

Appendix E: Roger Uys expert review comments

Ainslee Brown

From: Ainslee Brown
Sent: Thursday, 24 October 2019 6:02 PM
To: Ainslee Brown
Subject: FW: Eastern Bays Shared Path project: Further Information Request (s92) and s95E RMA - WGN190301 & RM190124

From: Roger Uys <Roger.Uys@gw.govt.nz>
Sent: Wednesday, 24 July 2019 3:00 PM
To: Shannon Watson <Shannon.Watson@gw.govt.nz>; Hamilton, Catherine <catherine.hamilton@wsp-opus.co.nz>; Head, Jeremy <jeremy.head@wsp-opus.co.nz>; Iain Dawe <Iain.Dawe@gw.govt.nz>; Evan Harrison <Evan.Harrison@gw.govt.nz>
Cc: Megan Oliver <Megan.Oliver@gw.govt.nz>; Jo Frances <Jo.Frances@gw.govt.nz>; Parvati Rotherham <Parvati.Rotherham@huttcity.govt.nz>; Sharyn Westlake <Sharyn.Westlake@gw.govt.nz>; Angus Gray <agray@doc.govt.nz>
Subject: RE: Eastern Bays Shared Path project: Further Information Request (s92) and s95E RMA - WGN190301 & RM190124

Hi Shannon

The main issues I am concerned about, the shoreline foragers, penguins and seagrass, are receiving further attention and are scheduled to be reported back on in early August.

I am satisfied that there are no plants species of concern on the shingle beaches that cannot be replaced by plantings. The shoreline birds present in these environments are scheduled for further feedback in August. I would add that Environment Aotearoa 2015 published the Threatened: Nationally Endangered status of the shingle beaches in the data files associated with the rare and naturally uncommon ecosystems indicator, available on the StatsNZ website as part of the report. This classification was based on the IUCN Red List criteria for Ecosystems, not for Species, so Environment Aotearoa 2015 does in effect refer to shingle beaches as Nationally Endangered.

I am satisfied with the assessment of lizard habitat done by Trent Bell of Wildlands that found no viable lizard habitat in the project area and require no further information.

With respect to the sea mammals I am satisfied with the advice from DOC that the project design will not increase the likelihood of seals accessing the road, however this response does not recognise the possibility that seals will enter the construction zone. This is unlikely, but should one do so it would be good to require work to cease until it has left or been removed by DOC.

Regards
Roger

Dr Roger Uys | Senior Terrestrial Ecologist, Kaimātai Pūtaiao Matua
Environmental Science
GREATER WELLINGTON REGIONAL COUNCIL
Te Pane Matua Taiao
Shed 39, 2 Fryatt Quay, Pipitea, Wellington 6011

From: Shannon Watson <Shannon.Watson@gw.govt.nz>
Sent: Monday, 22 July 2019 5:09 PM
To: Roger Uys <Roger.Uys@gw.govt.nz>; Hamilton, Catherine <catherine.hamilton@wsp-opus.co.nz>; Head, Jeremy <jeremy.head@wsp-opus.co.nz>; Iain Dawe <Iain.Dawe@gw.govt.nz>; Evan Harrison <Evan.Harrison@gw.govt.nz>
Cc: Megan Oliver <Megan.Oliver@gw.govt.nz>; Jo Frances <Jo.Frances@gw.govt.nz>; Parvati Rotherham <Parvati.Rotherham@huttcity.govt.nz>; Sharyn Westlake <Sharyn.Westlake@gw.govt.nz>; Angus Gray

<agray@doc.govt.nz>

Subject: FW: Eastern Bays Shared Path project: Further Information Request (s92) and s95E RMA - WGN190301 & RM190124

Hi all

The first part of the Eastern Bays Shared Path request for further information has come in for consideration while the more complicated matters (seagrass and effects on penguins) are being worked through. The consent will remain on hold under s92 of the Resource Management Act until ALL of the information has been provided and confirmed as appropriately addressing the information requested.

Megan – your concerns will be addressed in the second part of the further information response expected early August.

