eastbourne (including the ability for residents to access the coast) and between Eastbourne and other parts of Hutt City and the Wellington region. Submitter Graeme Hall<sup>10</sup> described the Project as a *"major part of the wider puzzle"*, that puzzle being the 72 km Te Aranui o Pōneke / Great Harbour Way walking and cycling trail circling Te Whanganui a Tara / Wellington Harbour. Ms Horrocks stated that the Project is *"vital for connectivity"*, noting it will bring people from Wainuiomata in and will encourage people to cycle to the ferry.
- 2.4 Health and safety benefits are also central to both the Project and the community's support of it, and include:
- (a) increased safety for cyclists and pedestrians (including commuters, families and children) who will be able to use the new 2.5 – 3.5 m

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<sup>7</sup> RMA, section 5(2).

<sup>8</sup> Ms Horrocks appeared (on behalf of the Eastbourne Community Board) before the Panel on 15 December 2020.

<sup>9</sup> Evidence of Mr Cager at paragraph 11.

<sup>10</sup> Mr Hall appeared (on behalf of Te Aranui o Pōneke) before the Panel on 15 December 2020.

wide Shared Path, where currently they are forced to choose between a 70/50 km/hour road carriageway or a narrow footpath; and

- (b) an increase in physical activity and active forms of transport and recreation that will be achieved as a result of the Shared Path, and the positive health and wellbeing effects that will result from that.

2.5 Health and safety also came across strongly in presentations that were heard from submitters during the hearing. For instance, the Panel heard a heartfelt submission from Robert Ashe, whose vision for Eastbourne includes his children being able to ride along Marine Parade safely.<sup>11</sup> Submitter John Morgan's presentation highlighted safety concerns as well, displaying photographs of the alarmingly narrow footpath that currently exists along parts of Marine Drive.<sup>12</sup> Mr Morgan spoke of people being killed and injured due to the disastrous combination of the narrow footpath and 70 km/hour speed limit, and noted that children's safe access to bus stops is currently in jeopardy due to the narrowness. Submitter Teresa Walton, while unable to attend the hearing, provided a written submission in support of the Project due to the urgent need for improved safety along Marine Drive.<sup>13</sup>

2.6 Although one submitter (Geoff Rashbrooke) expressed scepticism about the extent to which the Shared Path would get people out of cars and into bicycles,<sup>14</sup> the Panel heard expert evidence from Robert Greenaway (the Applicant's recreation expert) who referred to a number of points from a literature review he undertook, including:

- (a) that providing 'Activity Friendly Environments' (ie where the community has the option of recreation or active commuting in an attractive, safe and accessible setting) is considered a significant contributor to physical activity uptake;<sup>15</sup> and
- (b) that the World Health Organization estimates that changes to the urban environment could reduce physical inactivity by one third.<sup>16</sup>

2.7 Mr Greenaway's expert opinion is that the Shared Path will result in a significant increase in physical recreation uptake in the Eastern Bays community, which will have flow-on physical and mental health benefits (in addition to the economic and environmental outcomes associated with

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<sup>11</sup> Mr Ashe appeared before the Panel on 16 December 2020.

<sup>12</sup> Mr Morgan appeared before the Panel on 16 December 2020.

<sup>13</sup> The Applicant understands an email from Ms Walton was to be circulated as she was unable to appear at the hearing. While the Applicant has not received this email, it refers to Ms Walton's written submission dated 27 November 2019. Ms Walton's submission notes a serious cycling accident she was personally involved in in 2012, in which she had to stop suddenly, but because there was nowhere safe to stop she lost balance and fell off the side of the road onto the rocks below.

<sup>14</sup> Mr Rashbrooke appeared before the Panel on 16 December 2020.

<sup>15</sup> Evidence of Mr Greenaway at paragraph 31(f).

<sup>16</sup> Evidence of Mr Greenaway at paragraph 31(h).

changes in transport patterns).<sup>17</sup> Indeed, as Mr Cager's evidence notes, this has proven to be the case for HCC's Te Hikoi Ararewa (Wainuiomata Hill Shared Path), with initial monitoring showing that that Shared Path has led to over 92,000 movements through the counter on the Hutt side of the hill and 131,000 movements on the Wainuiomata side.<sup>18</sup> Survey results for Te Hikoi Ararewa showed that 80% of respondents used the Shared Path for walking and 31% for cycling, and users gave recreation (80%) and health (69%) as their main purpose for using the Shared Path.<sup>19</sup> Mr Povall's evidence (transport and safety) refers to Te Hikoi Ararewa as well, and also notes the forecast path usage recently completed for Te Ara Tupua – Ngā Ūranga to Pito-One Shared Path shows upwards projections.<sup>20</sup>

- 2.8 Another safety-related matter that arose was the potential for conflict – both between bus shelter users and cyclists along the Shared Path, and between cyclists travelling at speed and pedestrians.
- 2.9 In terms of potential conflict around bus shelters, Mr Povall clarified that the intention is that the Shared Path will run behind bus stops where possible, to limit interaction with people alighting from buses. Although submitter Felicity Rashbrooke expressed concern during the hearing that this design would move bus users closer to the actual carriageway<sup>21</sup>, Mr Ashe and Ms Horrocks did not consider this potential conflict to be a significant risk due to people's ability to adapt behaviours quickly and exercise common sense in sharing the space.
- 2.10 Ms Rashbrooke also raised concerns that the construction of the Shared Path would compromise access to the beach, however when Mr Greenaway was questioned on this by the Panel during the hearing, he stated that in his view beach access would be "*clearly enhanced*."
- 2.11 Similarly, the issue of cyclists travelling at speed along the Shared Path and interfering with pedestrian usage arose several times during the hearing. While some submitters expressed concern about this, the Panel heard from submitters such as Mr Steve Bielby, who anticipates that cyclists travelling at speed will continue to use the road; cyclists will only use the Shared Path at a safe speed. This is supported by the expert evidence of Mr Greenaway, which considers that commuting cyclists travelling at speed will remain road users as the Shared Path will not be suitable for high speed biking.<sup>22</sup> Mr Greenaway's evidence also states that in all recreation settings, managing conflict is an exercise in education and

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<sup>17</sup> Evidence of Mr Greenaway at paragraph 33.

