

## **Notification Recommendation under the Resource Management Act 1991**

*This report assesses the application, the potential adverse environmental effects and the relevant planning provisions in accordance with the Resource Management Act 1991. The report recommends whether to process the consent with or without notification.*

Application Number:	WGN220066
Applicant:	Shelly Bay Taikuru Limited
Location:	Shelly Bay Road, Maupuia, Wellington
Lodged:	16 September 2021

### **1. Summary Recommendation**

Overall, my recommendation is that the application does not require public notification under the provisions of s95A of the Resource Management Act 1991 (RMA), as the overall effects on the environment have been determined to be less than minor.

Having evaluated the application against the provisions of s95B of the RMA, the application does not require limited notification.

I recommend that the application can therefore **be processed on a non-notified basis** under the RMA.

This decision has been delegated to Christine Foster, on behalf of Greater Wellington Regional Council.

### **2. Introduction**

The Applicant, Shelly Bay Taikuru Limited, has applied to Wellington Regional Council (Greater Wellington) for a suite of Resource Consents (land use consents and discharge permits) to authorise activities to facilitate the 'Shelly Bay Masterplan' (Masterplan) residential/commercial development at Shelly Bay, Wellington.

The Masterplan was consented by Wellington City Council on 31 October 2019 via an Independent Hearings Panel under the Housing Accords and Special Housing Areas Act 2013 (HASHA). The Masterplan sets out building locations, footprints, maximum building envelopes and activity use as a basis for the future detailed design. Through a process set out in resource consent conditions, future development in accordance with the

Masterplan will be approved at the detailed design stage via an appointed Shelly Bay Independent Design Panel.

The following resource consents have been sought from Wellington Regional Council by Shelly Bay Taikuru Limited:

**Proposed Natural Resources Plan (appeals version), Operative Regional Plans (Freshwater Plan, Soil Plan and Discharges to Land Plan) and the National Environmental Standards for Freshwater (NES-FW).**

	<b>Activity</b>	<b>Description</b>
1.	Land use consent S9(2)	Earthworks exceeding 3000m <sup>2</sup> , soil disturbance exceeding 1,000m <sup>3</sup> on erosion prone land, and vegetation clearance within 5m of a surface water body.  <i>Discretionary Activity.</i>
2.	Land use consent S13	The construction and placement of a new inlet structure within an intermittent stream (under the NES-FW).  <i>Discretionary Activity.</i>
3.	Discharge permit S15	Discharge of sediment-laden water and associated contaminants from earthworks and vegetation clearance.  <i>Discretionary Activity.</i>
4.	Discharge permit and water permit S15 and S14	The take and discharge of potentially contaminated water associated with dewatering from Selected Land Use Registrar (SLUR) Category III land.  <i>Restricted Discretionary Activity</i>
5.	Discharge permit S15	Discharge permit for the discharge of stormwater from a new subdivision or development into water, or onto or into land where it may enter a surface water body or coastal water, including through an existing local authority stormwater network.  <i>Discretionary Activity.</i>
6.	Discharge permit S15	Discharge permit for the discharge of stormwater into water, or onto or into land where it may enter water that is not permitted by Rules R48, R48A or R49, or controlled by Rule R50, or a restricted discretionary activity under Rules R51, R52 or R52A.

		<i>Discretionary Activity.</i>
7.	Discharge permit S15	Discharge from contaminated land to land where it may enter water.  <i>Discretionary Activity.</i>

### 3. Site

The site is approximately 12.4 hectares and is located on the western side of Watts (Miramar) Peninsula / Te Motu Kairangi. The legal descriptions of the individual lots subject to this application can be found in section 4.1.1 of the application.

The site is defined by two bays ('the North Bay' and 'the South Bay') with steep vegetated coastal escarpments set back from the water's edge. These coastal escarpments form the dominant landform of the area. The escarpments are characterised by tracts of pine forest covered east-west orientated spurs. Within the exotic pine and macrocarpa forest, emergent regenerating native bush beneath the canopy is observable. The proposed works will generally occur within the flat land between the escarpment and the coast, noting also that a portion of the works will cut into the toe of the escarpment.