Everyone else - Can you please review the attached response and confirm whether or not the concerns you identified in your original assessments have been addressed by the applicant (I have attached the s92 request for ease of reference). If they have not been addressed can you please advise:

- Any areas of concern that have been addressed by the response
- Any areas of concern not appropriately addressed by the response
- what further information you require for remaining concerns to be 'closed out' and the format in which you would like this information to be provided

It would be appreciated if you could review the final response and provide any comments back to me within **5 working days (30 July 2019)**. Please let me know ASAP if you are not able to meet this timeframe.

Please give me a call if you have any questions.

Shannon Watson | Kaitohutohu / Resource Advisor, Environmental Regulation

GREATER WELLINGTON REGIONAL COUNCIL

Te Pane Matua Taiao

Shed 39, 2 Fryatt Quay, Pipitea, Wellington 6011 | PO Box 11646, Manners St, Wellington 6142

From: Van Halderen, Caroline <Caroline.VanHalderen@stantec.com>

Sent: Monday, 22 July 2019 11:45 AM

To: Shannon Watson <Shannon.Watson@gw.govt.nz>; Dan Kellow <Dan.Kellow@huttcity.govt.nz>

Cc: Povall, Jamie <Jamie.Povall@stantec.com>; Simon Cager <Simon.Cager@huttcity.govt.nz>

Subject: Eastern Bays Shared Path project: Further Information Request (s92) and s95E RMA - WGN190301 & RM190124

Hi Shannon and Dan

I refer to your letter dated 29 May 2019 requesting further information under section 92(1) from both Greater Wellington Regional Council (GWRC) and Hutt City Council (HCC) and for an additional request for affected party approval under s95E from GWRC.

Please find the attached memorandum outlining our responses to the requested information under the headings that are set out in your letter. Where necessary we have added more detail under a series of annexures attached to the memorandum.

Please note that further investigations are currently being undertaken on shoreline foragers, penguins and seagrass. We are planning to get a response to you early in August.

I have also attached a written approval form from CentrePort as requested. HCC Parks will provide comments during the internal feedback process. We have yet to receive written approval from Mr and Mrs Thomas and will follow up with them again.

Ngā Mihi | Kind regards,

Caroline van Halderen

B Town and Regional Planning, MNZPI
Senior Planner

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MEMO

TO Douglas Fletcher
COPIED TO Philippa Crisp
FROM Roger Uys
DATE 26 August 2019
FILE NUMBER

Eastern Bays Shared Path notified consent – Review of report on response to questions from the Greater Wellington Regional Council regarding the application to conduct works associated with the construction of a 4.4km shared path along Marine Drive in Hutt City’s Eastern Bays

In response to the notified consent, the Greater Wellington Regional Council requested additional information on the impacts on the habitats and wildlife. The initial response from the applicants addressed some of the requests, but information around the impacts on the shoreline feeding birds and on little blue penguins was deferred. This review considers a report by Dr John Cockrem (Dated 28 July 2019) seeking to address these outstanding questions.

Shoreline feeding birds

The Regional Council recognised that there were three broad feeding guilds of birds in the project area: (1) the offshore fishers (e.g. shearwaters and terns), (2) the inshore fishers (e.g. shags) and (3) the shoreline foragers (e.g. gulls and oystercatchers). While the impacts on the first two groups were acknowledged to be likely to be temporary, there was a concern that the impacts of the development may result in a permanent reduction of habitat for the shoreline feeders.

The applicants were asked to:

- (a) Please map the current feeding/foraging habitat for shoreline foragers within the current project area and quantify what percentage of this habitat will be lost as a result of the Shared Path Project.*
- (b) Once the percentage of habitat loss has been confirmed please provide an appropriate effects management package to confirm how the applicant intends to avoid, remedy, mitigate and/or offset the effects of habitat loss on shoreline foragers in accordance*

with the full effects management hierarchy, as required by Policies P32 and P41 (and Schedule G) of the PNRP. In particular, please break down the effects management package for shoreline foragers into the relevant categories (avoid, remedy, mitigate) and describe which measures/actions have been taken to:

- i. avoid significant coastal habitats for birds (Schedule F2 areas); then*
- ii. avoid more than minor adverse effects on shoreline foragers; then*
- iii. remedy any more than minor adverse effects on shoreline foragers; then*
- iv. mitigate any more than minor adverse effects on shoreline foragers; then*
- v. offset any residual effects on shoreline foragers*

Only once the effects management hierarchy has been followed and all other avenues exhausted is it appropriate to offer an offset to address the residual adverse effects on shoreline foragers.