<sup>18</sup> Evidence of Mr Cager at paragraph 42.

<sup>19</sup> Evidence of Mr Cager at paragraph 44.

<sup>20</sup> Evidence of Mr Povall (transport and safety) at paragraph 42.

<sup>21</sup> Ms Rashbrooke appeared before the Panel on 16 December 2020.

<sup>22</sup> Evidence of Mr Greenaway at paragraph 64.

expectation-setting, and that he would expect recreation managers to monitor conflict over time.<sup>23</sup>

- 2.12 The Project will also have major resilience benefits through its proposed replacement seawalls and revetment structures. As discussed in opening submissions and explained by Dr Michael Allis (the Applicant's coastal processes expert), although this is not a permanent solution it will be a significant improvement to the existing ad hoc seawalls (which are currently not fit-for-purpose and result in wave overtopping and frequent closures of Marine Drive during storm events) and will "buy time" for a longer solution to climate change and sea level rise to be formulated. These resilience benefits are also a crucial driving force behind the Eastbourne community's support of the Project, with climate change being one of the two main community priorities falling out of the 2016 survey (the other being a shared path for walking and cycling).<sup>24</sup> Submitter Derek Wilshere raised this during his presentation to the Panel, noting that he was involved in the seawall that is currently in place, but believes that there is now an opportunity for improvement.<sup>25</sup> Mr Bielby, when asked about the Project's role in responding to climate change, deferred to the experts but expressed hope that *"it will gain us 10 years on sea level rise."* That aligns with the Applicant's position of "buying" some time to allow robust community engagement and planning.
- 2.13 Submitter Peter Healy put the Project's resilience benefits in a different way; he noted that what people see is a Shared Path project, what they don't see is *"one big sewer pipe that is at risk"*.<sup>26</sup> This is a reference to the fact that main outfall sewer pipeline is located in the road corridor of Marine Drive, and Marine Drive provides the only road, infrastructure and utilities connection to the Eastern Bays community. If that connection is severed (say, due to storm and wave events closing Marine Drive) then access to or use of those key (regionally significant) infrastructure services is limited (or non-existent).
- 2.14 Several submitters expressed a wish to retain the Atkinson Tree, which is proposed to be removed as part of the Project's construction.<sup>27</sup> This issue is addressed in the evidence of Mr Povall (project design)<sup>28</sup> which notes that retaining the tree would require the Shared Path to significantly encroach on the beach (or to be significantly narrowed, with the tree restricting visibility and constituting a safety hazard). In addition, an arborist has advised that the Atkinson Tree is in poor health and would be

<sup>23</sup> Evidence of Mr Greenaway at paragraphs 65 and 66.

<sup>24</sup> Paragraph 2.1 of the Applicant's opening legal submissions. Ms Horrocks also raised this during her presentation before the Panel on 15 December 2020.

<sup>25</sup> Mr Wilshere appeared before the Panel on 16 December 2020.

<sup>26</sup> Referencing the fact that the main outfall sewer pipeline is located in the road corridor of Marine Drive, providing the only road, infrastructure and utilities connection to the Eastern Bays community (see paragraph 2.11 of the Applicant's opening submissions).

<sup>27</sup> For example Fiona Christeller and Ms Rashbrooke, who both appeared before the Panel on 16 December 2020, and Mr Healy, who appeared before the Panel on 17 December 2020.

<sup>28</sup> At paragraph 35(b)



unlikely to survive relocation. Instead, as Mr Povall's (project design) evidence outlines, replacement plantings in the triangular piece of land behind the bus shelter in Taungata Road are proposed.<sup>29</sup>

2.15 Submitter Mr David le Marquand presented on behalf of the oil companies<sup>30</sup> and noted that although the oil companies support the Project, they have reservations in relation to the implications for the oil companies' own resource consents and access to the wharf. The Applicant has discussed the relevant conditions with Mr Le Marquand and agreed amendments to condition G.15A and a proposed new condition G.15B to alleviate the oil companies' concerns.

### **3. DESIGN FEATURES OF THE PROJECT**

#### **Design life of the seawall**

3.1 There was some ambiguity during the hearing as to the design life of the proposed seawall, in particular whether it was designed to have a 50-year design life or a 100-year design life. Mr Povall confirmed to the Panel that the seawall has been designed to a theoretical 100-year design life, which is in accordance with the *Waka Kotahi Highway Structures Design Guide for Concrete Structures* and the *Code of Practice for Maritime Structures*.<sup>31</sup>

#### **Staged, bay-specific design process**

3.2 The proposed staged, bay-by-bay design process was a point of discussion throughout the hearing, with some submitters raising concerns with this approach and the Panel asking questions of the Applicant's witnesses as well as HCC's witnesses. The key points raised by submitters during the hearing were as follows:

- (a) a lack of detail in respect of the Landscape and Urban Design Plan ("LUDP") and Bay Specific Urban Design Plans ("BSUDP");<sup>32</sup>
- (b) a desire to avoid a "one size fits all" approach across the bays;<sup>33</sup> and
- (c) concerns regarding the "general hierarchy" phrasing in condition LV.4.<sup>34</sup>

3.3 These matters were addressed in the Applicant's evidence and during the hearing by the Applicant's expert witnesses. In particular, Julia Williams (the Applicant's landscape expert) advised the Panel:

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<sup>29</sup> Evidence of Mr Povall (project design) at paragraph 35(b)(v).

