

**Before the Hearings Panel of Greater Wellington Regional Council  
and Hutt City Council**

**IN THE MATTER** of the Resource Management Act 1991  
(the Act)

**AND**

**IN THE MATTER** Resource consent application by Hutt  
City Council (HCC) for the Eastern Bays  
Shared Path project.

**BETWEEN** Greater Wellington Regional Council  
(GWRC) and Hutt City Council  
(Local Authorities)

**AND** Hutt City Council Transport Department  
(Applicant)

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**Section 42A Addendum Report: Response to Esther Bennett email of 18 November  
2020**

**On behalf of Greater Wellington Regional Council (GWRC)**

**Shannon Watson**

**8 December 2020**

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## INTRODUCTION

- 1 My full name is Shannon John Watson. I am the reporting officer considering HCC's application for land use consents, discharge, water and coastal permits associated with the Eastern Bays Shared Path.
- 2 This addendum addresses the inclusion of an additional oystercatcher protection area introduced as part of the proposal through the email from Esther Bennett submitted on behalf of the applicant on 18 November 2020<sup>1</sup> that was not able to be reviewed and responded to in advance of issuing the s42A report.
- 3 I have read and am familiar with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014. I agree to comply with that Code. Other than where I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express. Of particular relevance I rely on the advice of Dr Roger Uys in response to information sent through by Ms Esther Bennett related to further measures to manage adverse effects on oystercatchers.
- 4 The email from Ms Bennett formalised the following additional measures to manage effects on oystercatchers proposed by the applicant:
  - (a) A new protection area for variable oystercatchers (totalling 200 m<sup>2</sup>) has been added at Sorrento Bay. There is now a total of four protection areas<sup>2</sup> for oystercatchers, other shorebirds and little penguins. The areas are the Sorrento Bay oystercatcher protection area (approximately 200 m<sup>2</sup>), Whiorau Reserve protection area for little penguins (approximately 1,950 m<sup>2</sup>), north of Bishops Park protection area for shorebirds and little penguins (approximately 7,750 m<sup>2</sup>), and west of HW Shortt Park protection area for shorebirds and little penguins (approximately 12,200 m<sup>2</sup>). The total area of protection areas is approximately 22,100 m<sup>2</sup>.
  - (b) The inclusion of an oystercatcher managed works zone to identify exclusion zones where construction works shall be restricted as described in the revised condition EM.1C(c) outlined in the email from Esther Bennett received 13 November 2020.
- 5 Following review of Ms Bennett's email Dr Uys contacted Dr Cockrem to get an understanding of the rationale behind the additional protection area at Sorrento Bay. In a discussion with Dr Uys on 30 November 2020, Dr Cockrem explained that the new oystercatcher protection area was identified to provide a refuge for oystercatcher chicks from the nest on the islet off Sorrento Bay to retreat to during high seas.
- 6 Dr Uys contends that the proposed protected area is an existing area of coastline that is currently available to the chicks. Dr Uys considers that *"while the area may be fenced to mitigate the risk of dog attack, the added value of "protecting" this area to manage the effects of the Shared Path on oystercatchers is questionable as this area is unlikely to be used by oystercatchers"*.

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<sup>1</sup> Attached as Appendix D of the GWRC s42A report

<sup>2</sup> Referred to as enhancement areas in the GWRC s42A report

- 7 Dr Uys remains concerned that (to date) the applicant has not been able to appropriately:
- (a) Report with any certainty the number of oystercatchers likely to be displaced by the Shared Path or evaluated the potential to manage these effects
  - (b) Quantify the expected effect of the Shared Path on the number of oystercatcher territories within the project area
  - (c) Quantify the reduction in food resources available or the associated changes to feeding and roosting behaviour of oystercatchers within the project area
- 8 Based on the advice of Dr Uys, I am also concerned that the new protection area at Sorrento Bay may not contribute to the mitigation of effects on oystercatchers given Dr Uys' opinion that this area is unlikely to be used by oystercatchers.
- 9 Because of the territorial nature of oystercatchers, the loss of oystercatcher habitat cannot be mitigated by habitat improvements in areas that already support oystercatchers as the resident birds will not accept displaced individuals into their territory. Rather, displaced birds are likely to be relegated to less productive habitats. In my opinion, based on the advice of Dr Uys, there remains a significant risk that effects on oystercatcher territories may affect breeding success which could lead to a decline in the population of oystercatchers in Wellington Harbour.
- 10 I therefore, at this time, support the conclusions of Dr Uys, being that oystercatchers may experience a loss of habitat that will not be avoided, mitigated or remedied to a level where the adverse effects can be considered acceptable. Without further measures to manage these effects the adverse effects on oystercatchers may be more than minor.
- 11 Accordingly, the conclusions I reach in my s42A report remain largely unchanged, being that:
- Regional Coastal Plan*
- 12 Because potential effects on oystercatchers may be more than minor, the proposal is not entirely consistent with the objectives and policies of the RCP, particularly those provisions<sup>3</sup> which are aligned with the direction of the relevant provisions of the NZCPS which require avoidance of adverse effects on sensitive ecosystems and indigenous biodiversity of which the proposal is also inconsistent (particularly Policy 11) and that adverse effects on these habitats and taxa may be more than minor.
- Proposed Natural Resources Plan*
- 13 The potential effects on oystercatchers may be more than minor, and as a result of adverse effects being potentially more than minor the proposal may be contrary to the objectives and policies of the PNRP requiring avoidance and protection of significant indigenous biodiversity values<sup>4</sup>. As such, the proposal, in its current form, may not meet either part of the 'gateway test'.
- Overall conclusion*
- 14 However, I still contend that provided there is a satisfactory outcome with respect to the management of effects on oystercatchers the proposal would be generally consistent with the direction in the relevant statutory planning documents, and the

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<sup>3</sup> Objectives 4.1.2, 5.1.3 and Policies 5.2.5 and 6.2.2.

<sup>4</sup> Objective O35 and Policies P31(e), P32, P39A, P40 and P41.

proposal would promote the sustainable management of natural and physical resources in accordance with the purpose of the Act.

- 15 Although there are a number of adverse effects on the environment, provided effects on oystercatchers can be managed to an acceptable level, I consider that the benefits would outweigh the adverse effects and that the adverse effects could be avoided, remedied or mitigated to an acceptable level.
- 16 The applicant is therefore encouraged to continue to evaluate further measures to demonstrate that the effects on oystercatchers can be appropriately managed for consideration at the hearing.

## **CONCLUSION**

- 17 The purpose of this addendum is to provide up to date information for the hearing panel prior to the hearing.
- 18 The email from Esther Bennett on 18 November 2020 introducing a new protection area for oystercatchers at Sorrento Bay has not changed my view or the overall conclusions in my s42A report that the effects on oystercatchers may be more than minor and that subject to resolution of effects on oystercatchers it could be open to decision makers to grant the consent.
- 19 My recommendation remains that the applicant should provide further measures to demonstrate that the effects on oystercatchers can be appropriately managed for consideration at the hearing.



Shannon Watson  
8 December 2020