

**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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**STATEMENT OF EVIDENCE OF CAROLINE ANN VAN HALDEREN  
(PLANNING) ON BEHALF OF THE APPLICANT**

30 November 2020

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## QUALIFICATIONS AND EXPERIENCE

1. My full name is **Caroline Ann van Halderen**. I am a Senior Planner at Stantec.
2. My evidence is given on behalf of Hutt City Council ("**HCC**") in relation to its applications under section 88 of the Resource Management Act 1991 ("**RMA**") for resource consents for the Eastern Bays Shared Path Project (the "**Project**").
3. I have the following qualifications and experience relevant to the evidence I shall give:
  - (a) I hold a Bachelor of Town and Regional Planning (Honours) from the University of Pretoria, South Africa and a Certificate in Public Participation from the International Association of Public Participation (IAP2).
  - (b) I have more than 35 years' experience as a planner, both in South Africa and in New Zealand. I am experienced in most aspects of town planning and environmental planning.
  - (c) I have been employed by Stantec New Zealand (formerly MWH) as a senior planner for 18 years and work widely around New Zealand.
  - (d) Much of my New Zealand experience is with roading projects for Waka Kotahi NZ Transport Agency ("**Waka Kotahi**") and local authorities. I have been part of a team that has delivered numerous roading and cycleway or shared path projects including central Dunedin one-way pairs separated cycleways.
  - (e) I led the planning work for the Dunedin City Council in obtaining global consents for rebuilding the seawall and maintenance activities around the Otago Harbour.
  - (f) I have led the planning work for the Project since 2016 through the Indicative and Detailed Business Case phases, and subsequently through to preliminary design and consenting. I have also attended and presented at numerous public/community meetings during that period.
  - (g) Of particular relevance to the Project, I have been involved in coastal planning, including the preparation of the draft Wellington Regional Natural Hazards Management Strategy. I have also worked in the Pacific on a number of climate change related projects.
4. I am a member of the:
  - (a) New Zealand Planning Institute (Full Member) (MNZPI); and

- (b) International Association of Public Participation (IAP2).
5. I confirm that I have read the 'Code of Conduct' for expert witnesses contained in the Environment Court Practice Note 2014. My evidence has been prepared in compliance with that Code. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

## **BACKGROUND AND ROLE**

6. In preparing my evidence I have:
- (a) read all the material in the application documentation, including the reports prepared by the various experts who have advised HCC in the course of developing the design.<sup>1</sup> I have relied on the information provided by those experts in forming my own opinions;
  - (b) undertaken numerous sites visits over the period of the Project from 2016 to 2020;
  - (c) taken part in expert meetings and workshops;
  - (d) attended and presented at stakeholder and community meetings, and community open days;
  - (e) reviewed Project options and reviewed on-going design changes;
  - (f) reviewed the technical information in support of the resource consent applications;
  - (g) read the submissions and attended the pre-hearing meetings; and
  - (h) read the section 42A reports.
7. I have also reviewed the draft evidence of the other experts for HCC.<sup>2</sup>
8. I was responsible for the preparation of the applications and the Assessment of Environmental Effects ("**AEE**") dated 16 April 2019 which forms the basis of the Project.
9. I was the planning lead on the Project. I have been part of the Project team since 2016 when Stantec was commissioned to prepare the Indicative Business Case ("**IBC**") and Detailed Business Case ("**DBC**"). The DBC was followed by the design and consenting stages.

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<sup>1</sup> Eastern Bays Shared Path Resource Consent Applications and Assessment of Effects on the Environment; Stantec; April, 2019; and Appendices A – S to the AEE.

<sup>2</sup> Jamie Povall, Shelley McMurtrie, Julia Williams, Dr Michael Allis, Richard Reinen-Hamill, Rob Greenaway, John Cockrem, Fleur Matheson, Ihakara Puketapu-Dentice, Alex James, Michael Copeland, Simon Cager and Morris Love.

10. I provided planning input into the design and collaborated with the technical experts in developing a design that I believe balances all the environmental constraints, to create a project that would achieve the Project objectives and meet the statutory planning provisions.
11. I was part of the consultation team and attended most of the stakeholder and community meetings during the development of the Project. I prepared the *Stakeholder Engagement and Consultation Report* (dated April 2019), Appendix I to the AEE which summarised all the consultation undertaken since 2016.
12. I prepared the *Alternatives Assessment* (dated March 2018), Appendix G to the AEE and collated the technical information that formed the basis of the assessment. I took part in the multi-criteria analysis ("**MCA**") sessions that were undertaken to assess design options.
13. I was involved in preparing the *Design Features Report* (dated January 2019), Appendix J to the AEE.

#### **SCOPE OF EVIDENCE**

14. The purpose of my evidence is to provide my assessment of the resource consent application, in light of the considerations set out in the relevant sections of the RMA. In doing so, I provide an assessment of the Project against the relevant statutory planning instruments. I also explain the resource consent conditions proposed by HCC for the Project and the approach taken to the management of effects in the design and construction of the Project.
15. My evidence addresses:
  - (a) my role in the Project;
  - (b) an overview of the Project and the resource consent application;
  - (c) a consideration of alternatives;
  - (d) an overview of the relevant statutory framework;
  - (e) a summary of the actual and potential effects of the Project on the environment;
  - (f) a consideration of the Project against the statutory planning instruments;
  - (g) a brief overview of the conditions;
  - (h) an overview of the consultation and stakeholder engagement;
  - (i) an overview of the terrestrial ecology on behalf of Mr Fred Overmars;

- (j) responses to submissions; and
- (k) responses to the section 42A report.

## **EXECUTIVE SUMMARY**

16. The Project requires resource consents from Greater Wellington Regional Council ("**GWRC**") and HCC, as works will be undertaken in the coastal marine area ("**CMA**") and within the road corridor. The joint application covers the entire length of the shared path and an integrated approach to consenting has been adopted whereby HCC has assessed the Project's overall environmental effects, instead of assessments specific to the activities requiring consent within each regulatory authority. Certain areas of the Shared Path, and associated seawalls, steps, ramps and bus shelters are located on land to be reclaimed within the CMA.
17. The Project has been carefully designed and developed with expert assistance to ensure that adverse effects on indigenous biodiversity have been avoided, in line with Policy 11(a) of the NZCPS, and Policies P39A(a), P40 and P41 of the PNRP (Decisions Version). Significant effort has been applied to achieve an outcome whereby all effects on indigenous biodiversity are assessed as less than minor. This has been achieved through numerous avoidance measures developed in an iterative process through Project design.
18. Relying on the evidence on behalf of HCC the adverse effects of the Project, taking into account the avoidance and minimisation measures in the proposed conditions, the adverse effects are minor (or less).
19. In my opinion, overall, the Project is consistent with the objectives and policies of the relevant plans, in particular the NZCPS and the PNRP.
20. I therefore consider that the Project meets the gateway tests in section 104D(1). It can therefore be assessed against the provisions of 104 of the RMA.
21. Having already commented on the adverse effects section 104 enables a consideration of all effects (positive and negative) of the Project.
22. The Project will provide significant benefits by creating a safe and connected walking and cycling route along the Eastern Bays. This enhanced connectivity will result in social, cultural, economic (including a significant COVID-19 funding commitment from the Government) and recreational benefits, including recreation and tourism opportunities; and positive benefits to health and wellbeing. Improved safety will also encourage the uptake of

active modes of transport, reducing congestion and CO2 emissions and most importantly providing sustainable travel choices.

23. The Project includes replacement seawalls to provide improved protection from storm events for Marine Drive and infrastructure (including regionally significant infrastructure being the road itself, the main sewer outfall pipe for the Hutt and the telecommunication network) contained within the Marine Drive road corridor. Approximately 5,000 people live along the Eastern Bays, with Marine Drive providing the only road and infrastructure service connection. It will provide the first step in enabling the Marine Drive road corridor to respond to the challenges of sea level rise.
24. The Project has raised the public awareness of the plight of little penguins and oystercatchers. It presents the opportunity to educate the public on these birds (in Eastbourne and the wider Wellington Harbour) through designated protection areas, signage and storyboards that will be part of the detailed design stage of the Project. It also enables, through protection areas and seawall texturing to provide habitat for shorebirds and penguins to utilise in the face of sea level rise.
25. There are also other opportunities to showcase the cultural, historic and ecological elements of the area through storyboards, and to highlight how the Project responds to these elements through design features (such as by creating textured concrete surfaces to establish biota habitat). Provisions for active and meaningful partnership with mana whenua is proposed along with opportunities for mana whenua to exercise kaitiakitanga.
26. Following extensive engagement with the community and stakeholders, and responding to feedback, the Project went through a number of design refinements. These related to a wide range of issues such as path width, beach amenity values and access to the beach, loss of parking, safety, bus stops, penguins and wave overtopping.
27. The Project was publicly notified and 200 submissions were received with 14 requesting that the Project be declined. I conclude from these numbers, and feedback from the numerous community and consultation events I have participated in, that there is overwhelming support for the Project from the community and stakeholder groups.
28. An important component of the community consultation was the close collaboration with members of the Eastbourne Community Board, Virginia Horrocks (Chairperson) and Derek Wilshere (past member). Their local knowledge of issues and the contacts that they have in the community were invaluable.
29. I note that it is unlikely with a Project of this nature in such a constrained location to achieve a complete consensus from the community and stakeholders. However, there is a clear commitment by the HCC and the

Project team to maintain the high levels of engagement and community involvement through the detailed design process to ensure a high-quality outcome that satisfies the community's requirements. Conditions have been developed that involved further consultation with community groups and other stakeholders.

30. I am however concerned about the 'cascading impact' of the overall outcome of the recommendation in the section 42A report (officers report) relating to the management of oystercatchers on the consistency with planning policies. I conclude from the outcome of the section 42A report that the outstanding key issue for the Project is the management of oystercatchers.
31. A significant amount of further work has been undertaken in identifying protection areas for penguins and shorebirds, including restrictions relating to the oystercatcher breeding season, an oystercatcher protection area (along with the other protection areas) and pest management. These are covered by the conditions (along with a commitment by HCC to seek that dogs be excluded from the beach at two areas, Sorrento Bay and part of Rona Bay. In my opinion the avoidance measures proposed through the evidence of **John Cockrem** address the outstanding concerns on oystercatchers raised in the section 42A report. I consider that this provides the "pathway" to the Project being consistent with the avoidance policies of the PNRP and the NZCPS and, overall, relying on HCC's experts, the effects will be no more than minor.
32. I note that apart from the concern about oystercatchers, the section 42A reports of both councils reach a similar conclusion and that they are generally supportive of the Project.
33. I therefore consider that granting the consents for the Project will promote the purpose of the RMA as reflected through the relevant planning documents. The proposed conditions of consent, which have been significantly refined since the version attached to the AEE, will ensure the adverse effects have been appropriately managed and the significant positive effects of the Project can be realised.

## **METHODOLOGY**

34. In preparing my evidence I have:
  - (a) undertaken multiple site visits including drive-overs and walk-overs of the full length of the Project;
  - (b) attended consultation and engagement events including individual bay consultation evenings and public events used to explain the project options and seek feedback to shape the proposed design;

- (c) reviewed the project documentation since 2016, and reviewed previous technical documentation prior to the involvement of Stantec before 2016;
- (d) reviewed planning provisions and prepared responses to GWRC's further information requests; and
- (e) reviewed planning reports pertaining to the Project.

## **PROJECT OVERVIEW**

### **Project Description**

- 35. HCC proposes to construct a 4.4km shared path (cycleway/walkway) along Marine Drive in two sections: between Point Howard and the northern end of Days Bay, and the southern end of Days Bay (Windy Point) to Eastbourne (Muritai Road / Marine Parade intersection) ("**Shared Path**"). Approximately 5,000 people live along the Eastern Bays, with Marine Drive providing the only road and infrastructure service connection.
- 36. A survey<sup>3</sup> has shown that residents list the completion of the Shared Path, and concern about climate change as the two most important issues facing the Eastbourne community. The Project presents an opportunity to integrate an efficient response to both of these issues.
- 37. The proposed design has been developed bay-by-bay on a site-specific basis, through an iterative design process, responding to a range of issues including, but not limited to, the structural condition of the existing walls, the width of the existing road reserve, coastal processes, ecology, presence of penguins and shorebirds, and community feedback.
- 38. The Project includes:
  - (a) The construction of the Shared Path. Of the 4.4km, approximately 3.14km will require works along the foreshore, while 1.3km will be unchanged with works proposed within the road corridor.
  - (b) The replacement of parts of existing seawalls and the construction of new curved seawalls with either a single, double or triple curves face. A total length of 1.3km (29% of the Project length) including the newly built curved seawall at York Bay, and existing revetment in southern Sunshine Bay is not changing from its current state. The 300m of relatively new curved wall in York Bay<sup>4</sup> already provides for a shared path that is consistent with the current designs.
  - (c) Seawalls will include beach access points and ramps in places.

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<sup>3</sup> Eastbourne Community Survey (2014). <<http://portal.huttcity.govt.nz/Record/ReadOnly?Uri=3688777>>

<sup>4</sup> Constructed in 2007-2008.

- (d) The placement of rock revetment to protect the Shared Path on the foreshore at certain vulnerable headlands.
- (e) The placement of beach nourishment at three beaches – Point Howard, Lowry Bay and York Bay.
- (f) Reclamation of 3000m<sup>2</sup> to allow for the widening of the road corridor.
- (g) The proposed works are shown in the *Preliminary Design Plans* (Revision J) Appendix N to the AEE.