<sup>30</sup> BP Oil, Oil New Zealand Limited, Mobil Oil New Zealand Limited and Z Energy Limited.

<sup>31</sup> See also paragraph 57 of Mr Povall's Project Design evidence.

<sup>32</sup> Raised by Ms Christeller.

<sup>33</sup> Raised by Ms Christeller.

<sup>34</sup> Raised by Ms Christeller.

- (a) she is confident in the robustness of the conditions around the design process, noting the staged process will enable individual bays or communities to determine what their priorities are;
- (b) she is confident that the staged approach, and the proposed conditions, will enable the Project to be developed in such a way that allows for the bay-specific individuality, while also ensuring continuity and cohesion across the Project as a whole; and
- (c) the level of detail contained in the Design Features Report is on par with the level of detail she has encountered in many other pre-application urban design reports.

3.4 During the hearing, both of HCC's landscape experts (Ms Hamilton and Jeremy Head) expressed some concern about a lack of detail in the designs that were attached to the resource consent application. However, following questions from the Panel:

- (a) Ms Hamilton noted conditions LV.1 to LV.7 are comprehensive and "*do a good job of identifying design outcomes sought and mechanisms for checks and balances*" and "*by and large alleviate my concerns*" regarding a lack of detail; and
- (b) Mr Head stated he was "*reasonably comfortable*" with the latest set of conditions, including the staged process and the certification process;

3.5 Since the hearing, the Panel has received an email from HCC's planner, Mr Kellow,<sup>35</sup> confirming that the conditions (as agreed between the Applicant and the councils) allow certification of the design process, rather than certification of the design itself. Mr Kellow's email states his view that it is reasonable to adopt the position of certifying the process rather than the detailed design due to the comprehensive manner in which the conditions cover expert involvement in the design, consultation with mana whenua and other stakeholders, managing potential conflicts between matters such as safety, urban design and natural character, protocols for inputs into drafts and required design details.

3.6 HCC has advised it is happy with the conditions attached to this reply as **Appendix 1.**

3.7 Finally, the Applicant has responded to the comments of submitters and the councils regarding the inclusion of the phrase "*general hierarchy*" in condition LV.4. As explained during the hearing, that phrasing had been purposefully included to ensure that in the event of a conflict between factors such as ecology, safety, natural character and so forth, there was a

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<sup>35</sup> Dated 22 December 2020 and available online at: [Microsoft Outlook - Memo Style \(gw.govt.nz\)](mailto:Microsoft Outlook - Memo Style (gw.govt.nz))

clear and agreed process for addressing those matters. Nevertheless, the Applicant has discussed this condition with the councils and proposes amended wording to this condition that removes the term "*general hierarchy*" while retaining the intent should conflict arise. This is discussed below in the conditions section.

### **Safety barriers**

- 3.8 The issue of safety barriers came up during Mr Povall's, Mr Kellow's and Ms Hamilton's presentations at the hearing. As discussed in Mr Povall's project design evidence, while a barrier is needed along parts (only the locations of highest risk) of the Shared Path for safety reasons, there has been a high degree of pushback from some members of the community due to the "*interrupting*" effect that the barrier would have on the coastal view.<sup>36</sup>
- 3.9 Ms Hamilton raised concerns that installing a safety barrier alongside the coastal edge of the Shared Path would have a "*shying*" effect on Shared Path users and would cause them to move closer to the road carriageway; which in her view as they occurred in the 2.5m sections would be particularly problematic. Mr David Wanty (HCC's traffic and safety expert) picked up on this point during his presentation to the Panel, noting there are ways to mitigate the "*shying*" effect, including shaping the barrier's vertical posts in such a way that avoids interference with bicycle handles.
- 3.10 Ms Hamilton and Mr Povall conferred on this issue during the hearing and following that discussion Ms Hamilton provided an email summary which has been made available to the Panel,<sup>37</sup> including Mr Povall's clarification that the proposed safety barrier is not likely to occur along the 2.5 metre wide sections of the Shared Path (but it may be required in parts of those narrower sections).
- 3.11 As above, Mr Povall has written an email confirming the outcome of his and Ms Hamilton's discussions on this point which is attached as **Appendix 3**. Both Ms Hamilton and Mr Povall agree that there are numerous design options available to satisfactorily resolve safety (and associated recreation) issues arising from safety barriers. Those options are set out in **Appendix 3**. Evidence on recreational effects was addressed by Mr Greenaway, who emphasised the compromises required (especially given the location of the Project) however did not raise any significant recreational concerns.

### **Path width**

- 3.12 Path width has been a topic of considerable discussion leading up to, and during, the hearing. As Mr Povall set out in his project design evidence:<sup>38</sup>

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<sup>36</sup> Project design evidence of Jamie Povall at paragraph 35(d).

<sup>37</sup> The email is also available online at: [Microsoft Outlook - Memo Style \(gw.govt.nz\)](#)

<sup>38</sup> Evidence of Mr Povall (project design) at paragraph 7.