In response to *Question a*, Dr Cockrem has mapped the current extent of feeding/foraging habitat for shoreline foraging birds by appropriate methods. Dr Cockrem has calculated the current extent to be 51,200m² of available habitat, with 5,836m² or 11.4 percent of this area to be lost as a result of the Shared Path. This information has adequately addressed the question posed.

In response to *Question b*, Dr Cockrem has indicated that the applicants feel that it would not be possible to avoid or remedy the loss of habitat for shoreline foraging birds. The applicant proposes that part of the loss of feeding area could be mitigated by the creation of rock revetments, but these are only claimed to mitigate a “small proportion” of the habitat lost and the spatial extent of the areas were not reported. The proposal to mitigate any residual effects on shoreline foraging birds is to create a breeding area for shoreline birds and little blue penguins on the southern breakwater wall at the Seaview Marina.

This offset at the marina may provide breeding habitat for shoreline birds but will not address the loss of feeding habitat for these species. The loss of available habitat is estimated at 5,836m², while the proposed breeding habitat enhancement on the seawall will only create 350 to 400m² of breeding habitat. Breeding is not possible without adequate food reserves, so we should be careful in considering improved breeding habitat as an offset to a loss of feeding opportunities.

It is also stated that the proposed biodiversity offset will not have adverse effects on biodiversity, however little blue penguins are currently nesting in the area proposed to be enhanced for shoreline bird breeding and the current penguin nesting opportunities at the end of the seawall will be lost. The proposal is to offset this loss of current penguin nests by improving the nesting habitat for penguins at the start of the seawall by raising the seawall so that the nests do not get inundated by high seas. There is, however, no evidence presented that inundation of nests is currently a problem or guarantee that either the shoreline birds or the penguins will use these enhanced areas for nesting and the area available for the penguins is likely to be less than currently available.

Variable oystercatchers are the shoreline feeding bird species most likely to be impacted by loss of feeding habitat. This species, although only At Risk nationally, is considered to be Vulnerable in the Wellington Region, which makes it a regionally Threatened species. It is unclear how many pairs of oystercatchers currently occupy the coastline area that will be lost, but it is likely that there are more than the one pair that might adopt the enhanced area on the seawall given the territoriality of this species during breeding season and the extent of the proposed seawall enhancement. The offset package has also not considered the impacts of disturbance of the oystercatchers' feeding in the habitat that remains by people and dogs using the Shared Pathway. It is therefore likely that the proposed offset measures will not adequately address the impact on this regionally Threatened species.

Little blue penguins

The Regional Council requested the applicant to:

- (a) *Please provide an assessment of the actual and potential effects on little penguins in accordance with the emerging DoC standard.*
- (b) *Please carry out an evaluation of the effects of the proposal on little penguins and how these effects are intended to be managed in accordance with the full effects management hierarchy, as required by Policies P32 and P41 (and Schedule G) of the PNRP. In particular, please break down the effects management package for little penguins into the relevant categories (avoid, remedy, mitigate) and describe which measures/actions have been taken to:*
 - i. *avoid significant coastal habitats for birds (Schedule F2 areas); then*
 - ii. *avoid more than minor adverse effects on little penguins; then*
 - iii. *remedy any more than minor adverse effects on little penguins; then*
 - iv. *mitigate any more than minor adverse effects on little penguins; then*
 - v. *offset any residual effects on little penguins*

Only once the effects management hierarchy has been followed and all other avenues exhausted is it appropriate to offer an offset to address the residual adverse effects on little penguins.

Dr Cockrem has received advice from DOC on their conditions for working around penguins. Rather than the 100m buffer that DOC has specified for working around shoreline birds in other consents, that was referred to in the response by GWRC, the DOC conditions for penguins in this development required a minimum distance of 10m from nests. DOC did however stipulate that this was subject to the nature of the works and associated disturbance. Where earthworks are taking place during the breeding season I feel that a 100m buffer should be maintained.