The flat area between the escarpment and coast currently accommodates a variety of buildings and structures associated with the former Royal New Zealand Air Force (RNZAF) Shelly Bay Base. Until recently, these buildings have been utilised for a range of activities including art studios and galleries, traveller accommodation, a café, and workshops. The terrestrial environment between the buildings generally consists of Pohutukawas and exotic grasses.

The applicant has identified two intermittent streams within the footprint of the site. One of these streams is partially located within the development area and the other is in the southernmost portion of the site. The stream within the development area is approximately 25m in length, and is fed from a small catchment to the north-east of the site. The stream enters an existing inlet structure situated up-catchment of the existing development and piped beneath the site and discharges to the Coastal Marine Area (CMA). The second stream is located in the southernmost portion of the site and has a length of approximately 92 metres, and is wholly located outside of the works area, being upstream of the site.

The site is located within, or adjacent to the following notable sites as defined within the Proposed Natural Resources Plan (Appeals Version):

- The majority of both the North and South Bays are listing within GW's Selected Land Use Registrar (SLUR) database as 'Potentially Contaminated Sites'. The SLUR database states that *'This site has been used as an Air-Force base. General military camp facilities including workshops, paint stores, munitions stores,*

*sewage pumping station, a rifle range and a shipway and repair yard were onsite’.*

- Wellington Harbour / Te Whanganui-a-Tara, which is adjacent to the site is defined within Schedule B as Ngā Taonga Nui a Kiwa, Schedule F2 as habitat for Indigenous Birds, Schedule D (Statutory Acknowledgements), and defined within the Hutt Aquifer Protection Zone (Wellington Harbour Aquifer Zone).

I also note that the site is located within an area defined in the Wellington Airport Height Restriction Area, as a ‘Transitional Side Surfaces’ under the Proposed Natural Resources Plan (Appeals Version). However, this has little relevance to the application as no structures are proposed in the CMA as part of this application.

The land to the East of the site is owned by the New Zealand Defence Force and is unoccupied with no legal public access. The land is vegetated, with a number of abandoned military bunker structures.

#### **4. Proposal**

The proposal generally consists of earthworks (and vegetation removal), potential discharges from a contaminated site, streamworks and the operational discharge of stormwater post-construction.

##### **4.1 Earthworks and Associated Activities**

###### **4.1.1 Earthworks**

The extent of earthworks and general method of construction has been well defined by the applicant. Section 5.1 of the Application presents an overview of the extent and method of works, and Appendix 5 of the application includes an Earthworks and Construction Management Plan.

Earthworks will occur over a total area of 46,125m<sup>2</sup>, involve a cut volume of 18,500m<sup>3</sup> and a fill volume of 9,700m<sup>3</sup>, and be undertaken across the entire extent of both the North and South Bays. The largest earthwork cuts are at the toe of the escarpment to enable the construction of the apartments. Appendix 3 of the application details areas of cut and fill on earthworks plans. The applicant has also stated that it is likely earthworks will be staged, however details of staging are subject to the appointment of a contractor and the development of a final construction methodology.

The applicant has proposed a number of erosion and sediment controls, which are detailed within section 5.1.4 of the Application, and defined in both Appendix 3 and 7 of the application documents.

I also note that part of the proposed works include works to Shelly Bay Road, and consist of minor widening works to create a shared footpath. These works will not encroach into the CMA, and are not considered by this assessment as they fall under the exclusion of

the definition of earthworks (see “Earthworks” as defined in the interpretation section of the PNRP (Appeals Version)).

#### 4.1.2 Discharges from Contaminated Land

As noted in section 2 of this report, the site is situated in an area defined within Greater Wellington’s SLUR database as having a ‘Verified history of hazardous activity or industry’. The applicant has provided a Preliminary Site Investigation (PSI) and Detailed Site Investigation (DSI) which identifies a number of potential sources of contamination associated with previous land uses occurring on the site. Upon review, asbestos exceedances make the site liable to be reclassified, at least in some small part, as Contamination Confirmed (SLUR Category III).

To manage the risk of discharges occurring as a result of disturbance to the site, the applicant has proposed to undertake works in accordance with a Contaminated Site Management Plan (CSMP) and a Soil and Sampling Analysis Plan (SAP). This is discussed further in section 7 of this report.