*"Detailed consideration of appropriate path width as well as potential environmental effects has resulted in a minimum path width of 2.5m applied in the most constrained locations, with 3.5m width used elsewhere (and for 83% of the length of the Shared Path)."*

- 3.13 At the hearing a range of views were heard from submitters on the subject of path width, including:
- (a) Mr Ashe, who although deferring to the technical experts, noted that if a lot of people were using the Shared Path it would naturally become a slow-use zone;
  - (b) Ms Rashbrooke, who noted that a landward alignment plus a reduction in path width would avoid encroachment onto the beach;
  - (c) Mr Rashbrooke, who expressed concerns about a 'trade-off' between the environment and amenity, stating nothing wider than 2.5 metres should be considered; and
  - (d) Mr Morgan, who considered that 3.5 metres was *"a must"*.
- 3.14 As the Panel is aware, the proposed path widths have been designed as a carefully considered compromise taking into account a range of factors and interests, from safety and recreational (for users of the Shared Path) to ecological (associated with beach/coastal encroachment). As Mr Povall explained during his presentation to the Panel, the proposed path widths were designed with the assistance of a multi-disciplinary teams. Where a path width of 3.5 metres can be accommodated this has been proposed, and where there are locational constraints such that 3.5 metres is not possible, 2.5 metres has been proposed.
- 3.15 While it is acknowledged that a perfect solution that satisfies all effects, interests and viewpoints is not achievable, Mr Povall considers the proposed design to be an acceptable compromise<sup>39</sup> and one which the majority of the community is supportive of. Mr Wanty's brief of evidence<sup>40</sup> supports this approach as well, noting *"My impression is that on balance the widths as proposed as reasonable..."*<sup>41</sup>
- 3.16 From a recreational standpoint, Mr Greenaway noted during the hearing that he is comfortable with a 2.5 metre width in limited sections of the Shared Path, and that while 3.5 metres is an ideal minimum width for people using the Shared Path, the adjacent beach areas are also an important recreational asset and that must be taken into account when

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<sup>39</sup> During the hearing Ms Hamilton disagreed with the Applicant's experts that 2.5 metres was an acceptable width from a recreational standpoint, however acknowledged that she understood the reasons for the reduction, including that there were ecological and environmental reasons behind that proposed design.

<sup>40</sup> Attachment 2 to HCC's section 42A Officer's Report. Available online at: [Attachment-2-to-s42a-report.pdf \(gw.govt.nz\)](#)

<sup>41</sup> Evidence of Mr Wanty at paragraph 49.

considering the broader recreational values and effects. In any case, as Mr Greenaway pointed out there are tools available to manage safety and recreational concerns associated with a narrower path, for example signage and road markings.

- 3.17 Overall, the Applicant's position (supported by the experts) remains that the proposed path widths ranging from 2.5 metres to 3.5 metres are acceptable and appropriate, in particular taking into account safety, recreational and ecological factors.

#### 4. ECOLOGICAL MATTERS

##### Seagrass

- 4.1 The Panel heard expert evidence from Dr Fleur Matheson (on behalf of the Applicant) and Dr Megan Oliver (on behalf of GWRC) in relation to the effects of the Project on seagrass. During Dr Matheson's presentation the Panel raised queries in relation to two areas of seagrass<sup>42</sup> and requested an assessment of the Project against the EIANZ tables for assigning ecological value and describing magnitude of effect and level of effects. Accordingly, Dr Matheson provided a supplementary statement of evidence dated 17 December 2020 which confirmed that:

- (a) the intention of the Project is to ensure that all areas containing seagrass are avoided during construction, and no construction will take place within two metres of any seagrass bed;<sup>43</sup>
- (b) in order to ensure there is no smothering of the seagrass beds by beach material, only coarse sand or larger will be used at Lowry Bay and the placement area of the beach nourishment material will be shifted to the north, and the material will be placed over two placements in the winter period;<sup>44</sup> and
- (c) using the EIANZ assessment guidelines, seagrass was assigned a High ecological value, Dr Matheson assessed (conservatively) the magnitude of effect as Negligible, and the overall level of effects was assessed by Dr Matheson as Very Low.<sup>45</sup>

- 4.2 The proposed conditions as set out in **Appendix 1** (in particular conditions EM.11 and EM.14 have been updated to reflect Dr Matheson's evidence.

- 4.3 Dr Oliver confirmed during the hearing that she was satisfied with these changes, and agreed with the Panel's proposition that as near as possible,

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<sup>42</sup> A 2m<sup>2</sup> section that overlaps with the proposed construction zone and a 7m<sup>2</sup> section that adjoins the initial adjusted beach nourishment profile in Lowry Bay.

<sup>43</sup> Supplementary statement of evidence of Dr Matheson at paragraph 8.

<sup>44</sup> Supplementary statement of evidence of Dr Matheson at paragraph 13.

<sup>45</sup> Supplementary statement of evidence of Dr Matheson at paragraph 19.

what has been proposed by the Applicant avoids effects on the seagrass beds.

- 4.4 The Panel heard a presentation from submitter Amelia Geary (on behalf of Forest and Bird) who expressed concerns that not enough consideration was been given to seagrass, including in relation to beach nourishment and ongoing monitoring of seagrass for unforeseen effects. As above, both Dr Matheson and Dr Oliver have confirmed that in their expert opinion, the Project as currently proposed (including the robust suite of conditions attached as **Appendix 1** and a seagrass monitoring programme) will avoid adverse effects on seagrass.