### **Project Key Drivers**

- 39. The Project aim is to develop a safe and integrated walking and cycling facility along Marine Drive to connect communities along Hutt City's Eastern Bays, and to provide links to other parts of the network for recreation and tourism purposes (the Remutaka Cycle Trail in particular, as well as the Great Harbour Way / Te Aranui o Pōneke and Te Ara Tupua – Ngā Ūranga ki Pito-One shared path). As explained in **Jamie Poval's** Transport evidence currently, pedestrian and cyclist connectivity and use along the Eastern Bays is low. This is due to a lack of dedicated cycling and walking facilities and the tightly constrained nature of Marine Drive. For the most part, cyclists and pedestrians must use the road shoulder, which is very narrow and even non-existent in sections.
- 40. Furthermore, the Project provides a basis for future opportunities for protecting the resilience of the road and underground services by upgrading the supporting seawalls. Marine Drive provides the only road access to the Eastern Bay suburbs and is therefore a key transport route for the region. Key infrastructure services, including the Main Outfall Sewer Pipeline ("**MOP**"), are located within the road corridor. As explained in **Mr Poval's** Design evidence.
- 41. The road is currently vulnerable to closure, and/or reduced operation, in part due to wave overtopping due to the current state of the coastal edge. The existing seawall in places has a residual life of less than 5 years, and as it has been built in an ad hoc nature over time, is vulnerable to failure and does not provide effective storm mitigation. Over time sea levels will rise, aggravating the situation. Ministry for the Environment (2017) projections forecast a 16cm sea level rise by between 2030 and 2040 (depending on global emissions trajectories). Further sea level rise will increase the frequency of all coastal inundation along the Eastern Bays, with sea level rise of 0.5m forecast to be reached sometime between ~2070 and ~2110 and sea level rise of 1.0m sometime after ~2115.
- 42. The Project recognises the series of ongoing processes of managing coastal values in the face of climate change, and sea level rise and the related pressures faced by GWRC and HCC. However, the Project is not a solution

to the effects of sea level rise, and instead provides the first step in potentially incremental upgrades that would assist in providing protection to the road (and underground services) from the effects of sea level rise along this section of the coast. As an adaptation model, the seawalls do not preclude future options and have been designed to enable additional protection to be added in the future if considered by the Eastern Bays community to be appropriate.

43. **Figure 1** shows the Shared Path indicated “B”, as part of an integrated walking and cycling facility in Lower Hutt.

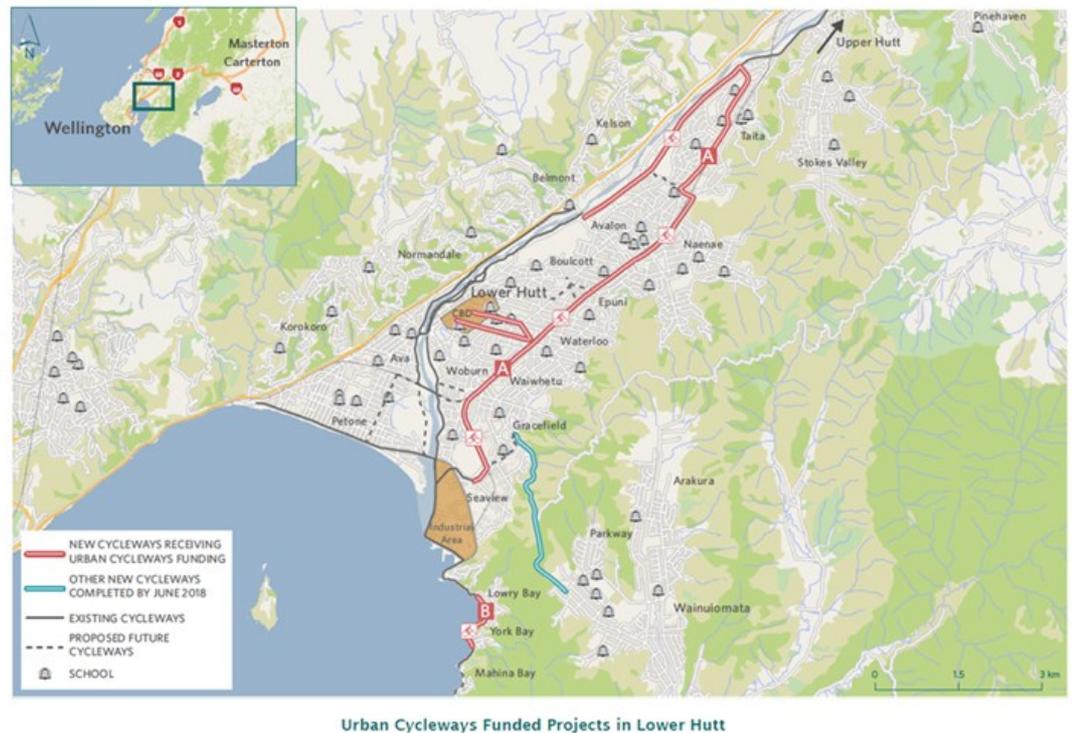


Figure 1: Urban Cycleway Projects in Lower Hutt

### Summary of Project Benefits

44. The Project will provide a safe and connected walking and cycling route along Marine Drive, providing enhanced connections:
- (a) within the individual bays (for recreation and access);
  - (b) between different bays (to shops, schools, recreation, etc.);
  - (c) to and from Lower Hutt and beyond (to work, school or for recreation etc. – see the figure above); and
  - (d) to other regional cycle routes, including the Great Harbour Way / Te Aranui o Pōneke walking/cycling route (Leg 3 Burdan’s Gate to Seaview) and the proposed extension of the Remutaka Cycle Trail (one of the New Zealand Great Rides) from the mouth of the Orongorongo River to Burdan’s Gate.

45. This enhanced connectivity will result in significant social, economic and recreational benefits, including:
  - (a) improved safety for pedestrians, cyclists and other road users;
  - (b) recreation and tourism opportunities; and
  - (c) positive benefits to health and wellbeing.
46. Improved safety will also encourage the uptake of active modes of transport, providing health and wellbeing benefits, reducing congestion and CO2 emissions and most importantly providing sustainable travel choice which aligns with the current Government Policy Statement for Transport.
47. In addition to increased connectivity, the Project will provide the first step in enabling the Marine Drive road corridor to respond to the challenges of sea level rise.
48. The Project includes replacement seawalls to provide improved protection from storm events for Marine Drive and other infrastructure contained within the Marine Drive road corridor. The replacement seawalls will reduce overtopping and debris on the road and develop a consistent seawall design that can be added to in the future. The Shared Path will sit on top of the new seawall. The new seawall and associated features will provide enhanced environmental outcomes compared to the existing seawalls.
49. The Project has raised the public awareness of the plight of little penguins and oystercatchers. The Project presents the opportunity to educate the public on these birds (in Eastbourne and the wider Wellington Harbour) through designated protection areas, signage and storyboards that will be part of the detailed design stage of the Project.
50. There are also other opportunities to showcase the cultural, historic and ecological elements of the area through storyboards, and to highlight how the Project responds to these elements through design features (such as by creating textured concrete surfaces to establish biota habitat).

### **The Applications**

51. The RMA outlines a number of relevant considerations for the determination of applications for resource consent. The Project involves several components. These components trigger the need for resource consents from GWRC and HCC, as works will be undertaken in the CMA and within the road corridor.
52. The applications were structured to meet the needs of the Project, within the framework of the RMA (sections 12, 14 and 15) and the relevant regional plans and district plan.
53. In summary the following consents are sought:

### *Regional planning consents*

- (a) Reclamation activities (unlimited consent duration sought): Coastal permit for the reclamation and associated drainage of foreshore and seabed required to construct new structures, and additions/alterations and replacement of existing structures.
- (b) Construction of new structures and the addition/alteration, replacement and demolition and removal of existing structures (35 year consent duration sought): Coastal permit to 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 CMA, including any associated:
  - (i) Destruction, disturbance, deposition and discharge of contaminants to the foreshore and seabed during construction and maintenance of the structures.
  - (ii) Diversion of coastal water (including dewatering) during construction and maintenance of the structures.
  - (iii) Occupation of space within the CMA.
- (c) Beach nourishment (35 year duration sought): Coastal permit to deposit natural materials, including sand, shingle and shell, onto the intertidal beach at Point Howard, Lowry Bay and York Bay for beach nourishment purposes.
- (d) Driving machinery on the beach within sites of significance (35 year duration sought): Coastal permit for disturbance of the foreshore and seabed as a result of driving heavy machinery on the foreshore and seabed during construction and maintenance activities.
- (e) Earthworks outside of the coastal marine area (35 year duration sought): Land use consent to undertake earthworks associated with construction of the shared path, including associated discharges of sediment laden water to land where it may enter coastal water.
- (f) No consents are considered necessary for stormwater discharge from the existing infrastructure.

### *District plan consents*

- (a) Land use consent for the construction, alteration (including widening the road in some areas) and diversion of Marine Drive to create the Shared Path.

- (b) Land use consent for the construction and operation of the Shared Path within a Significant Natural Resource ("**SNR**") site, being SNR 44. All work within Significant Natural Resource 44 requires consent.
  - (c) Land use consent for earthworks within the Special Recreation and Passive Recreation zoning.
54. The joint application covers the entire length of the Shared Path and an integrated approach to consenting has been adopted whereby HCC has assessed the Project's overall environmental effects, instead of assessments specific to the activities requiring consent within each regulatory authority. Certain areas of the Shared Path, and associated seawalls, steps, ramps and bus shelters which are located on land to be reclaimed within the CMA are being considered under section 89(2) of the RMA as if these activities related to an activity on land within the HCC District.
55. HCC is seeking a 10-year lapse period for all resource consents. While the intention is to build the Project over a 6 year period<sup>5</sup>, the extended lapse period provides the flexibility necessary to ensure that the construction of the Project can efficiently align with construction stages based on priorities associated with seawall structural integrity. It also allows for future funding arrangements and associated uncertainties.
56. An analysis of the Proposed Natural Resources Plan ("**PNRP**") rules indicate that the activities for which regional consents are sought are discretionary, restricted discretionary, controlled and non-complying. The district consents are discretionary and restricted discretionary. Bundling the activity statuses, the activity status of the Project is non-complying.
57. In my opinion, the set of consents sought subject to relevant and reasonable conditions, will appropriately provide for the Project that HCC seeks to undertake. The extended lapse period of 10 years is normal practice for a project of this type and scale.

## **CONSIDERATION OF ALTERNATIVES**

58. Throughout the development of the Project, alternatives and options associated with the design were investigated and recorded. The geography and terrain in the Eastern Bays area and the lack of any other alternative transport routes, means that the focus has been on alignments based on Marine Drive.
59. The Project has been developed on the seaward side of Marine Drive following a detailed alternatives assessment.<sup>6</sup> The assessment of alternatives is addressed in the Design evidence of **Mr Povall**. In my opinion

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<sup>5</sup> It could be up to a 6 year construction period but will depend on a number of factors such as bay complexity and length, month of contract award/start date (seasonality), traffic management, funding, procurement etc.

<sup>6</sup> The New Zealand Coastal Policy Statement (NZCPS) 2010 requires that alternatives and options be considered (Policy 10(1)(c)).

that process appropriately addresses the requirements of Policy 10 of the NZCPS which I address further in my evidence below (and Policy P4 of the PNRP).

## RELEVANT STATUTORY FRAMEWORK

60. In section 24 and Appendix S to the AEE I identified and assessed the Project against the relevant provisions of a document referred to in section 104(1)(b) of the RMA, a requirement of the Fourth Schedule of the RMA.<sup>7</sup> The following documents were assessed:
- (a) the National Environmental Standard for assessing and Managing Contaminants in Soil to Protect Human Health ("**NESCS**");
  - (b) the New Zealand Coastal Policy Statement ("**NZCPS**");
  - (c) the Regional Policy Statement for the Wellington Region ("**RPS**");
  - (d) the Regional Coastal Plan for the Wellington Region ("**RCP**");
  - (e) the PNRP; and
  - (f) the City of Lower Hutt District Plan ("**HCCDP**").
61. Based on the provisions identified, I consider that the key policy directions relevant to this application relate to:
- (a) protecting indigenous biological diversity in the coastal environment and avoiding adverse effects on listed indigenous biodiversity values;
  - (b) preserving and restoring the natural character of the coastal environment;
  - (c) protecting the natural features and natural landscapes (seascapes) of the coastal environment;
  - (d) maintaining or enhancing amenity values, including public access and recreation opportunities;
  - (e) recognising the place of local iwi as tangata whenua and protecting their cultural relationships with the coastal environment;
  - (f) recognising the benefits that arise from the use and development of regionally significant infrastructure; and
  - (g) protecting significant existing infrastructure from coastal hazard risk.
62. The Project has been developed to respond to the direction of the statutory framework and to meet the section 104D(1)(a) or (b) test. Any application for

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<sup>7</sup> RMA, schedule 4, clause 2(1)(g).

a non-complying activity will have to meet the 'gateway test' in section 104D of the RMA, which requires that either:

- (a) the adverse effects of the Project will be minor; or
- (b) the Project will not be contrary to the objectives and policies of the relevant plan and/or proposed plan.