#### 4.1.3 Dewatering

The applicant states that groundwater levels across the site were measured at depths from 0.7m to 1.9m. Works that intercept groundwater will likely require dewatering to facilitate construction. Activities that will likely intercept groundwater include the following:

- Excavations associated with building foundations;
- Excavations associated with the construction of stormwater quality devices; and
- Construction of lift shaft pits.

I also note that the decommissioning of proposed sediment control devices may require dewatering.

The applicant states that dewatering will be undertaken in accordance with GWRC’s “*Erosion and Sediment Control Guide for Land Disturbing Activities in the Wellington Region*”. Dewatering may also occur in areas of contamination, the applicant has stated that groundwater will be assessed by an appropriately qualified expert and if contamination is indicated, further investigation will be carried out to verify levels of contamination and allow appropriate planning for design of the dewatering system.

#### 4.1.4 Vegetation Clearance

Vegetation clearance on the escarpment will occur as part of the proposal. Approximately 6,450m<sup>2</sup> will be undertaken in total, with 6,020m<sup>2</sup> in the North Bay and 430m<sup>2</sup> in the South Bay. This corresponds with the earthworks areas identified within the escarpment. Approximately 30m<sup>2</sup> of vegetation clearance will also occur within 5m of the identified stream in the North Bay.

#### **4.2 Streamworks**

The proposal involves an upgrade to an existing stream inlet structure, situated up-catchment within the North Bay (the location of the inlet structure is illustrated on 'insert 1' of application drawing 1098-01-GW401-R2). The proposed structure will include a new wing-wall and apron to collect debris, and will therefore extend up to 3m upstream from the existing structure, resulting in the loss of up to 3m of intermittently flowing stream habitat.

To construct the structure, the applicant has proposed to temporarily divert the existing channel, and convey the water flow down the escarpment as the escarpment is progressively excavated. Any flow will be diverted into the existing stormwater line at the lower-level platform once the structure is built.

#### **4.3 Operational Stormwater Discharge**

As earthworks for the development exceed 3000m<sup>2</sup>, and the earthworks are associated with the construction of a new urban development, consent is required from Greater Wellington for the operational discharge of stormwater (i.e the discharge of stormwater from the site, once the proposed development is complete).

The Masterplan resource consent includes consent notice (s221) conditions requiring stormwater treatment solutions to be installed if any buildings are constructed using bare, unpainted, or untreated materials cladding or roofing materials. The Applicant has confirmed that future buildings will not include these materials, therefore, the applicant only considers it necessary to treat stormwater from the carparking areas, public spaces and the public road within the development area.

The applicant has provided a 'Stormwater Discharge Report' in Appendix 4 of the application documents, and summarised the approach to stormwater management within section 5.2.3 of the Application. Stormwater treatment from the land to be vested in Wellington City Council and the hardstand areas within the development lots will be in the form of raingardens and tree pits constructed in accordance with WWL's 'Water Sensitive Design for Stormwater: Treatment Device Design Guidelines Dec 2019 v1'.

The proposed aggregate area of raingardens (excluding tree pits) within proposed land to vest (road within North Bay and South Bay, and esplanade) is 159m<sup>2</sup> for a hardstand area of 5,909m<sup>2</sup>, giving a treatment area of 2.69%. Stormwater will discharge to the Coastal Marine Area (CMA) via new outlet structures. These outlet structures do not form part of this application, as the discharge of operational phase stormwater is not contingent on these structures being in place.

### **5. Assessment under S95A - Public Notification**

#### ***Adequacy of Information***

We have determined that the information contained within the application is complete and reliable for the purpose of making a recommendation on notification. The information contained within the application is sufficient to understand the potential adverse effects of the proposed activity and to identify any persons who may be affected by the activity's adverse effects.

***Applicant's request, non-response re further information or report or joint application with application to exchange recreation reserve – Step 1 s95A(2) & (3)***

The applicant has not requested the application be publicly notified.

Notification is not required under s95A(3)(b)/s95C(2) as the applicant provided all information before the agreed deadline.

S95A(3)(b)/s95C(3) is not applicable as the consent authority has not commissioned a report under s92(2)(b).

S95A(3)(c) is not applicable to this application.

***Rule in the Plan or NES that precludes public notification and controlled/boundary activities – Step 2 s95A(4) & (5)***

The rules triggered in the relevant regional plans for this application do not preclude public notification, it is not a controlled activity or a boundary activity.