#### **Variable oystercatchers**

- 4.5 As identified in the opening legal submissions, the critical issue that remained unresolved between the Applicant and GWRC going into the hearing was the Project's effects on variable oystercatchers. At that point, Dr Cockrem was satisfied that the effects of the Project on oystercatchers would be likely to be less than minor, while Dr Uys considered that the adverse effects may be more than minor. During the hearing Dr Cockrem answered many questions from the Panel as to the effect of the Project on oystercatchers including that even if the single breeding pair was lost (which is absolutely worst case and strict conditions are provided to avoid that outcome) there would be no effect at a regional (or ecological district level).<sup>46</sup>
- 4.6 As already mentioned, since the conclusion of the hearing the parties and experts have continued to engage on the issue and have agreed further amendments to the conditions (discussed below). Critical to the success of those discussions are the significant avoidance and minimisation measures proposed (as summarised in Condition EM.1<sup>47</sup>). Those measures have given both experts comfort that the effects have been appropriately addressed and that the project will provide for positive outcomes for oystercatchers.
- 4.7 As noted above, Drs Cockrem and Uys have prepared a joint statement of evidence, which is attached as **Appendix 2**. As set out at paragraph 7 of that statement, with the proposed conditions:<sup>48</sup>
- (a) Dr Cockrem's opinion is that the Project's effects on birds (including kororā / little penguins and oystercatchers) will be less than minor;  
and

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<sup>46</sup> This conclusion is consistent with the conclusion reached by Dr Bromley (appointed as the expert advisor to the Te Ara Tupua Project expert panel) as contained at page 12 of his report (available at: [https://epa.govt.nz/assets/Uploads/Documents/Fast-track-consenting/Te-Ara-Tupua/Ecology\\_Advice\\_to\\_ECP\\_LP01-v2.pdf](https://epa.govt.nz/assets/Uploads/Documents/Fast-track-consenting/Te-Ara-Tupua/Ecology_Advice_to_ECP_LP01-v2.pdf) )

<sup>47</sup> Noting Dr Uys' opinion as to the value of the proposed oystercatcher study as mentioned in the Joint Statement of 22 January 2021 (**Appendix 2**).

<sup>48</sup> The **Appendix 1** set

(b) Dr Uys' opinion is the Project's effects on birds (including kororā / little penguins and oystercatchers) will be no more than minor and appropriately address the matters set out in section 44 of his evidence of 17 December 2020.

4.8 This critical issue has therefore been resolved and the Panel can be satisfied that the potential effects on oystercatchers have been addressed (to a level where effects are 'avoided' in a policy sense as discussed below).

### **Kororā / little penguins**

4.9 The Panel heard presentations from submitters Michael Rumble and Ms Geary (Forest and Bird) relating to the Project's effects on kororā / little penguins.

4.10 Mr Rumble expressed dissatisfaction with the Applicant's proposed protection and minimisation measures relating to kororā / little penguins, and sought a number of additional measures including keyholes in the riprap, a 300-400 mm vertical wall above the riprap, one-way flaps on drains, signage and long-term monitoring.

4.11 Ms Geary sought measures around penguin detector dogs, construction, surveys, nest boxes, planting, pest control and skink habitat.

4.12 As above, since the hearing the parties (including the only two avifauna expert witnesses involved in the hearing) have continued to engage on conditions and minimisation measures, including further changes in relation to kororā / little penguins despite the experts agreeing that effects on them had been adequately addressed. Both Dr Cockrem and Dr Uys take the view that with these conditions and measures, effects on kororā / little penguins will be either less than minor or no more than minor.

### **Ecology conditions**

4.13 As set out above, since the conclusion of the hearing the Applicant and the councils (and the relevant experts) have continued to engage on the Project's conditions, especially in relation to birds. **Appendix 1** is the Applicant's updated set of proposed conditions, showing amendments made since the commencement of the hearing<sup>49</sup> in tracked changes. As above, the ecology conditions have been agreed between the relevant experts.

4.14 In relation to seagrass the conditions have been amended to:

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<sup>49</sup> The pre-commencement of hearing set was the set appended to Caroline van Halderen's evidence as Appendix A.

- (a) clarify that there shall be no smothering of any part of the seagrass beds (Condition EM.11(c)(iv));
- (b) make it clear that no construction works shall occur within 2m of any seagrass bed (Condition EM.11(c)(v));
- (c) provide for monitoring and remedial actions to be undertaken if required ((Condition EM.11(d); and
- (d) reflect changes to the beach nourishment processes proposed, as discussed during the hearing (Condition EM.14(f) and (g)).

4.15 In relation to birds (in particular kororā / little penguins and oystercatchers) the key changes are:

- (a) a clear focus to avoid or minimise effects (Condition EM.1);
- (b) extension of measures (focussed on revegetation and as shown in Appendix 1 to the conditions) to between Bishops Park and the HW Shortt Park protection areas should bylaws not be implemented as proposed (Condition EM.2);
- (c) amendments to and expansion of the Bird Protection Plan, including the inclusion of objectives (Conditions EM.3 - EM.3C);
- (d) amended construction works provisions for kororā / little penguins (Conditions EM.4 - EM.4AA);
- (e) inclusion of a Pest Management Strategy (Condition EM.5);
- (f) protection area review and reporting (Conditions EM.8 - EM8C); and
- (g) greater clarity to, and certainty for, the provisions.

## **5. MATTERS OUTSIDE SCOPE**

5.1 Two matters arose during the hearing which, while valid concerns, with respect are outside of scope of the Project. These matters related to:

- (a) the speed limit along Marine Drive; and
- (b) pedestrian crossings on Marine Drive.

### **Speed limits**

5.2 A number of submitters expressed concern with the current 70 km/hour speed limit along Marine Drive, requesting that the Applicant take steps to reduce the speed limit.<sup>50</sup>

<sup>50</sup> Speed limit was an issue mentioned by Ms Rashbrooke, Mr Rashbrooke, Mr Bielby, Mr Morgan and Mr Wilshire.



- 5.3 As counsel noted during the hearing, the speed limit along Marine Drive is not within the scope of the Project. Any changes to the speed limit along Marine Drive can only be made through a separate statutory process.