63. I have summarised the assessment in Appendix S of the AEE against the statutory planning instruments and have concluded that the Project is consistent with the relevant objectives and policies of the applicable national, regional and district level statutory provisions.
64. This assessment has been prepared specifically in relation to the requirement of the RMA to, subject to Part 2, have regard to specific provisions of statutory documents when assessing the Project.<sup>8</sup> These statutory documents have been instrumental in the development of the Project, though noting that the RMA requires an activity to "comply with" specific directive provisions as though they were akin to rules. This means that where there are directive provisions (such as those policies using "avoid"), specific consideration has been given to avoidance outcomes that are required to be achieved. As discussed in my evidence below I consider that avoidance relates to more than minor effects on the specified matter. Further, the analysis seeks to balance all the relevant planning provisions and consider them as a whole (while reading carefully their words), recognising that there are specific enabling provisions for infrastructure, that need to be considered along with prescriptive provisions seeking environmental protection.
65. The Project will promote the sustainable management of natural and physical resources and is consistent with the purpose and principles of the RMA. The Project will result in significant positive effects, particularly in relation to traffic safety and resilience, but also in terms of social and economic wellbeing. Notwithstanding the above, the Project will result in some minor adverse effects, particularly in relation to intertidal ecology, landscape and visual amenity, and amenity and recreation values.
66. Throughout the consideration of options, and the subsequent design process, the approach has been to avoid potential adverse effects, or where avoidance is not possible, to minimise actual or potential adverse effects associated both with the construction stage and the operation of the Project. This approach reflects the requirements in PNRP as to the mitigation hierarchy (Policy 41), noting that for some matters relevant to the shared path only avoidance is acceptable (Policy 41). To this end design features to achieve avoidance of all required matters, and avoiding or minimising all others, has been adopted and will be further developed during the detailed

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<sup>8</sup> RMA, section 104(1)(b).

design stage. Furthermore, management plans, directed toward 'managing' the various construction stages will be developed. A set of consent conditions which set the framework and key environmental parameters in which the management plans operate is also proposed. The proposed conditions are attached in **Appendix A**.

67. I have concluded overall that in relation to 'adverse effects on the environment' the Project has effectively avoided, remedied and mitigated adverse effects and is consistent with the mitigation hierarchy and policy requirements of the PNRP. Where residual adverse effects remain post-mitigation, for example in relation to ecological effects, those effects are minor or less and therefore acceptable. As a result, I am satisfied from the statutory assessment that the purpose of the RMA will be achieved by granting the resource consents sought for the Project.

### **THE PROJECT'S EFFECTS ON THE ENVIRONMENT**

68. Numerous investigations were undertaken in the development of the Project and the preparation of the AEE. These are described in the specialist reports included as appendices in the application documentation and will be presented in the evidence of the technical experts on behalf of HCC.
69. The AEE was undertaken in accordance with the Fourth Schedule of the RMA and taking into account the mitigation proposed. It relied on the advice of the various experts involved, as well as my own expertise. I note that the development of the Project had avoided many potential effects that might otherwise have occurred.
70. The preliminary design for the Project, has sought to avoid or mitigate adverse effects through the alternatives assessment, development of Project design features and the proposed construction methods. The design has gone through a series of iterations that were considered against the parameters of the natural environment (such as coastal processes, ecologically sensitive areas), to achieve an optimum design.
71. The actual and potential effects of the Project and mitigation or minimisation measures are summarised below.
- (a) Intertidal ecology: mitigation measures include textured vertical curved seawalls to provide improved habitat resulting in an increased diversity of taxa colonising these new walls. Effects on intertidal ecology are less than minor.
  - (b) Fish passage: mitigation measures for effects on fish passage include spat ropes or ramps at stormwater outlets. Effects on fish passage are negligible.

- (c) Vegetation: mitigation measures include beach nourishment to be done over winter months using coarse gravels and careful placement of material to avoid seagrass areas. The overall effects of the Project on vegetation taking into account proposed mitigation measures are less than minor for seagrass and less than minor for the remaining vegetation types and gravels.
- (d) Avifauna: disturbance of habitat during Shared Path and seawall construction is to be minimised through conditions, including protection areas, warning signage against disturbance by dogs, and management plans. The overall effects of the Project on avifauna taking into account the minimisation measures proposed are less than minor for little penguins and coastal birds.
- (e) Natural character, landscape and visual: mitigation measures will include Landscape and Urban Design Plan ("**LU**DP") and Bay Specific Urban Design Plans ("**BS**UDP") as outlined in the conditions. Through adopting the proposed mitigation measures, overall the adverse effects on natural character are low, and the adverse landscape and visual effects will be no more than moderate-low, which is no more than minor.
- (f) Amenity values and recreation: mitigation measures include beach nourishment at Point Howard, Lowry Bay and York Bay. Overall, the effects of the Shared Path on amenity effects and recreation of the bays range from none to less than minor.
- (g) Coastal Processes: design features as contained in Appendix J of the AEE, will mitigate effects of coastal processes. Overall, the construction and operation of the Project will have a less than minor effect on coastal physical processes.
- (h) Climate change and natural hazards: The Project is the first step in incremental upgrades or alternative adaptation options following the dynamic adaptive planning principles ("**D**APP") of "buying some time" with this initial adaptation option ("pathway"). Over time the effects of climate change and sea level rise will be significant on the Project area, but the Project offers the opportunity to adapt to the future.
- (i) Culture and heritage: an accidental discovery protocol is a condition of this application.<sup>9</sup> The overall effects of the Shared Path on culture and heritage will be less than minor. The Project offers opportunities through storyboards and signage to enhance cultural and heritage values and share them with the wider community, as discussed in the evidence of **Morris Love**.

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<sup>9</sup> See proposed conditions AP.1 and AP.2.

- (j) Construction: mitigation measures will be included in the Construction and Environmental Management Plan ("**CEMP**"), a condition of the application. The temporary nature of the works and the mitigation measures will be sufficient to ensure that any potential construction effects associated with the Project will be less than minor.
  - (k) Cumulative: mitigation measures include sediment management as set out in the construction methodology (Appendix J of the AEE) and loss of vegetation mitigated by translocation of plants and the additional planting on other areas (such as the beach nourishment bays of Point Howard, Lowry Bay and York Bay). The cumulative effects of the Project are negligible.
72. Overall, I have assessed the effects of the Project, taking into account the mitigation and minimisation measures proposed, as less than minor, and in some locations the environment will be enhanced.
73. Mitigation and minimisation measures are subject to proposed conditions outlined in further detail in my evidence below. I consider these to be appropriate methods of managing effects in the circumstances.
74. The Project was also identified as having a number of significant benefits as mentioned above.

#### **ASSESSMENT AGAINST STATUTORY PLANNING INSTRUMENTS**

75. I have summarised the assessment of the project against the key planning instruments.

#### **National Environmental Standard for assessing and Managing Contaminants in Soil to Protect Human Health**

76. The application recognises that potential effects on human health and the environment may occur if contaminated land is disturbed and/or used during the construction of the Project. These potential effects can be avoided through the application of appropriate procedures to manage contaminated soils and materials. Any soils and materials not suitable to remain on site will be excavated, removed off-site and disposed of in accordance with the procedures outlined in the NESCS.
77. There is a SLUR site (SN/03/188/02) in Marine Drive, Sunshine Bay (Sunshine Service Station) located on the landward side of the Shared Path (across from Marine Drive). Once the detailed design is complete, and there is greater clarity on whether the Shared Path is affected by contaminated land, it may be necessary to undertake a detailed assessment and prepare a detailed site investigation. Depending on the outcome of the detailed site investigation, a resource consent may be required and will be sought at that time.

## **New Zealand Coastal Policy Statement**

78. As the Project will directly impact the coastal environment, the NZCPS must be considered. There are seven overarching objectives of the NZCPS which set out the high-level direction for management of the CMA, and the policies follow this direction. I consider that all seven objectives are relevant to the Project. The majority of the Project is located in the coastal environment as defined in Policy 1 of the NZCPS. The following outlines how the Project has responded to each of the objectives.

### *Coastal Environment*

79. The relevant provisions of the NZCPS are Objective 1 and Policy 1. All of the Project is located in the coastal environment. Marine Drive, where the Project is to be constructed, is the result of upgrades of the track around the coast following the 1855 earthquake that raised the shoreline. As described in the evidence of **Julia Williams**, this coastal environment has been heavily modified since 1855 as a result of settlement along the coast and the upgrade of the track around the coastal edge as a transport route that has connected residents and the attractions along Marine Drive with the wider region. The existing road and seawalls have been constructed in the coastal environment and reclamation has occurred to support those developments.
80. While Marine Drive is proposed to be widened into the CMA to accommodate the Shared Path, the specific design and location of the areas of widening have been determined following specialist investigations and reports, assessment of alternatives and with public consultation. The proposed foreshore form has been specifically designed to maintain, and where possible, enhance biological and physical coastal processes, recognising they are dynamic, complex and interdependent in nature.
81. The construction of the Project will include mitigation measures developed through future detailed design work and the development of the specific construction methodology, which is contained within Appendix J of the AEE and is subject to a CEMP<sup>10</sup>.
82. While having minor effects on New Zealand's indigenous coastal flora and fauna, there will also be notable benefits through the establishment of new ecological habitat in the textured finish to the concrete seawalls.<sup>11</sup>
83. I am satisfied that all activities undertaken within the coastal environment as part of the Project have been carefully considered and where practicable the design and construction will be integrated and managed.

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<sup>10</sup> See proposed conditions GC.6 to GC.10.

<sup>11</sup> See proposed conditions C.2 and EM.19.

### *Natural Character*

84. The relevant provisions of the NZCPS are Objective 2 and Policies 13, 14 and 15. Objective 2 is underpinned by Policies 13, 14 and 15 which relate to preserving the natural character of the coastal environment and protecting natural features.
85. The assessment of the natural character of the coastal environment undertaken in Appendix D to the AEE, and the evidence presented by **Ms Williams** notes that the natural character biotic and abiotic values of the Eastern Bays landscape are assessed as low, however the experiential values are moderate to high. The assessment in Appendix D of the AEE notes that the overall coherence of the landscape derives from the wider setting including the enclosing, vegetated hillslopes, the sequence of bay and headland, the rocky outcrops and the harbour waters and the natural processes of the beach environment including the changing sea, light and weather conditions.
86. The assessment in Appendix D of the AEE also identifies opportunities to restore natural character as part of the Project by removing redundant structures and concrete slabs used as part of the existing revetment to protect the coastline. These measures have been incorporated into the Project design. The restoration of the intertidal areas will also be achieved through creating texture on the new concrete seawalls where habitats can be re-established.
87. The effects on natural character are identified as being caused by proposed changes to the road corridor, beaches and foreshore. At the wider Eastern Bays scale, effects are very low, particularly as the narrow fringe of land between the road and the water has a low visual prominence. At a local bay and beach scale there will be a loss of local landform, both natural and modified. While adverse effects at a local scale may be perceived as more pronounced, they are considered to be low by applying mitigation measures through the detailed design, which will be delivered through the LUDP and BSUDP.<sup>12</sup>
88. No outstanding natural features ("**ONFs**") and outstanding natural landscapes have been identified in this coastal environment ("**ONLs**"). Adverse effects of the Project on natural features and natural landscapes in the Eastern Bays coastal environment are projected to occur within a narrow band of existing development along the coastal edge. Effects are proposed to be effectively mitigated through the use of consistent path and seawall detailing to reduce visual impact of new structures and the use of the LUDP and BSUDP to provide a detailed design that responds to local landscape, history and land use.

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<sup>12</sup> See proposed conditions LV.1 to LV.7.

### *Treaty of Waitangi*

89. The relevant provisions of the NZCPS are Objective 3 and Policy 2. These provisions require that the principles of the Treaty of Waitangi are taken into account and emphasise the important role of tangata whenua in the management of the coastal environment.
90. The Project has been developed in consultation with mana whenua, as explained in the evidence of **Ihakara Puketapu-Dentice**. Within the Project area Taranaki Whānui ki Te Upoko o Te Ika and Ngāti Toa Rangatira have statutory acknowledgements over Te Whanganui-a-Tara / Wellington Harbour. There are also claims under the Marine and Coastal Act (Takutai Moana) 2011 within the Project area.
91. Mana whenua have been consulted on an ongoing basis since the initial stages of the Project's development. As a result of consultation, a *Cultural Impact Report* ("**CIR**") was prepared to inform the AEE (Appendix H) and this is outlined in the evidence of **Mr Love**.
92. In my opinion the CIR has enabled prioritisation and understanding of issues of significance to mana whenua and enabled these to be translated into the Project's design. Additionally, the CIR has enabled measures to be developed to avoid, remedy or mitigate actual and potential adverse effects on cultural values. Taranaki Whānui ki Te Upoko o Te Ika ("**Taranaki Whānui**") has indicated the wish to be involved during the detailed design stage where signage and storyboards will be developed for the Shared Path. This is a condition of the consent.<sup>13</sup> Further conditions include protocols for the accidental discovery of artefacts and/or taonga during construction.<sup>14</sup> **Mr Love's** evidence (along with that of **Mr Puketapu-Dentice**) also proposes and supports, and I have adopted, new mana whenua conditions (MW.1-MW.3).

### *Public Open Space and Walking Access*

93. The relevant provisions of the NZCPS are Objective 4 and Policies 18, 19 and 20. These provisions relate to maintaining and enhancing the public open space qualities and recreation opportunities of the coastal environment, as well as maintaining and enhancing public walking access and controlling the use of vehicles.
94. Marine Drive is a key access road in a modified coastal environment that provides existing public access to and along the CMA. The Project offers a good opportunity to expand its function to include a cycle and walkway, as well as build resilience into the existing infrastructure through the upgrade of the seawalls in a number of locations. As outlined in Appendix L to the AEE and in the evidence of **Mr Povall**, the path is expected to provide greater

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<sup>13</sup> See proposed conditions LV.3 and LV.7.

<sup>14</sup> See proposed conditions AP.1 and AP.2.

amenity benefits, widen transport choices and improve access to local facilities, including public open space such as the beaches and Whiorau Reserve located along the road corridor. The Project will also enhance community cohesion.

95. The Project will enable the public to walk and cycle along the coast from Point Howard to Windy Point. This is expected to provide significant regional community recreational benefits, enhanced by the connectivity provided by ferry services at Days Bay. The key outcomes of the Project are to improve pedestrian and cyclist safety and to increase the number of users on the corridor.
96. As physical access to some beaches along Marine Drive is currently difficult, rebuilding or the introduction of new seawalls offers the opportunity to support public access to the beaches through the provision of new steps and boat ramps. The design of the curved walls with stepped levels also offer opportunities for easier access to rocky headlands. More formalised and easy to use boat ramps allows easier access for swimmers and the launching of paddle boards, kayaks and small boats and avoids the need for vehicles to use the beaches.
97. Sea level rise over time is likely to result in the loss of public walking access on parts of the beaches and over the headlands. The proposed beach nourishment (for recreational purposes) will have some additional minor benefit in buffering the effects of climate change.