***Rule in the Plan or NES that requires public notification or Adverse Environmental Effects - Step 3 s95A (7) & (8) and s95D***

There are no rules in the Plan or NES that require public notification.

The application documents, supporting technical reports, and reviews undertaken by Greater Wellington contractors or officers have been relied upon in this environmental effects assessment. Where my conclusions differ, this is stated below:

<b>Effects on Water Quality from Earthworks and Dewatering</b>
<p>If earthworks are not managed appropriately, the discharge of sediment and other construction related contaminants could potentially adversely affect water quality, the aquatic habitat and biodiversity values of the coastal marine environment (namely Evans Bay). The discharge of sediment may also adversely affect recreational and visual amenity of the receiving environment.</p>
<p>The applicant has stated that the coastal receiving environment at Shelly Bay is a high energy environment, with flora and fauna adapted to strong physical effects of wave action, temperature and water fluctuations, and abrasion and mobilisation of fine material. The shallow subtidal and intertidal flora and fauna recorded are common in hard shore habitats, with no threatened or at risk organisms.</p>

The effects discussed above have been assessed as less than minor in the application documents<sup>1</sup>, on the following basis:

- The site is relatively flat, thereby reducing the velocity of flows offsite;
- There are no adjacent properties within the vicinity of the excavation works area;
- The applicant proposes an adaptive management approach to manage the sediment discharges from the site; and
- The applicant has provided a high level Erosion and Sediment Control Plan (ESCP) which demonstrates the works can be undertaken in accordance with Greater Wellington's 'Erosion and Sediment Control Guide for Land Disturbing Activities in the Wellington Region'.

Gregor McLean (Environmental Consultant, Southern Skies Environmental Limited) reviewed the application with respect to the proposed earthworks and proposed ESC during the construction phase.

Mr McLean held no significant concerns regarding the proposal and considered that earthworks can be appropriately managed. It is considered that with the implementation of best practice erosion and sediment control measures that adverse effects can be minimised as much as reasonably practicable.

Taking into account the applicant's assessment, and the comments received from Mr McLean, I consider that the potential adverse effects on the environment with respect to discharges from earthworks will be **less than minor** for the following reasons:

- The applicant has provided an overarching ESCP. The works will be undertaken in accordance with Greater Wellington's 'Erosion and Sediment Control Guide for Land Disturbing Activities in the Wellington Region', which has recently been updated, and is considered best practice for managing land disturbance. This will ensure discharge from the earthworks are minimised as much as practicable;
- The site is relatively flat, thereby reducing the velocity of runoff; and
- Any residual discharge from site will likely be temporary, and potential sediment deposition in the CMA will be minor, mobilised and dispersed quickly, therefore avoiding potential adverse effects of smothering.

I do not consider that there is any affected person(s) in relation to the adverse effects of earthworks or potential discharges from earthworks.

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<sup>1</sup> See Appendix 3 and 5 and section 8.2.3 of the AEE



### Discharges From Contaminated Land

The Preliminary Site Investigation and Detailed Site Investigation provided by the applicant identify the site as having been in military use since 1886 until 1995, including significant reclamation in 1942. Land uses identified on the Hazardous Activities and Industries List (HAIL) include categories C1 explosives and ordnance production, storage and use, and A17 chemical bulk storage (fuels and possibly paints). Low levels of asbestos fibres and lead were reported in surface soils from South Bay.

Disturbance to contaminated land may result in contaminants entering groundwater and surface water, potentially resulting in adverse effects on coastal biota, and human health. The applicant has assessed these effects as less than minor<sup>2</sup>.

The applicant has provided a Soil and Sampling Analysis Plan (SAP) which provides a framework for managing contamination hazards on site by identifying potential contamination hazards, and recommending mitigation measures relevant to the site condition. The applicant has volunteered a condition on the consent that requires additional site investigations to be undertaken in accordance with the SAP.

Dr Dave Bull has reviewed all information submitted in support of the consent application, including the DSI, PSI, CSMP and SAP. Dr Bull commented that the DSI covers South Bay only, whereas the application also includes parts of North Bay. Moreover, the PSI and DSI mentions specific activities that were not investigated at the time. In Dr Bull's opinion, the existing investigations are inadequate for this proposal, irrespective of their original merits.