The applicant has indicated that it would not be possible to avoid significant coastal habitat for birds or some adverse effects on the penguins in the project area. They propose that potential nesting sites be created in the rock revetments to remedy any more than minor effects. They do not however stipulate how many potential nesting sites might be created in this way. We may therefore request

them to stipulate a minimum number of potential nesting sites they would create or require them to create at least three potential nesting sites for every nest encountered by the detection dog.

The applicant proposes to undertake the work where there are penguin nests between 1 March and 30 June outside of the main nesting or moulting season. Penguins can however be present in nesting sites at any time of the year and may be injured or killed if their presence is not known. Ideally therefore, work in areas where penguins are known to nest should consider having an environmental officer on site and possibly include additional detector dog surveys just prior to the commencement of excavation.

The value of the proposed offset to residual effects on penguins at the Seaview Marina has been discussed above. In addition to the marina a section of the Whiorau Reserve has also been proposed as an offset for penguins. Penguins are currently nesting around the whole reserve, but only a small section of the Reserve (400-450m² area in the ~14,000m² Reserve) is proposed to be fenced. The “new” breeding habitat referred to will require the addition of nesting boxes, but it is unclear how many nesting boxes will be provided. The fencing to protect penguins from people and dogs to create “safe” breeding habitat will only benefit those birds nesting in the small fenced area while birds using the existing nests across the remainder of the Reserve will come under increased pressure from the increased use of the area.

Looking forward

The adverse effects of the loss of habitat and continued disruption of shoreline feeding birds and nesting little blue penguins do not appear to be adequately offset by the measures proposed. The impacts of increased activity are not addressed and the offsets do not appear to equate to the loss of habitat. I would like to encourage GWRC to continue talking to the applicant about opportunities to identify areas that could be enhanced by the exclusion of dogs and implementation of pest control to improve the quality of the habitat for shoreline feeding birds. I would also like to see the applicant investigate the opportunity to create a new penguin reserve or reserves outside of existing nesting areas to truly offset the impacts that this development will have.

From: [Roger Uys](#)
To: [Shannon Watson](#); [Jamie Steer](#)
Cc: [Philippa Crisp](#)
Subject: RE: Eastern Bays Shared Path - Memorandum 6 response
Date: Tuesday, 27 October 2020 10:22:54 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Hi Shannon

I've broken your request up into headings. I'll be referring to the points in Memorandum 6 responses with appendices.

Measures to avoid adverse effects

1. The applicant lays out what they consider to be the potential adverse effects in Point 18 as permanent loss of habitat and temporary effects of construction. They are however still not recognising ongoing effects of the use of the path. Instead, they try to dismiss them in Point 58, where they claim that it is not possible to understand these effects on coastal birds because there is "currently no data on the patterns of bird behaviour in the area available". While this may be true for the specific site, there is ample literature on flight initiation distances of coastal birds, including from New Zealand, for these effects to have been considered in the Nga Uranga ki Pito-One share path AEE that has just been submitted for the other side of the harbour. This is important because these ongoing effects are not being addressed in the effects management hierarchy. For example, 16 penguin nests will be subject to long-term disturbance through the use of the path (Point 43) and there is no clear plan to avoid them or otherwise manage these effects.
2. Beyond this, I feel that they have done what they can practically do to avoid impacts on shoreline foraging birds and penguins. The residual effects require mitigation and offsetting.

Suitability of replacement habitat

3. The three proposed protection areas were identified in conjunction with myself and DOC as appropriate for offsetting residual effects on shoreline foraging birds and penguins (Point 48).

Suitability of revised conditions

4. The three proposed protection areas may however not be enough to offset the residual effects for penguins. The development is expected to affect access to 2 penguin nesting sites directly and access to another 17 nesting sites indirectly (information provided in Point 43). The applicant is proposing that each protection area could accommodate a minimum of 20 penguin nesting boxes (ie at least 60 nesting boxes in total – see Point 31). In theory this should more than offset the 19 nests affected, however uptake of nesting boxes is often only around 20% for the first few years. At this ratio, we will need at least 95 nesting boxes to offset the 19 nests affected. The Applicant needs to demonstrate that they have sufficient capacity to provide for at least this many additional nesting boxes at a reasonable spacing (at least 2m apart) to avoid unnatural conflict behaviour as has been noted on Matiu/Somes Island. They also need to

undertake to maintain these for the life of the project.