#### *Coastal Hazards*

98. The relevant provisions of the NZCPS are Objective 5 and Policies 25, 25, 26 and 27. These provisions relate to coastal hazards and ensure that coastal hazard risks are identified and that responses in relation to coastal hazard risks take into account the potential effects of climate change.
99. Marine Drive is inherently vulnerable to coastal hazard risks. As explained in **Mr Povall's** Design evidence, the road is prone to closures and/or reduced operation, due in part to wave overtopping because of the current state of coastal edge. The existing seawall has a residual life of less than five years in places, is vulnerable to failure and does not provide consistent, nor effective, storm mitigation. Over time sea levels will rise, aggravating the situation and affecting the resilience of the road and underground infrastructure.
100. **Dr Michael Allis'** evidence, and Section 18 of the AEE, suggests that climate change, particularly sea level rise, will have an increasing impact on the wider Eastern Bays area. The principle effect of climate change along the Eastern Bays and on the Project is that the rising sea levels will increase the frequency of high-water events, leading to an increased frequency of wave overtopping and coastal inundation on the low-lying Marine Drive foreshore.

Frequent flooding already occurs along sections of Lowry Bay and the road has to be closed during heavy rains and strong tidal surges.

101. As outlined in the evidence of **Mr Povall**, the existing seawall is, in places, assessed as having a limited residual life. Around 33% of the seawall was identified as having less than 15-20 years remaining life, with over 20% of the length considered to be at risk of imminent failure (less than five years remaining life). Those with less than five years' life will be prioritised for replacement and reinstated with a modern fit-for-purpose structure on the basis of function and resilience. Design options have been selected to allow for upgrade potential.
102. The proximity of the Project to active faults, expanse of soft seabed sediments and geological history of large seismic events have required the reclamation structures be designed carefully in order to maintain serviceability access to the road following a seismic event, whilst avoiding, remedying or mitigating any potential effects on the receiving environment.
103. **Dr Allis** in his evidence explains that while the Project is not a long term solution to the effects of climate change and sea level rise, it will "buy some time" for HCC to develop a DAPP<sup>15</sup> plan for the Eastern Bays area to adapt to climate change, and ongoing sea level rise (over several centuries).

#### *Use and Development*

104. The relevant provisions of the NZCPS are Objective 6 and Policy 6. They relate to use and development of the coastal environment to enable people and communities to provide for their health and safety and social, economic, and cultural wellbeing.
105. I am satisfied that the Project will enhance community cohesion, provide amenity benefits, widen transport choices and improve access to the coast and to local facilities along the road corridor. The key outcomes of the Project are to improve pedestrian and cyclist safety and through the enhanced facility (through widening and other improvements) increase the number of walkers and cyclists along the corridor. Stakeholders identified the additional benefit of reducing the incidences of road closures and improving the resilience of the corridor. Opportunities to enhance tourism as an outcome of the Project was also recognised.
106. Policy 6 recognises the importance of the provision of infrastructure<sup>16</sup> and that the rate at which public infrastructure should be enabled is related to the reasonably foreseeable needs as the population grows. The future use of the path has been a key consideration in the Project design. As a result, the

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<sup>15</sup> The operative coastal guidance provided by the Ministry for the Environment (MfE) is the 2017 edition of Coastal Hazards and Climate Change – A Guidance Manual for Local Government.

<sup>16</sup> Section 2 of the RMA states that infrastructure means—.....(e) a water supply distribution system, including a system for irrigation: (f) a drainage or sewerage system: (g) structures for transport on land by cycleways, rail, roads, walkways, or any other means:....

path width has been considered as outlined in Appendix L of the AEE and in the evidence of **Mr Povall** and **Mr Rob Greenaway**.

107. Policy 6, among other matters, suggests that activities that do not have a functional need to be located in the CMA, generally should not be located there. It also recognises that there are activities with a functional need to be in the CMA. Ports, some aquaculture, wharves, and jetties are accepted by most to have a 'functional need' to be in the CMA. In my view because Marine Drive is already located beside the CMA, and the fact that there are operational and efficiency reasons for providing the Shared Path along Marine Drive, and in the absence of any other viable option, there is a functional need for the Project to be in the CMA. While the Shared Path could in theory be on the other side of Marine Drive, this option has been considered in the alternatives assessment and it was determined that this would not be a form of development that provided for the social, economic, and cultural wellbeing of people and communities.
108. As outlined in the *Transport Assessment* (Appendix L of the AEE), the Project will significantly improve traffic safety along Marine Drive, and rebuilding the seawalls will increase the resilience of the road and underground services. The Project will therefore enable people and communities to provide for their social and economic wellbeing. The needs of the community have been considered, determining that public infrastructure is required in this location, which in turn aids the recreational and economic growth of the Eastern Bays.
109. The Project provides for coastal recreation and public access, whilst recognising and responding to the need to locate the necessary structures related to the Shared Path in this location. The Project is in keeping with a highly modified environment which is characterised by an existing seawall along most of Marine Drive. There will be a minimal change in character and visual impact in this area of the CMA and will therefore not be unacceptable. Public access will be provided and enhanced along the foreshore by locating the Shared Path on the seaward side of Marine Drive, and by placing boat ramps and access steps at regular intervals in strategic locations at beaches and headlands. **Mr Greenaway** in his evidence outlines the recreational benefits of the Shared Path and has shown strong advantages associated with health (physical and mental) and wellbeing, tourism and environment.
110. The protection of natural character, open space, public access and the amenity values of the coastal environment have been carefully considered through the assessment of alternatives. The extent of the Project in the CMA has been reduced as much as practicable; however given the physical constraints on the landward side of Marine Drive, widening of the Shared Path to meet acceptable standards means that it will need to be into the CMA in places.

111. The Project achieves these outcomes by enabling the widening of the legal road (infrastructure), without compromising other values of the coastal environment. Integrated decision-making has involved inputs from different public agencies along with mana whenua and has resulted in the integrated development of a Project that is a traffic safety solution, and an integrated environmental solution, and delivers significant social and environmental benefits.

#### *Reclamation*

112. The relevant provision of the NZCPS is Policy 10. It provides strong directions in relation to reclamation of the CMA. The policy directs that reclamation must be avoided unless all four specific conditions set out in the policy are met.

113. Having particular regard to Policy 10(1)(a), a key outcome of the early stages of the alternatives assessment was identifying that limited land is available along Marine Drive that is suitable for road widening to accommodate a shared path that offers a safe and effective transport corridor. This is because Marine Drive is a narrow road and the sole access to Eastbourne with little space for widening on the landward side road. It is also the sole access road to Eastbourne for emergency services and lifeline utilities of regional significance.

114. Having particular regard to Policy 10(1)(b), achieving all the identified activities and associated outcomes could not be achieved in a location outside of the CMA.

115. Having particular regard to Policy 10(1)(c), the part of the Project located within the CMA requiring reclamation has been assessed to be an effective and efficient use of the CMA with the potential to deliver positive environmental outcomes that have been developed in an integrated manner. Through engagement with iwi and the community, a reclamation option was identified to be the preferred option as it enables delivery of wider benefits associated with the Shared Path resulting in a safe transport corridor. The alternatives have been assessed (refer to Appendix G) which concludes that widening the road into the CMA is the most practical option.

116. Having particular regard to Policy (10)(1)(d), the Project responds to the policy direction by enabling significant regional benefits in delivering a Shared Path including modal choices (walking and cycling); improved resilience of the seawalls, road and underground services; and opening the CMA up to greater public recreational use and access. This outcome would not be achieved effectively without using a reclamation solution.

117. Having particular regard to Policy 10(2), the reclamation has been designed to provide a more resilient road which is less prone to wave overtopping; to use aesthetically pleasing materials; and to achieve a high amenity public

access to the coastal edge. It also enables outcomes that remedy or mitigate effects on the coastal environment including positive cultural effects through signage and storyboards along the Shared Path.

118. The use of reclamation in this location also has other positive outcomes which includes a design that accommodates sea level rise through an iterative design process that addresses coastal erosion. The evidence of **Dr Allis** identifies that climate change will have an unavoidable effect on the wider Eastern Bays area. The principal effect of climate change on the Project is that the rising sea level will increase in the frequency of high-water events, leading to an increased frequency of wave overtopping and coastal inundation on parts of the low-lying Marine Drive foreshore (ie Lowry Bay).
119. As mentioned previously, many sections of the seawalls have a limited life expectancy and these sections will be prioritised for replacement and reinstated with a modern fit-for-purpose structure on the basis of function (level of service) and resilience. Design options have been selected to allow for upgrade potential following DAPP principles of iterative long-term management.
120. Having particular regard to Policy 10(3), the reclamation will provide for the efficient operation of council infrastructure, including a coastal road, underground services, and walking and cycling facilities.
121. Having particular regard to Policy 10(4), there will be some gains in land due to de-reclamation. This occurs when the existing seawall is removed and the new seawall is built on the landward side of the old footprint resulting in redundant reclaimed land to be restored to beach and public open space.
122. In my opinion the Project is consistent with Policy 10. An extensive range of options for achieving the Project objectives have been considered, and these are summarised in Appendix G of the AEE and the design evidence of **Mr Povall**. The *Alternatives Assessment* (Appendix G of the AEE) ruled out options outside the CMA, including a landward side option. Therefore, the reclamation is the only option as there is no practical alternative. Furthermore, the findings in the *Transport Assessment* (Appendix L of the AEE) conclude that the Project will provide significant regional benefits.

#### *Indigenous Biological Diversity*

123. The relevant provision in the NZCPS is Policy 11 and provides direction on protecting indigenous biological diversity and in particular, seeks to identify and avoid adverse effects on rare and threatened species.
124. To address the direction in Policy 11, the *Intertidal Ecology* (Appendix A) and *Avifauna and Vegetation Assessment* (Appendix C) of the AEE were commissioned. The assessments have identified, firstly, whether there is, or is likely to be, rare or threatened species present within the Project area, and

then, methods to avoid or where avoidance is not possible, mitigate adverse effects on indigenous biological diversity.

125. The Project avoids all subtidal areas and areas of seagrass identified as scheduled areas in the PNRP.<sup>17</sup> By working through a number of bay specific options, the Project will be located above the low tide level.
126. While much of the shoreline in the intertidal zone does not support a high diversity or density of biota, there are vegetation types present in the Project area that have a high ecological value. There have also been sighting of rare birds, and penguins are commonly seen in the area.
127. The *Avifauna and Vegetation Assessment* identified the presence of three At Risk – Declining plant species (seagrass, *pīngo* – planted, and *Veronica speciose* – planted) and possibly a fourth (*Melicytus orarius*), and with the gravel beaches (endangered naturally uncommon ecosystem). Some of these ecosystems and species are located in the Project footprint or margin. To mitigate adverse effects on these indigenous ecosystems and habitats the assessment recommends translocating the patches and their gravel and sand habitat immediately seaward of the Project footprint.
128. Parts of the Project area have been identified as being used by shorebirds and little penguins for roosting, foraging, access, nesting and moulting and are of high ecological value as stated in the *Vegetation and Avifauna Assessment*. Potential construction effects on oystercatchers and little penguins include noise, disturbance or destruction of nests, moulting of other occupational sites, and blocking penguins access. These potential adverse effects are avoided through the provision of protection areas and other methods as explained in the evidence of **Dr Cockrem**. Timing of works is also important to avoid breeding seasons.
129. Methods to avoid adverse effects on rare and threatened species have included design refinements to avoid and reduce any impact on sensitive areas such as feeding, breeding or nesting areas, and mitigation or minimisation measures where areas could not be avoided to manage the temporary construction effects on natural habitats. Measures include a penguin management plan, a habitat enhancement plan ("**HEP**") and other conditions. Avoidance measures are set out in detail in HCC's memorandum 6 to GWRC dated 9 July 2020<sup>18</sup> and addressed below in relation to the PNRP.
130. Positive effects of the Project include the enhancement of intertidal habitat by creating a textured concrete surface on the new seawalls. The proposed

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<sup>17</sup> Schedule F5 Coastal habitats.

<sup>18</sup> [Memorandum-6-response.pdf \(gw.govt.nz\)](#).

curved seawalls provide an improved habitat compared to the existing smooth angled concrete seawalls.

131. In the evidence of **Dr Cockrem**, he identifies specific opportunities for avoiding adverse effects on avifauna species, including the scheduling of certain activities outside bird breeding season and setting distance limits for construction activities close to nesting birds, establishing protection areas and undertaking pest management. I have adopted these in my proposed conditions.

#### *Water Quality*

132. The relevant provisions of the NZCPS are Policies 21, 22 and 23 that relate to water quality.
133. Policy 22 requires that use and development does not result in a significant increase in sedimentation levels and impacts in the CMA. Although the construction of the seawall will have some sedimentation effects, the situation is temporary, limited in areal extent and the dispersal will be managed through sediment control measures as a condition of the consent.<sup>19</sup> The resulting turbidity is expected to be no more than that occurring during storm conditions when wave action creates natural sediment and sediment movement. Sediment control measures include the use of silt fences, curtains and bunds.
134. The pouring of cement in situ to construct the seawalls, and the groundwater from the area at Sunshine Bay Garage, have the potential to discharge contaminants into the CMA. Cement will be poured during low tide in dry conditions to avoid discharge of contaminants and a fast drying additive can be used to ensure that the cement can harden in time. If it is not possible to undertake the works in dry conditions, then the work site will be shored, and the contaminated water will be contained and pumped to a treatment structure (container) where the water can be treated to get the pH to a level suitable for the local receiving environment. Alternatively, if quantities are limited, untreated water can be pumped into the wastewater network.
135. The presence of contaminants at Sunshine Bay Garage will be determined and if the groundwater is found to be contaminated, it will be managed (to be outlined in the Erosion and Sediment Control Plan, as part of the CEMP).