Dr Bull has recommended that a supplementary investigation is required. This was recognised and provided for in the CSMP, s92 response and revised SAP. The response provided proposes to undertake to investigate historic activities including:

- A former electrical transformer location in South Bay (HAIL B2)
- Paint storage in South Bay (possible HAIL A17)
- Slipway and maintenance area (HAIL F5)
- Fuel storage (HAIL A17)
- Deteriorated building materials including asbestos (HAIL E1) and lead-based paints (possible HAIL I)

After reviewing the supplementary information provided by the applicant, Dr Bull considered that the information was sufficient, and that the effects of disturbance to contaminated land could be appropriately managed.

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<sup>2</sup> See section 8.2.3 of the AEE

Based on the applicant's assessment, and the comments received by Dr Bull, I consider the potential adverse effects of any discharge from contaminated land can be managed such that the effects will be **less than minor**.

I do not consider that there is any affected person(s) in relation to the adverse effects associated with the potential discharge from contaminated land.

### **Operational Discharge of Stormwater**

Any development that increases impervious surfaces through the construction of buildings, pathways and roads, has the potential to increase contaminant generation and stormwater volumes discharging from site. Discharges of contaminants generated from urban environments, such as heavy metals, hydrocarbons and sediment may result in contaminants entering surface water, resulting in adverse effects on the biota of the receiving environment.

Stormwater from the site will be managed with water sensitive urban design (WSUD) measures, including rain gardens and tree pits for treatment of the water, prior to discharge to the CMA. The stormwater design and discharge report for the site<sup>3</sup> also addresses the treatment of the stormwater prior to discharge to the CMA and measures taken, such as constraints on roof materials to avoid potential sources of adverse effects on water quality.

Overall, the applicant has stated that stormwater will be managed at source, and potential effects are being 'minimised to the greatest extent possible' via the adoption of WSUD measures. While water treatment is not proposed to all impervious surfaces, the non-treated areas are non-trafficable areas where contaminant levels will be such that adverse effects of the untreated stormwater will be less than minor. Furthermore, the receiving environment is a high energy rocky coastline where dilution and natural breakdown is maximised, and therefore the potential for adverse effects on the water quality of the CMA is assessed as negligible.

The application and supporting documents were reviewed by David Wilson (The Urban Engineers). After requesting that the applicant provide further information in support of the proposal, Mr Wilson agreed that the adverse effects of stormwater discharges have been minimised to the smallest amount reasonably practicable. Mr Wilson noted that there is no stormwater treatment currently provided for the site (which discharges directly to the CMA) and considered that, overall, the proposal will improve stormwater quality.

Based on the applicant's assessment, and the comments received by Mr Wilson, I consider the potential effects of the discharge of operational stormwater can be appropriately managed such that the adverse effects will be **less than minor**.

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<sup>3</sup> See Appendix 4 of the AEE

It is noted that treatment devices will be vested with Wellington City Council. Wellington Water Limited (WWL) (as the entity that manages the three waters in the Wellington Region), will be responsible for the maintenance of these devices. The applicant provided written approval from WWL on 29 October 2021. Accordingly any adverse effects on WWL are disregarded under section 95D(e).

I do not consider that there is any other affected person(s) in relation to the discharge of operational stormwater to land where it will enter the CMA.

### **Discharges relating to Sea Level Rise (SLR)**

Greater Wellington has received a number of public enquiries relating to sea-level rise and the effect this may have on the operation of stormwater treatment and discharges on site. Although the public enquiries are not relevant to this assessment, the potential adverse effect is addressed here for completeness.

Section 2 of the Shelly Bay Design Guide<sup>4</sup> includes design guidance relating to minimum floor levels in order to account for the effects of climate change and sea level rise. The Masterplan resource consent includes a consent notice condition that requires buildings to be raised above a certain Relative Level (“RL”). Based on modelling undertaken by Greater Wellington, all proposed buildings and stormwater treatment devices will be situated outside of the predicted maximum sea level rise value<sup>5</sup> for 2100 (based on a 1.2-1.4m increase in sea level).