### **Pedestrian crossings**

- 5.4 Additional pedestrian crossings came up several times throughout the hearing, including by submitter Kate Wilson who raised the issue of access to ramps from the other (non beach) side of Marine Drive as a safety concern (though acknowledging it was not clear how one would condition this).
- 5.5 As Mr Povall explained during the hearing, additional pedestrian crossings have not been proposed as part of the Project. Also, as discussed by Mr Wanty pedestrian crossings may not always be the appropriate response and safe bays within the road centre may be a better solution. Further as Mr Wanty explained pedestrian crossings stop traffic and at times long queues and other issues can arise affecting their safety (such as at Day's Bay). Any such solution, as and when required, requires a full traffic and safety assessment by HCC. In the interim as Mr Morgan stated to the Panel, pedestrians already can, and do, wait for a gap in the traffic.

## **6. MATTERS RAISED IN THE PANEL'S MINUTE 2**

### **Meaning of "avoid"**

- 6.1 This section provides the Applicant's views about the interpretation of "avoid" in relevant planning documents, including the relevance of minor or transitory effects.<sup>51</sup>
- 6.2 The Applicant's opening submissions adopted the meaning of "avoid" as set out in Memorandum 6 and Ms van Halderen's evidence; which is that minor or transitory effects are acceptable within the context of an avoidance policy.<sup>52</sup>
- 6.3 During the hearing counsel referred the Panel to the Auckland Unitary Plan ("**AUP**") which requires, in order to give effect to Policy 11 of the NZCPS, activities in the coastal environment to be avoided where they will result in "non-transitory or more than minor" adverse effects.<sup>53</sup> That approach was confirmed by the High Court.<sup>54</sup>
- 6.4 Following the hearing the Panel sought a legal opinion from DLA Piper on the meaning of "avoid".<sup>55</sup> DLA Piper provided a legal opinion in response

<sup>51</sup> As requested by the Panel at paragraph 12 of *Minute 2*, 21 December 2020.

<sup>52</sup> See paragraph 4.81 of the Applicant's opening submissions.

<sup>53</sup> AUP, Policy D9.3(9)(a).

<sup>54</sup> *Royal Forest and Bird Protection Society of New Zealand Inc v Auckland Council* [2017] NZHC 980. During the hearing counsel also highlighted the High Court appeal on the East West Link Proposal in Auckland. Unfortunately, there is still no decision.

<sup>55</sup> *Minute 1*, 18 December 2020.

("DLA opinion") that supports the interpretation adopted by the Applicant that:

- (a) although Policies 13 and 15 of the NZCPS are worded differently to Policy 11 there is no material difference to the use of the term "avoid" among them (paragraphs 3-10); and
- (b) an activity can have minor or transitory effects while complying with an "avoid" policy (in particular at paragraphs 11-13).

6.5 The Applicant agrees.

6.6 For completeness the Applicant has minor comments in relation to the last two matters the Panel raised in *Minute 1*:

- (a) *Can minor or less than minor adverse effects be balanced against the positive effects of a proposal under Policy 11(a) NZCPS, as well as Policy 39A(a) PNRP?*

While the Applicant does not consider that anything hinges on this in this case, to be clear once an effect is at the level of (or below) no more than minor 'avoidance' as required under the policies has been achieved. In relation to any minor, or less than minor, residual effects *of an activity* then positive effects *of an activity* may be considered (as opposed to "balanced"). But such consideration would not be against Policy 11 of the NZCPS (nor Policy 39A of the PNRP) as those policy requirements have been achieved.

On a broader matter as raised in the DLA opinion,<sup>56</sup> and again not relevant in this case as offsetting/compensation is not proposed, it remains arguable<sup>57</sup> that although "adverse effects" are to be avoided a "net" effects approach could be adopted (depending on the facts and context). That is because:

- (i) the avoidance relates to "*adverse effects of activities*".<sup>58</sup> Reference to activities necessitates a broader view of what is the effect *of the activity* (including with conditions which could include offsetting/compensation<sup>59</sup>); and

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<sup>56</sup> At paragraphs 14 and 15.

<sup>57</sup> Again, this issue may be resolved in the High Court appeal on the East West Link Proposal in Auckland. Unfortunately, there is still no decision.

<sup>58</sup> Policy 11(a) of the NZCPS. Policy 39A of the PNRP unusually does not include this reference but an activity is implicitly required.

<sup>59</sup> See, for example, the approach adopted by the expert consenting panel concerning the Matawii water storage reservoir at [337]-[340] noting that the policy in question uses the term "*no further loss of extent*" as opposed to "*avoid*".

- (ii) such an approach provides a "real world" assessment against the policy<sup>60</sup> and interprets and applies the meaning of "effect" in a realistic and holistic way.<sup>61</sup>
- (b) *Can we be satisfied that the planning policy framework of the current NZCPS (now 10 years old) and the PNRP is such that it is not necessary for us to revert to Part 2 RMA in our consideration? In other words, can we reconcile the adverse effects of a proposal with its positive effects under Part 2 of RMA?*

Again, this is not a matter that affects the outcome as in the Applicant's submission (and the expert planning assessments, now that matters are agreed), the Project is consistent with both Part 2 and the provisions of the PNRP. While the comments in the DLA opinion<sup>62</sup> are accepted, the Panel needs to apply care in relation to paragraph 20 of the DLA opinion. The comments are fair (and as above of no consequence in this case) but the PNRP (including Policy 39A) still has appeals to be resolved by the Environment Court. Where planning documents are still in various stages of development the Environment Court has considered Part 2.<sup>63</sup>

### **Code of Conduct**

- 6.7 Prior to the hearing counsel identified an issue in relation to documents received from GWRC and HCC. Specifically, most of the reports or documents received on behalf of the councils' expert witnesses did not include a confirmation that those witnesses would adhere to the Environment Court's Code of Conduct for Expert Witnesses. This issue was rectified at the hearing and has been resolved.
- 6.8 Separately, in relation to Mr Rumble's submission and his confirmation at the hearing to adhere to the Code of Conduct for Expert Witnesses, counsel reiterate that while Mr Rumble has expertise in the field of kororā / little penguins, that is quite distinct from presenting as an expert witness in an RMA consent hearing. As the Panel is aware, in agreeing to adhere to the Code of Conduct for Expert Witnesses an expert witness has a duty to impartially assist the Panel, and must not be, or act as, an advocate for the party who engages that witness.<sup>64</sup> Given Mr Rumble appeared before the Panel on behalf of himself, and he submitted in opposition to the Project, he

<sup>60</sup> *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZRMA 239. At [85] Fogarty J refers to the "real world" approach required under a section 104D (and the RMA as a whole) analysis.