#### *Heritage*

136. The relevant provision of the NZCPS is Policy 17 which sets out mechanisms that should be applied to ensure that historic heritage in the coastal environment is protected.

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<sup>19</sup> See conditions GC.7(a), (k), and (l)(viii) and C.6 in particular.

137. The Skerrett Boatshed in Lowry Bay is a listed Historic building in the HCCDP. The Shared Path will be narrowed to avoid the building.
138. Marine Drive is part of the history of Eastbourne having been established as a track initially by Māori who occupied kāinga in the sheltered bays, and later used by early European settlers who drove stock along the coast between the Hutt Valley and the Wairarapa. The access road was improved after the 1855 earthquake and widened over the years into what is present today.

### *Conclusion*

139. In conclusion, the NZCPS provides a comprehensive framework for undertaking coastal management. In my opinion when assessed directly against specific objectives and policies, the Project achieves the NZCPS provisions. I note that the NZCPS outlines specific effects that are to be avoided. In this regard, I consider that the Project is consistent with the NZCPS as it:
  - (a) avoids significant adverse effects (Policy 5);
  - (b) meets the four exceptions in Policy 10(1);
  - (c) avoids adverse effects of activities on indigenous biological diversity (Policy 11);
  - (d) avoids effects on natural character (Policy 13);
  - (e) avoids effects on natural features (Policy 15);
  - (f) avoids significant adverse effects on ecosystems and habitats after reasonable mixing (Policy 23); and
  - (g) does not increase the risk of social, environmental and economic harm from coastal hazards and avoids redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards (Policy 25).
140. I have discussed the "avoidance" of adverse effects in further detail under a separate heading in my evidence below.
141. The Project is largely within the CMA and is therefore subject to evaluation against the policies and rules that apply to that area through the relevant plan (being the RCP and the PNRP). While there are both actual and potential effects associated with the Project, in my opinion, the design and construction avoids effects in those areas that the NZCPS directs and the mitigation and minimisation which is provided through the design features or is proposed through proposed conditions has been able to ensure that effects will all be minor or less than minor.

142. According to the *King Salmon* decision,<sup>20</sup> the NZCPS is to be given effect by lower level policy and plan documents. The relevant planning documents are assessed below.

### **Proposed Natural Resources Plan**

143. The decisions version of the PNRP (dated 31 July 2019) ("**PNRP (Decisions Version)**") includes amendments to objectives and policies that had previously been assessed in Appendix S (Statutory Assessment) of the AEE.

144. I will focus on the changes to the PNRP as relevant to the application:

- (a) the introduction of Policy P39A which requires that adverse effects on specific ecosystems, habitats and species must be avoided; and
- (b) the inclusion of an exception to the mitigation hierarchy provided in Policy P41 for specific ecosystems and habitats identified in Policy P40 that requires that adverse effects be managed under Policy P39A.

145. Policies P39A, P40 and P41 are all subject to appeals to the Environment Court.

#### *Policy P39A: Indigenous biodiversity values within the coastal marine area*

146. Policy 39A provides direction as to how the indigenous biodiversity values of aquatic ecosystems, habitats and species within the CMA are to be protected. Only Policy P39A(a) is relevant to the Project.<sup>21</sup> It requires the avoidance of adverse effects on a series of special and/or vulnerable ecosystems, habitats and species.

147. Policy P39A(a) is intended to give effect, within the Wellington regional context, to Policy 11(a) of the NZCPS and is drafted in very similar terms.

148. The policies using the word "avoid", as is the case with Policy P39A(a) of the PNRP (Decisions Version) and Policy 11(a) of the NZCPS, have been the subject of considerable judicial scrutiny. The Supreme Court has observed, albeit in the context of Policies 13 and 15 of the NZCPS, that minor or transitory effects are acceptable within the context of an avoidance policy:<sup>22</sup>

*"(...) It is improbable that it would be necessary to prohibit an activity that has a minor or transitory adverse effect in order to preserve the natural character of the coastal environment, even where that natural character is outstanding. Moreover, some uses or developments may enhance the natural character of an area."*

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<sup>20</sup> *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38.

<sup>21</sup> Policy P39A(b) relates to the ecosystem values of estuaries, which are not relevant to the Project.

<sup>22</sup> *Environmental Defence Society Inc v The New Zealand King Salmon Company Limited* [2014] NZSC 38 at [145].

149. I consider that this approach is broadly consistent with GWRC's position as expressed during a meeting on 22 January 2020 that consents can only be granted "*if effects on threatened biodiversity are transitory or (less than) minor.*"
150. Further, the Environment Court in *Royal Forest and Bird Protection Society of New Zealand v Auckland Council* endorsed the approach of the Court of Appeal in *Man O' War*, as follows:<sup>23</sup>
- "The Court of Appeal also noted, with respect orthodoxically, that the requirement to "avoid" adverse effects is contextual, so that whether any new activity or development would amount to an adverse effect must be assessed in both in the factual and broader policy context."*
151. The consideration of avoidance therefore also requires context-specific queries which relate to the particular species affected, use and vulnerability of habitat, inevitable effects on the species or habitat at issue (whether those are generated by natural or man-made causes, such as from sea level rise or existing infrastructure), and enhancement resulting from development. These matters are addressed below.

*Policy P40: Ecosystems and habitats with significant indigenous biodiversity values*

152. Policy P40 seeks to protect and restore ecosystems and habitats with significant indigenous biodiversity values. The following habitats, referenced in Policy 40(b) and (d) respectively, are relevant to the Project:
- (a) significant habitats for indigenous birds in the CMA identified in Schedule F2c:
- (i) the foreshore area between Point Howard and Sunshine Bay (excluding Windy Point) falls within *Wellington Harbour (Port Nicholson) foreshore; northern end of Day's Bay to Point Howard*. Five threatened or at-risk indigenous bird species are known to be resident or regular visitors to this habitat: black shag, pied shag, little black shag, red-billed gull and variable oystercatcher;
- (ii) subtidal habitats in and adjoining the Project area are located within the *Wellington Harbour (Port Nicholson) – inland waters*. Five threatened or at-risk indigenous bird species are known to be resident or regular visitors to this habitat: little penguin, fluttering shearwater, red-billed gull, Caspian tern and white-fronted tern; and

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<sup>23</sup> *Royal Forest and Bird Protection Society of New Zealand Incorporated v Auckland Council* [2017] NZHC 980 at [34]; citing *Man O' War Station Limited v Auckland Council* [2017] NZCA 24 at [65].

- (b) ecosystems and habitat-types with significant indigenous biodiversity values in the CMA identified in Schedule F5: *seagrass and subtidal rocky reefs*.

**Figures 1 and 2 in Appendix B** show Schedule F2c and Schedule F5 in the PNRP (Decisions Version).

153. The indigenous taxa listed in (a) fall within the scope of Policy P39A(a)(i). To comply with Policy P39A(a)(i), adverse effects on these species must be avoided. My evidence focusses on this policy and the matter of "avoidance".

*Policy P41: Managing adverse effects on ecosystems and habitats with significant indigenous biodiversity values*

154. Policy P41 manages adverse effects on ecosystems and habitats with significant biodiversity values identified in Policy P40 via an effects management hierarchy.
155. The policy requires that, in the first instance, activities that risk causing adverse effects on the values of a site with significant indigenous biodiversity values identified in Policy P40 must avoid such sites. If the ecosystem or habitat cannot be avoided, adverse effects must be managed in accordance with the mitigation hierarchy set out in Policy P41(a) to (d).
156. However, amendments in the PNRP (Decisions Version) include an exception for certain ecosystems and habitats identified in Policy P40(b) to (d) on the following terms:

*"If the ecosystem or habitat cannot be avoided, (except for those ecosystems and habitats identified in Policy P40(b), (c) and (d) that are identified and managed by Policy P39A(a)), the adverse effects shall be managed by...."*

157. As a result, there is no ability to consider adverse effects on those ecosystems and habitats in accordance with the mitigation hierarchy in Policy P41. Instead, adverse effects must be managed under Policy P39A(a). Policy P41 (and the relevant exception) applies to the Policy P40(b) and (d) habitats listed above. Adverse effects on these habitats (and the relevant species) must be managed under Policy P39A(a).

### **Potential adverse effects requiring avoidance**

158. Appendix C-1 (*Avifauna and Vegetation*) of the AEE identifies the following potential adverse effects on the habitats and species identified in paragraph 147:
- (a) the permanent loss of Schedule F2c and Schedule F5 habitats; and
  - (b) temporary (construction) effects on shorebird species and little penguins.

159. These potential adverse effects, the level of effect, and avoidance requirements of the policy framework are summarised below.

*Permanent loss of Schedule F2c habitats (intertidal foraging habitat for shoreline foragers and little penguin breeding habitat)*

160. As identified above, a number of shorebird species categorised as 'threatened' or 'at-risk' forage, roost and nest on the foreshore and in intertidal areas around Wellington's coastline. Any potential adverse effects on the offshore fishers (shearwaters, terns and giant petrel) and inshore fishers (shags and reef heron) are likely to be temporary. As outlined in the evidence of **Dr Cockrem** the potential effects on shoreline foragers (oystercatchers) may result in a permanent reduction in their intertidal foraging habitat. However, **Dr Cockrem** concludes in his evidence that those effects, including on oystercatchers, will be less than minor.
161. While there are no known little penguin breeding sites within the proposed Shared Path or seawall footprints, two sites have been identified within revetment upgrade areas and a number of other breeding sites are likely to be indirectly affected by the Project. Unless raised in the future, these sites (and especially those within the revetment upgrade areas) will be progressively lost to sea level rise. While the potential direct impact within the Project footprint is small (two sites directly lost), further losses are possible as alteration of the surrounding habitat is known to result in the abandonment of nests.
162. Encroachment and the consequential loss of intertidal foraging habitat for shoreline foragers and little penguin breeding habitat is a key permanent (post-construction) effect of the Project. The potential for adverse effects of this habitat loss were assessed in Appendix C-1 (*Avifauna and Vegetation*) of the AEE as being more than minor. Extensive avoidance measures set out in detail in the application documents and in the follow up work undertaken by **Dr Cockrem** in his evidence and the Little Penguin Interest Group, have been designed to ensure that these effects are no more than minor.

*Permanent loss of Schedule F5 habitats (seagrass and subtidal rocky reefs)*

163. As detailed in the application and further information provided by, and evidence of **Fleur Matheson**, the Project alignment avoids all subtidal areas (including subtidal rocky reefs) and areas of seagrass identified in Schedule F5.
164. Potential adverse effects on seagrass beds during the construction stage will be avoided in accordance with the measures outlined below and the proposed conditions. Temporary (construction) effects on subtidal rocky reefs are avoided by the plans appended to Appendix E (*Coastal Process*) to the AEE. Temporary occupation of the subtidal zone during construction is limited to that set out in those plans.

*Temporary effects on reef heron, shags, shoreline foragers (including oystercatchers) and little penguins*

165. Temporary effects on reef heron, shags, shoreline foragers and little penguins during the construction phase relate to sedimentation, food and waste, and noise and disturbance. The potential adverse effects of construction on these species are assessed in Appendix C-1 (*Avifauna and Vegetation*) of the AEE as being more than minor. There will be no effects on the offshore fishers (shearwaters, terns and giant petrel).
166. Avoidance measures, set out in detail in the proposed conditions and the section below, will ensure that construction is undertaken in a manner that avoids, or minimises adverse effects on reef heron, shags, shoreline foragers and little penguins such that they are no more than minor. Further, the habitat protection areas will provide safe roosting and nesting habitat for shorebirds.

**Avoidance of adverse effects**

*Avoidance - Permanent loss of Schedule F2c habitats*

167. The following measures have been incorporated into the Project design to reduce the extent of encroachment onto the foreshore, and thereby avoid the loss of intertidal foraging habitat for shoreline foragers and little penguin breeding habitat:
- (a) Choice of steeply rising curved seawalls as the predominant seawall design to reduce the encroachment footprint of the revetment seawall types. The use of a vertical curved seawall as opposed to revetment reduces the amount of space required thereby reducing the encroachment onto the beach and subsequent loss of habitat.
  - (b) The adoption of curved seawall designs rather than revetment structures at north Lowry Bay and south Lowry Bay.
  - (c) Beach nourishment and associated monitoring and management at Point Howard beach, York Bay and south Lowry Bay. The effect will be to retain all the existing backshore habitat in these three bays.
  - (d) Landward realignment of Marine Drive is proposed to reduce beach encroachment at two areas (Sorrento Bay and York Bay). This has avoided 0.5 to 1m of widening into the beach.
  - (e) Reducing the path width at certain beach locations (Sorrento Bay, northern Lowry Bay, Mahina Bay and Sunshine Bay) from 3.5m to 2.5m. This decision maintains a continuous path, while limiting the impact to a highly valued public asset and avoiding encroachment and the resulting loss of significant avifauna habitats.