5. It is important to recognise that the habitat enhancement program is not a means to avoid effects as suggested by Points 30 & 31. Rather, it may mitigate or offset the effects.
6. It is also important to recognise that the protection areas are existing habitat and will not replace lost feeding habitat for shoreline feeders. They may enhance its usability, but there will still be a net loss (Point 46) of shoreline feeding habitat that is not mitigated or offset.
7. For example, roosting poles (Point 31b) will not create new feeding habitat in the intertidal area for oystercatchers or new fishing habitat for shags offshore that they couldn't already access. Roosting poles offer more places for gulls or shags to rest and digest their food away from human disturbance and so are a mitigation of the ongoing impacts of the use of the shared path.
8. Pest management (EM.1B) needs to be for the life of the project, not just the construction phase or the next 10 years. It should also be adequate to maintain pest animal populations below a 10 percent tracking rate in the project area as determined by standard monitoring techniques.
9. While I acknowledge that the Applicant is not in the politically tenable position to address the threat of cats to wildlife in the project area, they are able to address waste that will attract cats and pest animals. I would therefore like to see a condition requiring twice-yearly coastal clean-ups for the life of the project as has been included for the Nga Uranga ki Pito-One share path.
10. I am happy with the other conditions proposed, particularly the need for a penguin management plan and signage to keep dogs on leads and to exclude them from protection areas.

Is habitat enhancement of Bishops Park and HW Short Park mitigation or an offset?

11. Jamie Steer is better placed to comment on the distinction between mitigation and offsetting as it is developing in New Zealand. My understanding, from work in South Africa where the concepts are well established, is that mitigation deals with effects directly in the site where they occur while offsetting deals with the effects indirectly in another site. By this understanding, habitat enhancement of the protection areas is necessary for creating nesting habitat for penguins to offset their loss of 19 nesting opportunities elsewhere along the coast (penguin boxes require cover so they don't overheat). Mitigation may take the form of controlling dogs or pest animals so that they don't affect the 16 penguin nests on the seaward side of the shared path whose access will not be affected by the development, but whose suitability may be affected by the ongoing use of the shared path.

Is there sufficient information to judge the likely effects on penguins and coastal birds?

12. The Applicant has provided sufficient answers to our questions summarised in Part 2 – Penguins and Coastal Birds to judge the likely effects on these species. As outlined above though, questions still remain regarding the adequacy of the effects management package. I would have liked to see a clearer unpacking of the effects and what components of them were avoided. What residual effects can be mitigated. What remaining effects can be offset. But most importantly, what effects cannot be managed and require compensation, such as the loss of shoreline feeding habitat.

Regards
Roger

From: Shannon Watson <Shannon.Watson@ghd.com>
Sent: Friday, 23 October 2020 4:24 PM
To: Roger Uys <Roger.Uys@gw.govt.nz>; catherine.hamilton@wsp-opus.co.nz; Head, Jeremy <Jeremy.Head@wsp.com>; Sharyn Westlake <Sharyn.Westlake@gw.govt.nz>; Iain Dawe <Iain.Dawe@gw.govt.nz>; Megan Oliver <meoliver@doc.govt.nz>
Cc: Anna McLellan <Anna.McLellan@gw.govt.nz>; Dan Kellow (InTouch) <dan.kellow@huttcity.govt.nz>; Michelle Conland <Michelle.Conland@gw.govt.nz>; Helen Anderson <Helen.Anderson@ghd.com>
Subject: FW: Eastern Bays Shared Path - Memorandum 6 response
Importance: High

Hi all

As signalled earlier this week, we have now received the latest response from Hutt City Council on the Eastern Bays Shared Path. The files are too large to send individually but can be found in the file transfer link below:

Login Information

FTP link: <https://tmpsftp.stantec.com>

Login name: s1104213903

Password: 4480436

Expiry Date: 11/18/2020

Please let me know if you have any trouble accessing the documents.

Note: "Memorandum 6 with appendices" includes the applicants responses to the questions raised in our July 9 Memo and the various appendices highlighted.

Can you please review the latest response as it relates to your field of expertise and provide me with any comments or concerns that you have.