<sup>61</sup> *Tauranga Environmental Protection Society Inc v Tauranga City Council* [2020] NZEnvC 43 at [106].

<sup>62</sup> At paragraphs 17-19 and 21.

<sup>63</sup> See, for example, *Cossens v Queenstown Lakes District Council* [2018] NZEnvC 205 at [142].

<sup>64</sup> Environment Court's Practice Note 2014, section 7.2(a) and (b).

does not meet the independence and impartiality criteria and cannot be treated as an expert witness.

**Road barriers and bus stops**

6.9 The Panel has directed that the Applicant provide a comment on the status of road barriers and bus stops, and whether they are permitted or non-complying.

6.10 These activities are permitted under the City of Lower Hutt District Plan ("LHDP") – Rule 13.3.1.37 which relates to roading and traffic and transport structures. That rule states:

*Traffic control signals and devices, light and decorative poles and associated structures and fittings, post boxes, landscaped gardens, artworks and sculptures, bus stops and shelters, phone boxes, public toilets and road furniture located within the road reserve and the rail corridor.*

6.11 Mr Kellow also confirms this at page 2 of his section 42A report.

**Summary of consents sought**

6.11 A summary of the consents sought by the Applicant are as follows:

<i>Operative Regional Plans (all discretionary activities)</i>	
1. Coastal Permit	Reclamation and associated drainage of the foreshore and seabed.
2. Coastal Permit	<p>Construct new structures, and undertake additions and/or alterations, replacement, and removal and demolition of existing structures (seawalls, rock revetments, boat ramps, beach access structures, edge protection structures, stormwater outlets) located within the coastal marine area, including any associated:</p> <ul style="list-style-type: none"> <li>• destruction, disturbance, deposition and discharge of contaminants to the foreshore and seabed during construction.</li> <li>• occupation of space within the coastal marine area.</li> </ul> <p>Deposit natural materials, including sand, shingle and shell, onto the intertidal beach at Point</p>

	Howard, Lowry Bay and York Bay for beach nourishment purposes.
3. Land use consent	Undertake earthworks associated with construction of the Shared Path, including associated discharges of sediment laden water to land where it may enter coastal water.
4. Discharge permit	Discharge sediment laden water to coastal water during excavation activities and dewatering in the coastal marine area.
5. Water permit	Take groundwater and divert coastal water associated with dewatering activities during construction.
<i>Proposed Natural Resources Plan</i>	
6. Coastal permit	Reclamation and associated drainage of the foreshore and seabed (Discretionary Activity)
7. Coastal permit	<p>Construct new structures, and undertake additions and/or alterations, replacement, and removal and demolition of existing structures (seawalls, rock revetments, boat ramps, beach access structures, edge protection structures, stormwater outlets) located within the coastal marine area, including any associated:</p> <ul style="list-style-type: none"> <li>• destruction, disturbance, deposition and discharge of contaminants to the foreshore and seabed during construction.</li> <li>• occupation of space within the coastal marine area.</li> </ul> <p>(Non-complying Activity)</p>
	<p>Deposit natural materials, including sand, shingle and shell, onto the intertidal beach at Point Howard, Lowry Bay and York Bay for beach nourishment purposes.</p> <p>(Non-complying Activity)</p>
8. Land use consent	Undertake earthworks associated with construction of the Shared Path, including associated discharges of sediment laden water to land where it may enter coastal water (Discretionary Activity).

9. Discharge permit	Discharge sediment laden water to coastal water during excavation activities and dewatering in the coastal marine area (Discretionary Activity).
10. Water permit	Take groundwater and divert coastal water associated with dewatering activities during construction (Discretionary Activity).
<i>Lower Hutt District Plan</i>	
11. Land use consent	Construction, alteration (including widening the road in some areas) and diversion of Marine Drive to create the Shared Path (Discretionary Activity).
12. Land use consent	Construction and operation of the Shared Path within SNR 44 (Restricted Discretionary Activity).
13. Land use consent	Earthworks within the Special Recreation and Passive Recreation zoning (Discretionary Activity).

6.12 The works affecting the Hutt Aquifer Management Zone will be managed through the Construction and Environmental Management Plan ("**CEMP**") (see condition GC.7(m)(xi), which includes a requirement that: *In consultation with Wellington Water Limited, developing a site-specific methodology for dewatering and managing effects on the aquifer where the excavation and/or depth of any required seawall foundation exceeds 2.5 m Below Ground Level.*)

6.13 The works are covered by the Coastal Permit to construct new structures, and undertake additions and/or alterations, replacement, and removal and demolition of existing structures. These works are triggered by Rules R153, R155 and R166 of the PNRP.