- (f) The use of parallel steps and parallel boat ramps, and an increased angle for ramps, including the use of mini steps. These steps and ramps will be provided parallel to the seawalls, rather than perpendicular, to reduce beach encroachment.
168. Due to the above measures, the total proposed encroachment of the Project has been reduced to 5,500m<sup>2</sup>. Reclamation of the CMA has been limited to 3000m<sup>2</sup> (this forms part of the total 5,500m<sup>2</sup> encroachment area).
169. In addition to reducing encroachment into the Schedule F2c area, the Project will provide for the creation of new fenced protection areas for shoreline foragers and little penguins. The total combined area of four sites is 22,100m<sup>2</sup>.
170. The protection areas will be established at the following locations:
- (a) Sorrento Bay for oystercatchers (200m<sup>2</sup>).
  - (b) Whiorau Reserve for penguins (1,950m<sup>2</sup>). This area will be established prior to the commencement of construction.
  - (c) North of Bishops Park for penguins and potential area for shoreline foragers (7,750m<sup>2</sup>); and
  - (d) HW Shortt Park for penguins and potential area for shoreline foragers (12,200m<sup>2</sup>).
171. The protection areas will be established subject to a HEP which requires:
- (a) the ability to accommodate 100 little penguin nesting opportunities (including boxes) in the protection areas;
  - (b) the provision of additional foreshore habitat for shoreline foragers, including wooden poles for roosting; and
  - (c) pest management, planting, and provisions for ecological resilience to sea level rise.
172. As a result of all of the avoidance measures set out above and detailed in the proposed conditions, the permanent (post construction) effects of habitat loss on shoreline foragers and little penguins are less than minor as set out in **Dr Cockrem's** evidence.

*Avoidance – Temporary effects on reef heron, shags, shoreline foragers (including oystercatchers) and little penguins*

173. Temporary effects on reef heron, shags and shoreline foragers during the construction phase relate to sedimentation, food and waste, and increased noise and disturbance due to construction activities.

174. The existing environment already contains many noise sources to which the bird species of interest have adapted. However, construction disturbance and noise are the main effects of the Project on little penguins. These potential effects on penguins will be greatest during the little penguin breeding and moulting period (between July to February). For oystercatchers, these potential effects will be greatest during oystercatcher breeding and chick foraging period (between November and February).
175. Avoidance measures, set out in detail in the proposed conditions, will ensure that construction is undertaken in a manner that avoids adverse effects on reef heron, shags, shoreline foragers and little penguins. The temporary (construction) effects of the Project on reef heron, shags, shoreline foragers and little penguins are less than minor.

*Avoidance – Temporary (construction) effects on seagrass*

176. Potential adverse effects on the seagrass beds identified at south Lowry Bay from construction works and beach nourishment will be avoided by applying conditions on seagrass avoidance measures and beach nourishment restrictions.

*Avoidance - Context*

177. As mentioned above case law has indicated that context is relevant when determining avoidance. The context relevant for the Project includes:
- (a) Some of the significant habitat for foraging birds that is affected (Schedule F2c) is existing rock revetment and seawall. Therefore, some of the loss of the existing seawalls and revetment immediately triggers the PNRP (Decisions Version) Policies. Further, the inclusion of those defences indicates that seawalls and revetments are likely to provide new significant habitat for shoreline foragers (especially given the Project's design to enhance such outcomes which do not exist on the existing defences).
  - (b) The habitats affected are already highly modified which reduces their ecological values (see Appendix C-1 of the AEE) and the ecological effect of the Project. The evidence of **Dr Cockrem** expands on these values.
  - (c) The listed foraging shorebirds (and little penguins) affected are accustomed to living in the highly modified habitat immediately adjacent to and affected by a busy Marine Drive with relatively high existing recreational activity.
  - (d) Climate change and sea level rise will, likely within the next 20-30 years, significantly reduce the existing extent of foreshore habitat protected by Schedule F2c. With the Project this loss will be slowed by

the beach nourishment and avoided by the provision of protection areas (for shorebirds and penguins to retreat to) and features within the seawalls and revetments themselves will provide habitat that will not otherwise exist.

- (e) Protected areas and ecological enhancements provided by the Project as set out in the conditions.

#### *Avoidance - conclusion*

- 178. The Project has been carefully designed and developed with expert assistance to ensure that adverse effects on indigenous biodiversity have been avoided, in line with Policy 11(a) of the NZCPS, and Policies P39A(a), P40 and P41 of the PNRP (Decisions Version). Significant effort has been applied to achieve an outcome whereby all effects on indigenous biodiversity are assessed as less than minor.
- 179. This has been achieved through the avoidance measures referenced above, detailed in the application documents and the draft conditions in **Appendix A** of my evidence. Adverse effects on significant habitats and species have been avoided through an iterative design process, such that effects are less than minor. Overall, the adverse effects on the environment are assessed by HCC's experts to be no more than minor.
- 180. There are also a number of positive environmental effects that the Project will provide, such as the establishment of new ecological habitat. The beach nourishment, while carefully avoiding affecting seagrass beds, will ultimately prolong their existence in the face of sea level rise. The effects of sea level rise, irrespective of the Project, will within 1-2 decades result in the same, and greater (total beach loss), effects on indigenous biodiversity within the Project area.
- 181. In my opinion, overall, the Project is consistent with Policies P39A(a), P40 and P41 of the PNRP (Decision Version) and Policy P11(a) of the NZCPS and meets the gateway tests in section 104D(1).
- 182. Having passed the section 104D gateway the Project moves to be evaluated in accordance with section 104 of the RMA. I rely on my evidence above, and the proposed conditions, in relation to the significant positive effects of the project and the appropriate management of adverse effects in order to be consistent with the relevant planning provisions.

#### **City of Lower Hutt District Plan provisions**

- 183. The Project has been assessed against the provisions on the HCCDP (refer to section 6, Appendix S of the AEE). Policy 14A under the Roading Hierarchy of the HCCDP (2018) provides strong direction that adequate levels of service for access and movement are provided to meet the travel

demand of pedestrians, cyclists and motorised traffic during the off-peak period.

184. Marine Drive is recognised as a network utility under the plan. Policies for Network Utilities (13)(a) and (b) is to provide for the:
- i. need for new and the maintenance and upgrading of existing network utilities;*
  - ii. technical and operational requirements and constraints of network utilities in assessing their location, design, development, construction and appearance; and*
  - iii. benefits that network utilities provide to the economic, social and cultural functioning of the City.*
- b) *To enable the efficient construction, installation, operation, upgrading and maintenance of network utilities.*
185. Rules in the HCCDP associated with the Project, relate to network utilities, general residential, recreational zoning, historic buildings, trees and contaminated sites.
186. The Project area bisects SNR site #44 (Point Howard Beach) of the HCCDP<sup>24</sup>, which seeks to protect the occurrence of *Melicytus orarius*. SNR #44 comprises land at Point Howard seaward of Marine Drive and extends into Wellington Harbour. HCC has been unable to find the origins of SNR #44 and its mapping. A search of the Shared Path route at Point Howard did not find *Melicytus orarius*. All work within SNR #44 requires consent.
187. Of particular relevance is the Skerrett Boatshed (1906) at Lowry/Whiorau Bay which is a listed historic building (Heritage Listing #3580) and identified on Map C6 of the HCCDP, requiring protection. The building will be retained and it will not be affected by the Project. The 'Atkinson Tree' in York Bay is not listed as a notable tree but has local interest. It has been identified in the landscape assessment to be removed and is addressed in the evidence of **Ms Williams** and **Mr Povall**.
188. HCC currently does not identify ONLs and ONFs or special amenity landscapes ("**SALs**") in its district plan. The Landscape Evaluation Draft Technical Review Assessment undertaken for HCC in 2016 did not identify any ONLs or ONFs or SALs within the Project area. A natural character assessment was undertaken in 2016 for GWRC and HCC. No Outstanding or Very High Natural Character areas are identified within the Eastern Bays

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<sup>24</sup> Hutt City Council 2017. City of Lower Hutt District Plan. Hutt City Council. <http://eplan.huttcity.govt.nz/Pages/XC.Home/Home.aspx>. Accessed 2017-05-24.

coastal terrestrial area, which is assessed as having moderate natural character.

189. The Project is consistent with the relevant objective and policies.

## **OVERALL SUMMARY OF PLANNING DOCUMENTS AND PART 2 MATTERS**

190. Assessment of resource consents applications under section 104, and the role of Part 2, has changed in recent years and has most recently been set by the Court of Appeal in the decision of *RJ Davidson Family Trust v Marlborough District Council*.<sup>25</sup> In short, the Court of Appeal determined that:

- (a) notwithstanding *King Salmon*, RMA decision makers should usually consider Part 2 when making decisions on resource consents (that is the implication of the words "subject to Part 2" in section 104);
- (b) this, in particular, applies if the decision-maker considers that the plan has not been competently prepared; however, where the relevant plan provisions have clearly given effect to Part 2, there may be no need to refer to Part 2 as it "would not add anything to the evaluative exercise". It would be inconsistent with the scheme of the RMA to override those plan provisions through recourse to Part 2. In other words, "genuine consideration and application of relevant plan considerations may leave little room for Part 2 to influence the outcome".
  - (i) While the NZCPS has significant status (as recognised in the *King Salmon* decision) it is now 9 years old. The RPS is newer (2013) and its relevant provisions are assessed in the AEE (Appendix S) (and the Project is consistent with them). The operative regional plan is old (2000) and, while there is a decision on the PNRP, sections relevant to this application are under appeal with the Environment Court. Therefore, while there are numerous layers of relevant planning provisions, given their age, the reforms that have occurred to the RMA since there were made operative and potential gaps, this assessment has also considered and applied Part 2 of the Act. This approach also ensures that issues that are recognised, but for which direction is limited, such as sea level rise, can be appropriately considered.
  - (ii) A key finding in *Davidson* relevant to this application is that if the project breaches a relevant policy in the NZCPS then recourse cannot be had back to Part 2 for the purpose of subverting that policy. Equally, regional plans should not be rendered ineffective by reference back to Part 2. I have taken care to ensure such an outcome does not occur. For the reasons set above, I consider

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<sup>25</sup> *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

that the Project does not breach any relevant provisions of the NZCPS (in my opinion the Project is consistent with them).

- (iii) Finally, context is important when applying the relevant planning provisions. The sections above have set out the existing environment and values of the Project area, and its highly modified nature. Equally, they have set out the purpose for the Project in providing a safe connection for cyclists and pedestrians along the Eastern Bays (and the associated social and economic benefits, as well as health and safety that provides) with enhanced resilience (while buying some time to enable the community to decide long-term responses) for Marine Drive and the lifeline infrastructure along and under the road corridor.

191. The key themes from the relevant planning documents and Part 2 of the RMA are identified below. I have tried not to repeat the assessment given that I have addressed these themes in detail under the section on the NZCPS and the PNRP. Overall, when the benefits of the Project are considered alongside the proposed measures to avoid, remedy and mitigate the associated adverse effects, the Project strongly promotes sustainable management of natural and physical resources and is consistent with the relevant planning provisions and the purpose and principles of the RMA.

#### *Natural Character and Landscapes of the Coastal Environment*

192. Relying on the assessment and evidence of Ms Williams the Project is consistent with:

- (a) Policy 13 (and 14) of the NZCPS and Policies 35 and 36 of the RPS.
- (b) The Project is consistent with Policy 15 of the NZCPS and Policies 35 and 36 of the RPS.

#### *Reclamation/use and development*

193. Marine Drive is the sole access road to Eastbourne and is of regional significance. Policy 6 of the NZCPS recognises the importance of infrastructure within the coastal environment, and in relation to the CMA requires recognition of a functional need for some activities to be located there (see also Objectives O12 and O53 of the PNRP). Policy 10 of the NZCPS, and the relevant lower order policies (such as P145 of the PNRP), direct that reclamation of the CMA be avoided unless specific circumstances apply. Policy P145 also requires that the minimum area necessary be reclaimed and that it, where possible, be made available for public use.

194. As explained in the evidence of **Mr Povall**, the Project has been carefully assessed (from an alternatives perspective) in terms of available options outside of the CMA, that the activity has a functional and operational need to

be located within/adjacent to the coast and that there are no practicable alternative methods. The Project will provide significant regional and national benefit in terms of its linkages with other cycleways, provision of safe walking (Policy 19 of the NZCPS) and cycling (and public access to/from the beach), enhancement of existing public use, and short-term protection of Marine Drive (and its associated regionally significant infrastructure) from the effects of climate change, thereby buying time for a planned and integrated community response. Through proposed limited areas of de-reclamation where that is feasible, the Project is consistent with Policy 10(4) of the NZCPS.

195. Overall, the Project is consistent with the relevant planning provisions in relation to reclamation and use and development of the CMA. The Project is also consistent with the relevant provisions in Part 2. In particular, the Project, and the reclamation involved, promotes sustainable management through effective and efficient use of the CMA of regionally and nationally significant infrastructure while avoiding and mitigating adverse effects to an appropriate level and delivering positive environmental outcomes that have been developed in an integrated manner.

#### *Coastal Hazards/Climate Change*

196. Marine Drive and the Eastern Bay suburbs are inherently vulnerable to coastal hazard risks. Over time sea levels will rise, aggravating the existing situation and affecting the resilience of the road and underground infrastructure (as well as the ongoing wellbeing and survival of the community). The NZCPS has reference to natural hazards, and climate change within Policies 10, and 24-27.
197. As explained in the evidence of **Dr Allis** and **Mr Povall**, the reclamation structures have been carefully designed to maintain serviceability access to the road following a seismic event and climate change, whilst avoiding, remedying or mitigating any potential effects on the receiving environment, complying with the policy direction of the various planning documents and Part 2 of the RMA.
198. Overall, the Project is consistent with the relevant objectives and policies in the planning documents, will manage the significant risks from climate change on the Eastern Bay community, will protect the finite characteristics of the regionally significant physical resources while appropriately addressing adverse environmental effects and promoting sustainable management.

#### *Indigenous biodiversity*

199. The Project has been carefully designed and developed with expert assistance to ensure that adverse effects on indigenous biodiversity have been avoided (or minimised where appropriate), in line with Policy 11 of the NZCPS, and the relevant lower order policies (including Objective O35 and

its relevant policies within the PNRP). Significant effort has been applied to achieve an outcome whereby all effects on indigenous biodiversity are assessed as no more than minor. There are also a number of strong positive effects that the Project will provide (including resilience to sea level rise for shorebirds and penguins).