Sharyn/Iain – is there a need to push further for post-storm event monitoring or can this be appropriately captured by other conditions related to ensuring structures are structurally sound (Condition C.12). I note that despite comments from the applicant to the contrary (paragraph 83 of their response), new condition EM19 does not consider monitoring of revetments. Are there any other outstanding concerns that you have with the proposal?

Megan – I expect based on our previous emails that you do not have any significant concerns with the applicant not proposing any monitoring of the effectiveness of the seawall enhancement textures. Are there any other outstanding concerns that you have with the proposal?

Roger – Could you please provide me with your thoughts on the appropriateness of the applicants response regarding the measures by the applicant to avoid adverse effects (iterative changes to the design) and what has now been proposed by the applicant in terms of replacement habitat and the revised conditions to reflect the measures now proposed.

Jamie/Roger could you please also provide comment on whether the areas proposed for habitat enhancement at Bishops Park and HW Short Park can be considered 'mitigation' (and not an offset) given located slightly outside of the project area and might not necessarily be considered 'like for like'. This is critical for the gateway test because if considered an offset these areas/measures of habitat enhancement cannot be considered. Is the information provided now suitable for you to make a judgement on the likely level of effects on penguins and coastal birds?

Catherine/Jeremy – Do the changes the applicant has made to the conditions at least give you more comfort regarding the process around the LUDP and BSUDP's and the certification processes? It does not appear we are going to get any further information related to design in advance of the hearing. Any outstanding concerns you have regarding the design (or lack thereof) will therefore likely need to be resolved via expert conferencing and subsequently expert evidence. I think there would be value in setting up a meeting/discussion with the applicant and their landscape expert to discuss your outstanding concerns. As part of this discussion we might not get any further design information but we might be able to set (and agree) some bottom lines or non-negotiables that would give you some more certainty about the worst-case scenario in terms of effects as the project progresses.

-
Timeframes

The applicant is pushing for a December hearing which means timeframes for completion of Officers Reports and pre-hearings processes are extremely tight. Therefore it would be **MASSIVELY APPRECIATED** if you could review the response and get back to me (email is fine) with any questions or concerns **ASAP** but by no later than **Friday 30 October 2020**. Even if you are not able to get a written response back to me it would be appreciated if you could give me a call **before Friday** to discuss any preliminary thoughts and/or concerns so I can signal to the applicant whether any further discussion or resolution of matters is required and what these matters might be. In addition, **if you could please signal your availability if a hearing was to commence in early-mid December (hearing expected to be approx. 2-3 days) that would be appreciated (the applicants proposed programme for hearing dates can be found in Caroline's email below).**

As described in my email earlier this week, once comments have been received and outstanding concerns identified we can work on consolidating comments received during the course of the application into final position statements such that they can be appended to the Officers Reports over the coming weeks.

As always if you have any questions or concerns give me a call.

P.S. Sorry for the late Friday afternoon email I hope you all have a great long weekend!

Kind regards

Shannon Watson
Environmental Planner

GHD

Proudly employee owned

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Connect



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From: Van Halderen, Caroline <Caroline.VanHalderen@stantec.com>
Sent: Thursday, 22 October 2020 5:03 PM
To: Shannon Watson <Shannon.Watson@ghd.com>; Dan Kellow (InTouch) <dan.kellow@huttcity.govt.nz>
Cc: Simon Cager (InTouch) <simon.cager@huttcity.govt.nz>; Povall, Jamie <Jamie.Povall@stantec.com>; David Allen <David.Allen@buddlefindlay.com>; Libby Cowper <libby.cowper@buddlefindlay.com>; Esther Bennett <Esther.Bennett@buddlefindlay.com>
Subject: Eastern Bays Shared Path - Memorandum 6 response

Hi Shannon and Dan

Here is the response to the further information request of 9 July 2020. Memorandum 6 includes the revised conditions.

Due to the large size, the full response can be accessed from a shared folder with the login below.

The response comprises the following:

- Memorandum 6
- Appendix A – Revised Conditions (I have also included a word version showing track changes to assist you in identifying the revisions)
- Appendix B - Avoidance Measures
- Appendix C – Loss of Habitat
- Appendix D – Mitigation Options
- A combined version of the full response

Please note that I will respond separately to your comments about dewatering which you raised at the meeting on 15/10/20

As mentioned at the meeting we are keen to have the hearing in December and would like to aim for the week of **14 December**.