## **7. PNRP DEPOSITION RULE R205**

7.1 At paragraph 9 of its *Minute 2* the Panel directed Mr Watson to provide clarification regarding the PNRP deposition Rule R205, drawing on the evidence of Dr Oliver. In particular, the Panel asked, "*is deposition limited to deliberate / direct actions, as opposed to an indirect outcomes arising over time from natural processes?*"

7.2 Mr Watson's response to that query was contained within a document provided to the Panel on 23 December 2020.<sup>65</sup> In summary, Mr Watson clarified that upon review of the PNRP (2015), in his view:

<sup>65</sup> Available online at: [Shannon-Watson-GWRC-response-to-Minute-2.pdf](#)

- (a) R205 is not the most appropriate rule for consideration of deposition inside sites of significance;
- (b) rather, R209 is the most relevant rule given it specifically provides for deposition inside sites of significance (as opposed to R205 which provides for destruction, damage or disturbance inside sites of significance and associated deposition);
- (c) resource consent is not required under R209 because the deposition activity is not occurring inside the site of significance (the seagrass beds); in order for the rule to be triggered the activity must occur **inside** the site of significance; and
- (d) deposition under R209 is limited to deliberate/direct actions inside the site of significance and not an indirect outcome arising over time from natural processes.

7.3 The Applicant agrees with Mr Watson and, for completeness, notes that the same approach that applies to Rule R209 (that the *activity* causing the destruction, damage or disturbance must occur *inside* the site of significance) applies equally to Rule R205 (and that is supported by Policies P143 and P144).

7.4 The decisions report for the PNRP states:<sup>66</sup>

- (a) at paragraph 8.3:

*Policy P143 directs the avoidance of sand, shingle or shell deposition **in sites** identified in Schedules C, E4, F4, F5 and J except in limited identified circumstances. Similarly, Policy P144 avoids dumping **in those Scheduled sites** except where necessarily associated with RSI and where there are no reasonable alternatives.*

- (b) at paragraph 8.10:

*... **all other destruction, damage or disturbance activities are discretionary under Rule R204 where outside scheduled sites, and non-complying under R205 where inside scheduled sites.***

- (c) At paragraph 8.12:

<sup>66</sup> PNRP Decisions report, Part 2. Available online at: [Decisions on Submissions to the Proposed Natural Resources Plan Part 2 - Cover.indd \(gw.govt.nz\)](#)

... **Where inside scheduled sites**, such **activities** are non-complying under Rule R209.

(emphasis added)

7.5 For the above reasons a deliberate action is required under Rule R205 as opposed to it regulating natural processes.

## 8. CONDITIONS

8.1 As already mentioned, the proposed conditions in **Appendix 1** have been agreed (after considerable effort and numerous meetings) between the experts and by the Applicant, HCC and GWRC.

8.2 As the Applicant emphasised during the hearing, care needs to be taken as to the level of detail in the conditions to enable flexibility during detailed design to achieve better environmental outcomes. In addition (and again as discussed during the hearing), it is important that unreasonable costs not be imposed on the Applicant. During the hearing Mr Healy made a plea to the Panel that the Shared Path not be made so expensive that it stalls.

8.3 In response to the matters set out in paragraph 5 of *Minute 2*, particular consideration has been given to:

- (a) the purpose statement in Condition EM.14;
- (b) the 2-stage beach nourishment placement process in Condition EM.14(f);
- (c) integrating access and mobility requirements within the design (Conditions LV.3 and LV.6(a));
- (d) the time period for monitoring the beach nourishment (which has remained unchanged) (Condition EM.15); and
- (e) wording changes sought by the oil companies (and agreed with Mr le Marquand and also in relation to utilities (Conditions GC.15A and GC.15B).

8.4 The changes made to the ecological conditions and beach nourishment have been summarised above.

8.5 The remaining changes (without repeating those above) are primarily for consistency and clarity (such as Condition GC.2) and to respond to comments during the hearing. These include:

- (a) references to "suitably qualified and experienced persons" (Condition GC.5(b) and (c) and EM.10 relating to fish relocation);
- (b) reviews of management plans (Condition GC.5(c));



- (c) inclusion of consultation with Wellington Water Limited for dewatering and managing adverse effects on the Waiwhetu aquifer (Condition GC.7(m)(xi));
- (d) removal of the ability to utilise the CEMP if construction noise limits are to be breached (Conditions GC.8 and GC.14);<sup>67</sup>
- (e) removal of references to reclamation (as the Project is not resulting in reclamation as defined in the PNRP (Conditions C.1, C.8 - C.10);
- (f) a process to determine rock to be used in rock revetment (Condition C.2(c)(i));
- (g) inclusion of an advice note in Condition C.7 to refer to, and raise awareness of, the requirements of s107 of the RMA;
- (h) inclusion of a requirement to maintain structures (Condition C.12);
- (i) removal of "general hierarchy" in Condition LV.4(a) but retention of the intent of that, with added clarity, within Condition LV.4(b); and
- (j) minor changes to Condition LV.7 responding to ecological matters and discrete matters raised during the hearing.

8.6 With all of these agreed changes the adverse effects of the Project have been appropriately addressed enabling granting consent for the Project, and thereby realising the significant positive effects promotes the sustainable management purpose of the RMA.

**DATED** this 22nd day of January 2021

**David Allen / Esther Bennett**

**Counsel for the Applicant**

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<sup>67</sup> The Applicant accepts that no consents for such exceedances were sought.

**APPENDIX 1: AGREED CONSENT CONDITIONS (SHOWING TRACKED CHANGES)**

[See overleaf]

**APPENDIX 2: JOINT STATEMENT OF EVIDENCE OF DR JOHN COCKREM  
AND DR ROGER UYS**

[See overleaf]

**APPENDIX 3: EMAIL FROM JAMIE POVALL IN RESPONSE TO SAFETY  
BARRIER DISCUSSION WITH CATHERINE HAMILTON**

[See overleaf]

**APPENDIX 4: WALL MAP OF PROJECT AREA**

[See overleaf]