200. As explained in the evidence of **Dr Cockrem, Ms McMurtrie, Dr Matheson and Dr James** through the design process and the avoidance (or minimisation where appropriate) measures proposed to appropriately protect and avoid adverse effects on indigenous biodiversity, the Project is consistent with the relevant objectives and policies of the relevant planning documents and also with the relevant provisions in Part 2 of the RMA.

#### *Tangata Whenua*

201. The Project has been developed in consultation with mana whenua and provides for the matters in section 6(e) of the RMA. The CIR from Raukura Consultants has enabled prioritisation and understanding of issues of significance to mana whenua.
202. As explained in the evidence of **Mr Love and Mr Puketapu-Dentice** the design processes and mitigation measures proposed (including archaeological discovery protocols and the mana whenua conditions) appropriately provide for the matters in Part 2 of the RMA (particularly section 6(e) and 7(a)) and are consistent with the relevant objectives and policies of the relevant planning documents (including Policy 2 of the NZCPS, and Policies 48 and 49 of the RPS).

#### *Natural Coastal Processes*

203. The proposed foreshore form has been specifically designed to maintain, and where possible, enhance biological and physical coastal processes, recognising they are dynamic, complex and interdependent in nature. **Dr Allis**, the construction and operation of the Project will have negligible to minor effects on coastal physical processes and will include design elements that will "buy some time" for HCC to work with the community to determine a long term response to sea level rise, in accordance with the direction in the relevant planning documents (including Policies 18, 24 and 25 of the NZCPS) and Part 2 of the RMA.

#### *Public Access*

204. Marine Drive is a key access road in a modified coastal environment that provides existing public access to and along the CMA. The Project enables the expansion of these functions to include a cycle and walkway, as well as build resilience into the existing infrastructure through the upgrade of the seawalls in a number of locations. As explained in the evidence of **Mr Greenaway** the Shared Path will enhance public access and is expected to

enhance community cohesion, provide greater amenity benefits, widen transport choices and improve access to local facilities, including public open space such as the beaches and Whiorau Reserve located along the road corridor, and therefore maintain the intent of the relevant objectives and policies of the relevant planning documents (including Policies 18 and 19 of the NZCPS, Policy 53 of the RPS and Objective (10 and Policy P9 of the PNRP) and Part 2 of the RMA). Further the beach nourishment (explained in the evidence of **Mr Reinen-Hamill**) will mitigate the recreational effects of beach loss.

### *Social/health and safety/wellbeing*

205. The Project is to develop a safe and integrated walking and cycling facility to connect communities along the Eastern Bays, and to provide links to other parts of the network for recreation and tourism purposes (as explained in the evidence of **Mr Greenaway, Mr Povall and Mr Cager**). Currently, pedestrian and cyclist connectivity and use along the Eastern Bays is low, due to few dedicated facilities and the tightly constrained nature of the road along Marine Drive. This enhanced connectivity will unlock significant social, economic and recreational benefits, including improved safety for pedestrians, cyclists and other road users, recreation and tourism opportunities, and positive benefits to health and wellbeing. The Project is consistent with the relevant objectives and policies of the relevant planning documents (including Objective 6 of the NZCPS) as well as Part 2 of the RMA.

### **CONDITIONS**

206. Throughout the consideration of options, and the subsequent design process, the approach has been to avoid potential adverse effects, or where avoidance is not possible, to mitigate or minimise adverse effects associated both with the construction stage and the operation of the Project. To this end a suite of recommended consent conditions which set the framework and key environmental parameters in which management plans operate is also proposed. The proposed conditions are attached in **Appendix A**.
207. Management plans (such as a construction and environmental management plan (CEMP) directed toward 'managing' the various construction stages will be developed. Other management plans include Traffic Management Plan (TMP), Little Penguin Management Plan (LPMP), Habitat Enhancement Plan (HEP), Beach Nourishment Plan (BNP), Seawall and Revetment Habitat Plan (SRHP), Landscape and Urban Design Plan (LUDP) and Bay Specific Urban Design Plans (BSUDP).<sup>26</sup>

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<sup>26</sup> See conditions pertaining to the management plans: Construction and Environmental Management Plan (GC.6 to GC.10), Traffic Management Plan (GC.11 to GC.13), Little Penguin Management Plan (EM.2 to EM.6), Habitat Enhancement Plan (EM.7 to EM.9), Beach Nourishment Plan (EM.13 to EM.14), Seawall and Revetment Habitat Plan (EM.19), Landscape and Urban Design Plan (LV.1 to LV.4) and Bay Specific Urban Design Plan (LV.5 to LV.7).

## STAKEHOLDER ENGAGEMENT AND CONSULTATION

208. I was part of the consultation team led by HCC and attended most of the stakeholder and community meetings during the development of the Project. Stakeholder engagement and consultation was a key component of the Project. Consultation was a valuable source of information, particularly in identifying and assessing potential adverse effects and it contributed to project development and design. In my opinion there was a genuine commitment to communicate effectively with individuals and groups which led to a high level of community buy-in which was reflected by the fact that over 90% of submissions received were in support of the shared path. I discuss submissions further under a separate heading in my evidence.
209. Key stakeholders included:
- (a) The Department of Conservation ("**DoC**") has important statutory roles associated with the coastal marine area. DoC has been consulted and indicated the key issues they have are effects on avifauna, the CMA and freshwater fish passage.
  - (b) GWRC is a key stakeholder for the Project in terms of managing any development within the coastal marine area, and as the consent authority. Numerous meetings were held with GWRC over the course of the project.
  - (c) HCC, notwithstanding the fact that HCC is the applicant, it also has responsibilities as a road controlling authority.
  - (d) Waka Kotahi in its role as promoting an affordable, integrated, safe, responsive and sustainable land transport system, and managing the allocation of funding to transport activities.
  - (e) CentrePort is a stakeholder for the Project given that uninterrupted access to the terminal wharf at Seaview (from Marine Drive at Point Howard) especially during the construction of the shared path will be important. An upgrade to the wharf infrastructure is underway and knowing where the underground services are located is critical.
  - (f) The iwi authorities that have an interest in this application include the two with statutory acknowledgments, Taranaki Whānui ki Te Upoko o Te Ika and Ngāti Toa Rangatira.
210. An important component of the community consultation was the close collaboration with members of the Eastbourne Community Board, Virginia Horrocks (Chairperson) and Derek Wilshire (past member). Their local knowledge of issues and the contacts that they have in the community were invaluable. They were instrumental in setting up the meetings, led the various bay meetings and provided support throughout the process. A number of other elected community members also attended the various

community meetings. While Virginia Horrox and Derek Wilshere were the main links between the Project team and the local communities, they also worked closely with the technical team tasked with preparing the design of the Shared Path and have provided an in depth local perspective on aspects of the facility.

211. Feedback on seawall options and treatments for more sensitive areas around beaches was also sought. The consultation process adopted a 'bay-by-bay' approach, with dedicated sessions for individual bays, concentrating on the key issues faced by each bay along the corridor. Each bay had unique characteristics and concerns which required a focussed approach.
212. Following extensive engagement with the community and stakeholders, and responding to feedback, the Project went through a number of design refinements. These related to a wide range of issues such as path width, beach amenity values and access to the beach, loss of parking, safety, bus stops, penguins and wave overtopping.
213. The Project was publicly notified and 200 submissions were received with only 14 requesting<sup>27</sup> that the Project be declined. I conclude from these numbers that there is overwhelming support for the Project from the community and stakeholder groups. I have addressed some of the issues raised by submitters in my evidence below under a separate heading.
214. The high level of interest (and diverse views) on how to manage and protect penguins resulted in the formation of a Little Penguin Interest Group. Details on the work undertaken by this group is set out in the evidence of **Mr Simon Cager**.
215. I note that it is unlikely with a project of this nature in such a constrained location to achieve a complete consensus from the community and stakeholders. However, there is a clear commitment by the HCC and the Project team to maintain the high levels of engagement and community involvement through the detailed design process to ensure a high-quality outcome that satisfies the community's requirements. Conditions have been developed that involved further consultation with community groups and other stakeholders.

## **OVERVIEW ON TERRESTRIAL VEGETATION**

216. *An assessment of ecological effects of the proposed Eastern Bays Shared Path Project on coastal vegetation and avifauna*, prepared by Mr Fred Overmars was included as Appendix C1 of the AEE. This assessment found:

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<sup>27</sup> 16 submissions were received in opposition. However, of these submitters Michael Rumble (76) wanted GWRC to grant the resource consents and Nigel Oxley (84) wanted GWRC to grant the resource consents with modifications.

- (a) Vascular vegetation is generally absent from Marine Drive and other vehicular surfaces, concrete seawalls and rock riprap, exposed rocky substrate and most rocky islets.
  - (b) The vascular flora of the survey area is comprised largely of introduced species: 44 of the total 77 species (57%) identified. There are 30 indigenous species<sup>28</sup> (39%), including two not native to the Wellington region (pohutukawa and karo).
  - (c) The Project footprint is a long linear feature and terrestrial ecological values tend to be site-specific rather than applying to the entire area.
  - (d) Single and small groups of pohutukawa between Marine Drive and the sea are a feature of the Project area. These have a concrete seawall between their root structure and the sea, except for the 'Atkinson tree' in York Bay, which is growing directly in beach gravels. This species is not indigenous to the Wellington Region and so has low local ecological value. The "Atkinson tree" is addressed in the evidence of **Ms Williams** and **Mr Povall**.
  - (e) The only "Threatened" or "At Risk" native plant species within the Project footprint have been planted for landscape or restoration purposes.
  - (f) As noted in my evidence above, the Project area bisects SNR #44 (Point Howard Beach) of the HCCDP<sup>29</sup>, which seeks to protect the occurrence of *Melicytus orarius*. A search of the shared path route at Point Howard did not find *Melicytus orarius*.
  - (g) With appropriate mitigation actions the effects of the Project can be reduced to low for gravel beaches and negligible to net gain for the "Threatened" or "At Risk" native plant species.
217. Overall, appropriate mitigation is ensured through proposed consent conditions GC 7(u) to (z)<sup>30</sup>, which will require relocating and/or protection of any "Threatened" or "At Risk" native plant species in the Project area. These conditions are accepted in part from the section 42A report. This will adequately remedy any potential adverse effects on terrestrial vegetation to an acceptable level.

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<sup>28</sup> This includes the seagrass, *Zostera muelleri* subsp. *novaezealandica*, which is specifically covered in the evidence of Dr Fleur Matheson.

<sup>29</sup> Hutt City Council 2017. City of Lower Hutt District Plan. Hutt City Council. <http://eplan.huttcity.govt.nz/Pages/XC.Home/Home.aspx>. Accessed 2017-05-24.

<sup>30</sup> Note that these are new conditions as recommended in the section 42A report.

## RESPONSE TO SUBMISSIONS

218. I have reviewed the 200 submissions with the majority in support of the Project.<sup>31</sup> A total of 14 submissions requested that the application be declined. Those specifically relating to planning are from the Department of Conservation (161), Royal Forest and Bird (170), and East Harbour Environmental Association Incorporated (80). I wish to provide some comment and response to those submissions as well as a number of individual submissions. The technical experts will respond to submissions under their respective evidence briefs.

### Department of Conservation (168)

219. The key matter raised by the DoC submission in relation to the Project is that overall, the Project is contrary to relevant policies of the PNRP and NZCPS. DoC opposes the application as it does not take a precautionary approach in line with the NZCPS 2010. DoC also has concerns around Policy 11 of the NZCPS as well and Policies P31, P32, P40 and P41 of the PNRP. DoC does, however, seek a decision where suitable conditions and mitigation measures are imposed to address its concerns.

220. With respect to the comment that the application does not take a precautionary approach (Policy 3 NZCPS), I refer to the Statutory Assessment (Appendix S of the AEE). In the assessment I conclude that the existing seawall has already heavily modified the coastal environment and through the Project its replacement is an opportunity to provide some enhancement. The Project is the first step in incremental upgrades or alternative adaptation options following the dynamic adaptive planning principles ("**DAPP**") of "buying some time" with this initial adaptation option ("pathway"). Over time the effects of climate change and sea level rise will be significant on the Project area, but the Project offers the opportunity to adapt to the future. **Dr Allis** in his evidence sets out the adaptive management approach and addresses this matter in greater detail.

221. My assessment of the NZCPS and the PNRP including my comments on "avoidance" in my evidence above responds to the concerns raised about planning policies. I have addressed the concerns around Policy 11 of the NZCPS as well and Policies P31, P32, P40 and P41 of the PNRP.

222. In my opinion, all further concerns raised by DoC have been addressed through evidence from the technical experts (ecological and coastal processes). These relate to mitigation measures in response to potential adverse effects on coastal vegetation (seagrass), avifauna foraging habitat and penguin habitat. The conditions have been significantly strengthened

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<sup>31</sup> Of the 200 submissions received, 179 are in support of the application (either in full or in part), 16 are in opposition (in full or in part) and 5 submissions are neutral. However, of these submitters in opposition Michael Rumble (76) wanted GWRC to grant the resource consents and Nigel Oxley (84) wanted GWRC to grant the resource consents with modifications.

since the application was notified and I believe that the conditions pertaining to little penguins and shoreline foragers (oystercatchers in particular), HEP, intertidal and subtidal ecology, fish passage, beach nourishment and seawall and revetment habitat appropriately respond to the concerns raised by DoC.