Based on storm surge modelling<sup>6</sup>, both the North and South Bays may become periodically inundated by storm surge by 2100 if no further mitigation is implemented (predicated on a 1.2-1.4m increase in sea level). This may lead to debris from the development and surface contaminants (hydrocarbons, heavy metals etc.) discharging into the CMA. Inundation of the bays may also affect the operation of existing stormwater treatment devices.

When considering that that the maximum consent term under the Resource Management Act is 35 years, the frequency of these events will be low over that time period (considering the progressive nature of SLR). The effect SLR and storm surge on the upkeep and maintenance of stormwater treatment devices, and the effect of discharges from outgoing storm surge will be **negligible**.

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<sup>4</sup> Refer to Shelly Bay Design Guide [here](#).

<sup>5</sup> See [GWRC Sea Level Rise Models](#)

<sup>6</sup> See [GWRC Sea Level Rise Models](#)

### **Freshwater Ecology**

Works in the beds of streams have the potential to cause adverse effects through the release of sediment into downstream reaches, and structures placed in stream beds can result in the permanent loss of stream habitat thereby decreasing the biodiversity values of the stream.

As described in section 3.2 of this report, the applicant is proposing to upgrade an existing stream inlet structure up catchment of the site. This involves the clearance of vegetation within 5m of the intermittent stream and the loss of up to 3m of streambed habitat. The applicant has assessed the ecological effects of the streamworks on the intermittent stream reach to be less than minor<sup>7</sup>.

Furthermore, the applicant has volunteered a condition of consent that requires restoration planting of the impacted margins of the intermittent stream upon completion of the inlet replacement works.

Dr Michael Greer (Senior Scientist, Aquanet Consulting Limited), reviewed the application and the ecological assessment provided by the applicant (Appendix 10). Dr Greer agreed with the assessment and supported its conclusion, stating that the scale of the works, combined with the intermittent nature of the stream means there is almost no potential for adverse effects.

In accordance with the application and supporting documents, and the review provided by Dr Greer, I consider that the adverse effects on instream ecology are likely to be **less than minor**.

I do not consider that there is any affected person(s) in relation to the adverse effects streamworks may have on instream ecology.

### **Little Blue Penguin Habitat**

The terrestrial environment within the North and South Bays of Shelly Bay is known to provide nesting locations for Little Blue Penguins/ kororā. Although not defined within the application, it is likely penguins reside within or under existing buildings at Shelly Bay.

Although Greater Wellington does not regulate the removal or demolition of buildings, consideration can be given to the effect earthworks may have on birds residing within the footprint of works.

The applicant has volunteered the following conditions as part of the proposal to avoid any adverse effects on Little Blue Penguins/ kororā during earthworks:

<sup>7</sup> See section 8.2.3 and Appendix 10 of the AEE

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

Dr Roger Uys (GWRC, Senior Terrestrial Ecologist) reviewed the conditions proposed by the applicant and stated that the conditions recognise a *“pragmatic compromise between supporting development and the environment”*, and that the conditions reflect GWRC’s approach to setting conditions around penguin habitat in the Wellington Harbour. Dr Uys had no further concerns.

In accordance with the application and supporting documents, and the review of condition provided by Dr Uys, I consider that the adverse effects on Little Blue Penguins/ kororā will be avoided, and are likely to be **negligible**.

I do not consider that there is any affected person(s) in relation to the effects the proposal may have on Little Blue Penguins/ kororā.

### Cultural Effects

The cultural values associated with the site have been defined by the applicant via the submission of two separate Cultural Impact Assessments (CIA). The first CIA (referred to as the ‘2016 CIA’) was provided with the application and was originally written and produced in support of the Master Plan consent application lodged with Wellington City Council in 2017<sup>8</sup>. This assessment was prepared by Kura Moeahu, Peter Addis and Lee Rauhina-August on behalf of Taranaki Whānui Ki Te Upoko o Te Ika and The Port Nicholson Block Settlement Trust (PNBST).

<sup>8</sup> Appendix 15 of the AEE

PNBST is a post-settlement governance entity established in 2008 to receive and manage the redress provided by the Crown to Taranaki Whānui ki te Upoko o te Ika in settlement of their historical Treaty of Waitangi claims.

The second CIA (referred to as the '2021 CIA'), was produced as a response to a further information request. This was prepared by Morris Love in association with the PNBST<sup>9</sup>.