Here is a proposed programme:

ACTION	DATE
Officers' s42A report(s) due	Friday 20 November (16 working days before hearing)
Applicant's evidence due	Friday 27 November (11 working days before hearing)
Submitters' evidence due	Friday 4 December (6

	working days before hearing)
Expert conferencing (if required)	Monday 7 – Thursday 10 December
Applicant's and GWRC's rebuttal evidence (if any) due	Thursday 10 December (2 working days before hearing)
Applicant's opening legal submissions to be pre-circulated	Friday 11 December (1 working day before hearing)
Hearing commences	Monday 14 December

Let me know if you'd like to meet to discuss or clarify any of the responses. Happy to work through these matters to achieve a positive outcome.

Login Information

FTP link: <https://tmpsftp.stantec.com>

Login name: s1104213903

Password: 4480436

Expiry Date: 11/18/2020

Nga Mihi | Kind regards,

Caroline van Halderen

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Senior Planner

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MEMO

TO Shannon Watson, Anna McLellan
COPIED TO Philippa Crisp
FROM Roger Uys
DATE 12/11/2020
FILE NUMBER

Eastern Bays Shared Path project residual effects on penguins and shorebirdsBackground

Stantec, on behalf of the Applicant, Hutt City Council, has responded to the further information request from Greater Wellington Regional Council and Hutt City dated 9 July 2020 prepared by Shannon Watson and Dan Kellow. This response was titled “Eastern Bays Shared Path project Memorandum 6 – Response to matters raised in email dated 9 July 2020”. As part of this response, the Applicant has reviewed its proposed draft conditions to respond to matters raised in the further information request. With respect to penguins and shorebirds the Applicant has not addressed the full scope of environmental effects and has proposed a suite of conditions that will be inadequate to manage the significant environmental effects. In particular, the Applicant has identified environmental effects associated with the loss of habitat and the operations during the construction phase, but has not considered the impacts of the ongoing use of the pathway on the behaviour and habitat of the penguins and shorebirds.

This memo details the outstanding concerns for penguins and shorebirds, the conditions the Applicant has proposed to manage the effects and outlines recommended conditions to mitigate these effects.

Penguins

Little blue penguin have been classified as a Nationally At Risk, Declining species. The project area has been estimated to contain a significant proportion (12-14 percent) of the population in the Wellington Harbour. They are already under pressure from development and use of the Eastern Bays with only 34 percent of the coastline of the project area accessible to penguins. This access, which is essential to their life cycle, will decrease to 22 percent (a 35 percent further reduction) by the construction of the shared path.

In response to the further information request, the Applicant has reported that, two penguin nesting sites have been identified within the footprint of the construction and will be destroyed. A further 17 penguin nesting sites have been identified on the landward side of the path, access to which will be affected by the construction and ongoing use of the path. Thus, 19 penguin nesting sites are expected to be affected by both the construction and ongoing use of the path. The Applicant has proposed to mitigate these effects of habitat loss across three protected areas at Whiorau Reserve, north of Bishops Park and HW Shortt Park. These areas were identified in conjunction with the Department of Conservation Senior Biodiversity Ranger and local penguin experts and are considered suitable for this purpose. The Applicant has further proposed a Habitat Enhancement Plan that will include appropriate planting, pest management and protection from dogs to support penguins in these three protected areas. They have also proposed a Penguin Management Plan to manage the risks to birds during construction and to inform the management of the protected areas. The Applicant proposed that each site could support a minimum of 20 penguin nesting boxes which would amount to at least 60 penguin nesting boxes across the three sites. While the proposed minimum number of penguin nesting boxes across the three sites exceeds the number of nests being affected, experience suggests that the initial uptake of penguin nesting boxes varies considerably. This is not well documented in the literature, but following discussions with local penguin experts, the average initial uptake of penguin nesting boxes is expected to be around 20 percent. To mitigate the loss of nesting opportunities would therefore require around 100 penguin nesting boxes to be installed and maintained across the three protected areas. This is 40 penguin nesting boxes more than the minimum number proposed by the applicant. Experience by the Department of Conservation on the nearby Matiu/Somes Island has shown that conflict arises between birds if nesting boxes are placed too close together. So, the Applicant needs to indicate that they can provide adequate area, above the mean spring tide mark, across the three protected areas to house 100 nesting boxes at least 2m apart from each other to present an effective mitigation of the habitat loss.