The 2016 CIA makes no determinative assessment on the level of cultural effects of the proposal, rather, it focuses on the overarching tribal history of Wellington, the archaeological importance of the site, the recent history of the site, and Waahi tapu and archaeological sites on the peninsula. The main findings of the report are summarised below:

- Marukaikuru Bay/Shelly Bay has high cultural significance to the iwi of Taranaki Whanui;
- Taranaki Whānui people lived in Shelly Bay until 1835 (although I note there is nothing substantive in the report that confirms this statement);
- Any development of Marukaikuru must adequately take account of and reflect Taranaki Whānui cultural links, history and tangata whenua status in Wellington.

The 2016 CIA goes on to express the support of the resource consent application from the PNBST as a whole. As the 2016 CIA does not comment on the adverse effects the proposal may have on the cultural values of the site and receiving environment (considering the site is defined within the report as having high cultural significance), the applicant was asked to provide further comment in regard to potential adverse cultural effects. In response, the applicant provided the '2021 CIA'.

The 2021 CIA makes a definitive conclusion that the development and associated effects will result in less than minor cultural effects<sup>10</sup>. This conclusion has been drawn from an examination of the historical, cultural and physical evidence of any Māori occupation or use at the site. The main findings of the 2021 CIA are summarised below:

- The cultural significance of the site is low;
- There is no conclusive evidence that the early Māori, who first occupied Motu Kairangi either occupied or used this area despite there being old Ngāi Tara Pā sites in the vicinity;
- The name *Marukaikuru*, as applied to Shelly Bay is likely a mistake;
- The report disputes the claim that Shelly Bay is "Māori Land", by stating that much of the flat land at Shelly Bay was reclaimed from the seabed of Wellington

<sup>9</sup> See the further information response dated 21 October 2021

<sup>10</sup> See paragraph 68 of the report titled "Cultural Impact Assessment - Shelly Bay Development"

Harbour in 1942, and “There were no tenths awarded on the Miramar Peninsula, and no land for Pā, urupa or cultivations”; and

- There are no Māori archaeological sites recorded at Shelly Bay.

Notwithstanding the differences in the CIAs, it is clear that PNBST supports the proposal. The overarching themes in both CIAs are similar and neither CIA draws the conclusion that the adverse effects of the proposal on cultural values will be less than minor.

Although there are varying opinions as to the cultural significance of the site, for reasons discussed above, the proposal is likely to have minimal impact the cultural values of the site. I therefore agree with the conclusion reached in the '2021 CIA', and consider that the effects on cultural values from the proposal are likely to **be less than minor**.

I also note that the application was circulated to both PNBST and Te Rūnanga o Toa Rangatira for comment on Greater Wellington’s Te Wāhi platform. No comments were received from either entity at the time this report was prepared.

I do not consider that there is any affected person(s) in relation to the adverse effects the proposal may have on the cultural values.

#### ***Special Circumstances - Step 4 - s95A(9)***

Special circumstances are regarded as matters which may be exceptional, abnormal or unusual but less than extraordinary or unique.

Since the sale of the land to Shelly Bay Taikuru Limited, the Masterplan development has been subject to significant public interest and media attention.

Since the lodgement of the application, Greater Wellington has received numerous emails from the general public in opposition to the development.

Matters raised in these emails generally included:

- Adverse environmental effects arising from earthworks and post-development stormwater discharges;
- Adverse effects on the Hutt Valley Aquifer;
- Adverse environmental effects on Little Blue Penguins/kororā;
- Infrastructure capacity concerns (wastewater and Shelly Bay Road width);
- Sea level rise; and

- Adverse cultural effects.

In addition to the public interest described above part of the site subject to development is under occupation by an entity called 'Mau Whenua'. Mau Whenua is a collective of Taranaki Whānui iwi members who made their opposition to proposed sale of iwi land at Shelly Bay known in late 2015 and early 2016<sup>11</sup>. Their overarching concern was with the initial sale of the land to 'The Wellington Company', however concerns have also been raised in correspondence to GWRC regarding the adverse cultural effects of the proposal (noting that the specific details of what those effects are where not provided)

Due to the significant public interest and occupation of the site by Mau Whenua (at the time of writing), coupled with the potential adverse effects of the proposal, a detailed consideration of special circumstances for this application has been undertaken.