In addition to the 19 nests affected by habitat loss, a further 16 penguin nesting sites have been identified on the seaward side of the proposed footprint of the shared path. Birds utilising these sites for nesting and/or moulting will be affected by the ongoing use of the path by people and dogs. This effect has not been recognised by the Applicant. Dogs, in particular are a direct threat to penguins, capable of causing life threatening injuries and indirectly raising stress levels in the birds that could affect their natural behaviour and lead to nest failures. The Applicant has proposed to control dogs in the protected areas and to erect signage to encourage the public to obey the bylaw about having dogs on leads. In addition to this, I recommend that the Applicant erect information signage outlining the risks posed by dogs.

The creation of the shared path will attract more people into the area. This increased human activity typically results in an increase in litter. Litter not only presents a direct risk to wildlife, but also attracts pest animals. The Applicant has proposed to maintain litter bins at locations where people tend to gather, ie at Point Howard, Whiorau Reserve and Days Bay. Birds however will be affected by litter along the length of the shared path. So, in addition to these concentration points, the Applicant should provide a litter management plan for the whole project area that includes provision for coastal clean-ups at least twice a year for the life of the project. This could be seen as an opportunity for the Hutt City Council to engage its community.

While there are many factors influencing pest animal populations in urban areas, litter is widely considered to promote pest numbers. Pest animals pose a threat to the nesting/moulting penguins and this is reasonably expected to increase with the use of the shared path. The Applicant has proposed to do pest control, providing up to a maximum of \$4,000 (including GST) per year, spread over 10 years, for pest management within the protection areas at Bishops Park, HW Shortt Park and Whiorau Reserve. While this will contribute to the mitigation of habitat loss, it does not adequately address the long-term effects of the ongoing use where penguins continue to nest along the length of the shared path. The applicant needs to demonstrate how they will manage this ongoing effect along the length of the shared path. This may include, but should not be limited to: environmental education, litter management, and a pest management plan.

Shorebirds

The Wellington Harbour has been identified as a significant bird habitat in the regional proposed Natural Resources Plan. The Eastern Bays were included in this classification due to their abundance of Nationally At Risk shoreline foragers. Some minor design changes have been made that will avoid the loss of habitat for shorebirds. There are also recommendations to mitigate some effects for some species through the Habitat Enhancement Plan for the three protected areas. This includes the provision of wooden poles to create roosting habitats for shoreline foragers like gulls and shags. The outstanding concern is for the oystercatchers.

Variable oystercatcher have been classified as a Nationally At Risk, Recovering species. While other At Risk bird species characteristic of the project area (red-billed gull, black shag, little black shag and pied shag) will feed, roost and nest communally, oystercatchers are territorial. This means that any loss of variable oystercatcher habitat cannot be offset by improvements in the condition of habitat elsewhere as it would for other species (eg in the proposed protected areas) as they will not congregate in improved habitat. The Applicant has calculated that there will be a seven percent loss of habitat for shoreline foragers resulting from the shared path. It should be remembered that this is a further seven percent loss on top of the cumulative reduction in habitat around this coastline. The applicant has reported that this will amount to a loss of 3786m² of shorebird habitat between the toe of the proposed construction and the low tide mark. The Applicant has not reported the numbers of variable oystercatchers expected to be affected by this habitat loss, however it should be kept in mind that this habitat occupies a narrow zone, so will extend along a significant length of coastline, potentially affecting several pairs of oystercatchers. The Applicant has also not reported how the proximity of the path may affect oystercatcher feeding behaviour or proposed solutions to avoid or mitigate these effects, such as screening. Any effects on oystercatcher territories may be sufficient to adversely impact breeding success. Even if pairs are not currently breeding in the area, maintenance of territories is essential to support the natural behaviour of this species. Oystercatchers don't roost on poles like gulls and shags do and habitat enhancement planting and dog controls in the protected areas will not mitigate a reduction in food resources. Consequently there is no path to manage the effects of habitat loss on oystercatchers without replacing the physical extent that is lost. The Applicant should be encouraged to consider options to compensate these effects.