While public interest potentially could be a factor in determining whether special circumstances exist, on its own, but it is not necessarily determinative. The Courts have commented that in a case where there is no evidence of adverse effects likely to arise from an activity, it is unlikely that special circumstances requiring notification could be justified<sup>12</sup>. In addition, in *Urban Auckland v Auckland Council*, the High Court commented on this issue, saying<sup>13</sup>:

*"Concern on the part of an interested party could not of itself be said to give rise to special circumstances because if that was so every application would have to be advertised where there was any concern expressed by the people claiming to be affected."*

The public interest in this application, potentially arises from a number of factors in particular:

1. The controversies surrounding the method of sale of the land (subject to this application) to the applicant;
2. The appropriateness of the development as a whole (in terms of location and suitable supporting infrastructure); and
3. The adverse environmental and cultural effects of the proposal.

With respect to points 1 and 2, these are not matters that are within scope of the current application and cannot be considered in the determination of special circumstances as (1) Greater Wellington has no regulatory authority determining the sale and purchase of property; and (2) the 'Masterplan' is already consented by Wellington City Council,

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<sup>11</sup> (sourced from <https://www.mauwhenua.co.nz/about>).

<sup>12</sup> Fullers Group Ltd v Auckland Regional Council [1999] NZRMA 439 (CA) at 447; *Urban Auckland v Auckland Council* [2015] NZHC 1382, [2015] NZRMA 235 at [138].

<sup>13</sup> *Urban Auckland v Auckland Council* (2015) NZHC 1382, (2015) 18 ELRNZ 792 at [137].



and the decision considered the overarching appropriateness for development in this location.

Point 3 is relevant to the application, however, as set out in section 4 of this report, the environmental and cultural effects of the proposal will be less than minor. I do not consider that any adverse environmental or cultural effect as a result of the proposal is out of the ordinary, or could be considered exceptional that would merit the need for public notification. Therefore, I consider that there are no special circumstances that warrant the application being publicly notified.

## **6. Assessment under S95B - limited notification**

### ***Affected protected customary rights groups, affected customary marine title groups and statutory acknowledgements - Step 1 – S95B(2) and (3)***

There are no affected protected customary rights groups or affected customary marine title groups as a result of the application.

A Statutory Acknowledgement is a formal acknowledgement by the Crown that recognises the particular cultural, spiritual, historical and traditional association an iwi has with a site of significance or resource identified as a statutory area. The site to which this application applies is not subject to a Statutory Acknowledgement.

The proposal is adjacent to Wellington Harbour/ Te Whanganui-a-Tara which is an area subject to a statutory acknowledgment (under Section 29(1) of the Port Nicholson Block Claims Settlement Act 2009 and Section 31(1) of the Ngāti Toa Rangatira Claims Settlement Act 2014).

The groups subject to a statutory acknowledgement have not been determined to be an affected person under s95E.

### ***Rule in the Plan or NES that precludes limited notification – Step 2 - s95B(6)***

The rules triggered in the relevant regional plans of NES-FW for this application do not preclude limited notification.

### ***Notification of other persons if not precluded – Step 3 - sections 95B(7) and (8) and s95E***

No persons have been identified as potentially affected in accordance with S95E.

### ***Special Circumstances - Step 4 - s95B(10)***

As discussed above, there are no special circumstances that exist in relation to the application that warrant notification of the application to any other persons not already determined to be eligible for limited notification under this section.

### ***Further Information s95C***

As discussed above, the applicant provided all information before the agreed deadline under s95C(2). S95C(3) and (4) are not applicable to this application.

### **7. Assessment under Section 95E and 95D**

Written approval has been received from Wellington Water Limited, therefore any adverse effects on this party have been disregarded under S95D(e).

### **8. Conclusion and recommendation**

Overall, my recommendation in regard to this application is that:

- Having evaluated the application against the provisions of section 95A, the application **does not require public notification.**
- Having evaluated the application against the provisions of section 95B, the application **does not require limited notification.**
- That, for the reasons outlined above, the application can **be processed on a non-notified basis** under the Resource Management Act 1991.

Recommended by:



Nick Pearson  
Senior Resource Advisor  
GWRC, Environmental Regulation

Reviewed by:



Anna McLellan  
Team Leader  
GWRC, Environmental Regulation