223. Through the Little Penguin Interest Group, DoC has been represented by their senior ranger (biodiversity), Brent Tandy, and he has been party to the agreements sought in identifying the protection areas for penguins and shoreline foragers. **Mr Cager** outlines the work undertaken by the Little Penguin Interest Group in his evidence. Under the conditions proposed<sup>32</sup>, DoC will continue to be consulted with the preparation of Little Penguin Management Plan prior to the construction of the shared path and HEP of the protection areas for penguins and shoreline foragers.
224. A significant amount of work has been undertaken on penguins and shoreline foragers (especially oystercatchers) since the application was notified in November 2019. The evidence of **Dr Cockrem** outlines the measures that are proposed to protect these birds. These measures are reflected in proposed conditions.<sup>33</sup>

#### **Royal Forest and Bird (170)**

225. The Royal Forest and Bird submission also raises similar concerns to the DoC regarding ecological effects and sought to have the application declined unless design and conditions can sufficiently address adverse effects set out in the NZCPS and provide appropriate mitigation and remediation. My response in relation to DoC above addresses their concerns.
226. Through the Little Penguin Interest Group, Forest and Bird has been represented by Amelia Geary and she has been party to the agreements sought in identifying the protection areas for penguins and shoreline foragers as set out in the evidence of **Mr Cager**.

#### **East Harbour Environmental Association Incorporated (80)**

227. The East Harbour Environmental Association submission raises concerns that the Project would cause unnecessary damage to the coastal environment. For the reasons set out in my evidence, relying on the evidence of the technical experts, I consider that the Project is consistent with all the planning requirements, will not cause unnecessary damage to the coastal environment and promotes the purpose of the RMA.

#### **Individual Submitters**

228. A number of individual submitters indicated that they would like to see the application declined for a number of reasons. They were Michael Sheridan

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<sup>32</sup> See proposed conditions EM.2 to EM.9.

<sup>33</sup> See conditions EM.1 to EM.9.

(66), John Gibb (85), Karen and Haley Holmes (87), Geoffrey Rashbrooke (179), Ann Elizabeth Bell (189) and Bruhlmann Gertrud (Trudi) (190). In my opinion, the range of concerns that these submitters raised have been addressed through further work on the mitigation measures and conditions as attached to my evidence.

229. I respond to the submitters in opposition specifically concerned about the Shared Path at York Bay (Morgan Sissons (174) and Margaret Sissons (175), Roger Brown (162) and Richmond Esmond Atkinson (168)). The concerns were mainly about the path width and loss of beach, and the loss of the Atkinson tree. The Project team has worked closely with the York Bay residents through the residents association and by having bay meetings. While every effort is made to include feedback into the Project, there are many factors that need to be taken into account and balanced to achieve a positive outcome. The loss of beach from the 3.5m path width will be offset against beach nourishment which will improve the amenity value of the beach.
230. The Atkinson tree is addressed in the evidence of **Ms Williams** and **Mr Povall**. This tree is not legally protected, but its presence draws mixed emotions from the public (refer to Appendix I in the AEE). The option of relocating the tree was investigated, however an arborist's report has concluded that the tree is in poor health and is unlikely to survive relocation to another location.<sup>34</sup> The path width would need to be reduced significantly to accommodate the tree (to less than the 2.5m minimum acceptable width) so narrowing it has not been considered. The Atkinson tree is one of the issues to be addressed under the Bay Specific Urban Design Plan where a replacement can be proposed in another suitable location, to be worked through with the local bay community. In this way the legacy of the tree can be acknowledged in a respectful and appropriate way.
231. A combined submission from Z Energy, BP Oil NZ Limited, Mobil Oil NZ Limited (30) supported the application but raised concerns about the location of a penguin protection area. In the Seaview/Point Howard area the Oil Companies operate terminals and associated infrastructure (including pipelines) in proximity to the Project and were concerned about the proposal to develop the groyne area (north of Point Howard) to enhance bird breeding areas and penguin nesting sites. This proposal is no longer being considered for the Project as other sites were found to be more suitable as penguin and shorebird protection areas. The Project works will be to the south of Point Howard and there is a condition to consult with CentrePort around access arrangements during construction (covered by a condition) which will ensure that there is the necessary co-ordination between the oil companies.

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<sup>34</sup> David Spencer, Arborlab Consultancy Services, March 2018.

## RESPONSE TO COUNCIL OFFICER'S SECTION 42A REPORT

### Wellington Regional Council section 42A report

232. I have thoroughly read through the section 42A report and its attachments and wish to comment on a number of matters.

233. In general the report is supportive of the applications and I note that Mr Watson states that *"I consider that the majority of adverse effects can be mitigated to a level where they can be considered minor or less than minor. The positive economic and health and safety effects of the proposal for the Wellington Region (and NZ) have been identified as being significant"*<sup>35</sup>.

#### *RMA matters*

234. I am however concerned about the 'cascading impact' of the overall outcome of the recommendation relating to the management of oystercatchers on the consistency with planning policies.

235. I note that Dr Uys in his assessment, considers that residual adverse effects on oystercatchers after avoidance and mitigation measures proposed by the applicant, are more than minor. He states that the applicant is therefore encouraged to consider options to further manage the effects of the loss of habitat on oystercatchers and present these at the hearing for the consideration of the commissioners.<sup>36</sup>

236. Critically, in finalising the section 42A report, Dr Uys had not had time to review and provide comment on additional information provided by HCC<sup>37</sup> (included in Appendix D of the section 42A report) which included an additional habitat enhancement area specifically for oystercatchers at Sorrento Bay.

237. As a result of the concerns raised by Dr Uys, Mr Watson in his findings has concluded the following, having regard to:

- (a) Policy 6 of the NZCPS - due to concerns about the potential impacts on oystercatchers, overall he considers the proposal is in part consistent with Policy 6.<sup>38</sup>
- (b) Policy 11 of the NZCPS - because the effects on oystercatchers are potentially more than minor, the proposal is inconsistent with Policy 11.<sup>39</sup>

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<sup>35</sup> Page 109 of section 42A report.

<sup>36</sup> Page 57 of section 42A report.

<sup>37</sup> Email sent on 18 November 2020.

<sup>38</sup> Page 115 of section 42A report.

<sup>39</sup> Page 117 of section 42A report.

- (c) Policy P39A PNRP - the current proposal may not avoid adverse effects on oystercatchers to a level where effects are considered acceptable. The proposal may be contrary to Policy P39A.<sup>40</sup>
- (d) Policy P40 PNRP - as there is likely to be a loss of oystercatcher habitat which is not currently being replaced or otherwise appropriately mitigated, the proposal is not protecting or restoring ecosystems or habitat in a manner consistent with P40. The proposal may be contrary to Policy P40.<sup>41</sup>
238. As such, Mr Watson concludes that the proposal may not meet either part of the section 104D of the RMA 'gateway test'.
239. Mr Watson does however acknowledge that if the applicant is able to demonstrate the effects on oystercatchers can be appropriately managed then he considers the proposal will be consistent with both parts of the 'gateway test' being not contrary to the objectives and policies of the PNRP and the effects will be no more than minor.
240. He concludes under his Part 2 assessment that "*Although there are a number of adverse effects on the environment, provided there is a satisfactory outcome to the matters outlined above, I consider that the benefits would outweigh the adverse effects. I also consider that the adverse effects could be avoided, remedied or mitigated to an acceptable level*".<sup>42</sup>
241. Mr Watson has recommended that "*further information be provided in respect of the management of effects on oystercatchers*"<sup>43</sup>. He considers that "*there may be a pathway to work through these critical matters and subject to a satisfactory outcome...*"<sup>44</sup>.
242. I conclude from the outcome of the section 42A report that the outstanding key issue is the management of oystercatchers for the Project. **Dr Cockrem** in his evidence has outlined the significant amount of further work undertaken in identifying protection areas over the past two months preceding the hearing. He has also proposed restrictions relating to the oystercatcher breeding season, dog control and pest management, as outlined in his evidence and covered by conditions.
243. In my opinion the additional measures proposed by **Dr Cockrem** in his evidence address the outstanding concerns on oystercatchers raised in the section 42A report (and I have assessed the relevant planning documents in detail in my evidence above). I consider that this provides the "pathway" to

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<sup>40</sup> p138 of s42 report

<sup>41</sup> p138 of s42 report

<sup>42</sup> p151 of s42 report

<sup>43</sup> p142 of s42 report

<sup>44</sup> p151 of s42 report

the Project being consistent with the avoidance policies of the PNRP and the NZCPS and, overall, relying on HCC's experts, the effects will be no more than minor.

*Points of clarification*

244. Mr Watson requested confirmation of the configuration of the Shared Path in terms of lengths of the path at the respective path widths.<sup>45</sup> I can confirm that the majority of the Shared Path (83 %, or 3.65km) is the full 3.5m width, and a limited length (17% , or 0.75km) is the reduced 2.5m width as outlined in the design evidence presented by **Mr Povall**.
245. The total area subject to habitat enhancement is identified as being 21,900 m<sup>2</sup> <sup>46</sup>. This amount has been increased to 22,100m<sup>2</sup> to include an oystercatcher protection area. This is addressed in the evidence of **Dr Cockrem**.

**Recommended Conditions**

246. I note that a number of modifications and additions have been made to the draft conditions proposed in the AEE and updated in Memorandum 6. In general terms these are acceptable, and where they are not acceptable, they will be addressed by the relevant experts in their evidence and through comment 'bubbles' in the attached conditions. I am happy to discuss these at the hearing.
247. I have carefully considered the amendments to the proposed conditions recommended in the section 42A reports (and the comments on them in HCC's evidence). I have amended the proposed conditions as set out in **Appendix A** as I consider appropriate in response. Where they are not acceptable, they are addressed by the relevant HCC experts in their evidence and through comment 'bubbles' in the attached conditions.

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<sup>45</sup> p6 of the s42 report

<sup>46</sup> p53 of s42 report

### **Hutt City Council section 42A report**

248. I have thoroughly read through the section 42A report and its attachments and note that it recommends that land use consent is granted subject to suitable conditions of consent being imposed. In general terms these conditions are acceptable, and where they are not acceptable, they are addressed by the relevant HCC experts in their evidence and through comment 'bubbles' in the attached conditions. Again, I have amended the proposed conditions as set out in **Appendix A** as I consider appropriate in response.

**Caroline Ann van Halderen**

**30 November 2020**

**APPENDIX A: CONDITIONS (ATTACHED SEPERATELY)**

## APPENDIX B: FIGURES 1 AND 2

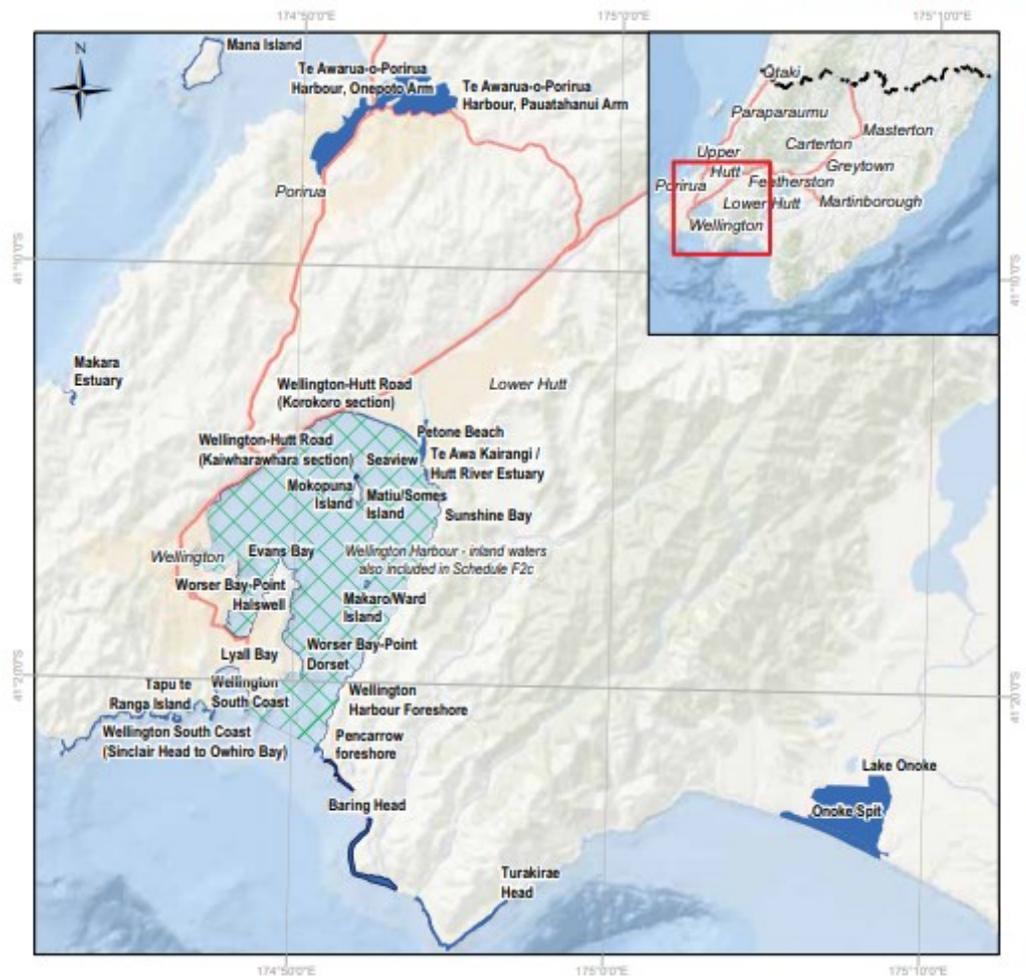
Figure 1: Schedule F2c of the Proposed Natural Resources Plan (Decisions Version)

Schedule F2c: <u>Significant Habitats</u> for indigenous birds in the coastal marine area				
Habitat extent	NZTM 2000 Northings	NZTM 2000 Eastings	Description	Critical periods
Waikanae Estuary	5473284	1768804	<p>At least twelve threatened or at risk species are known to be resident or regular visitors to this site: banded dotterel, NI fernbird, NZ dabchick, SI pied oystercatcher, variable oystercatcher, bar-tailed godwit, pied stilt, black shag, pied shag, red-billed gull, white-fronted tern and Caspian tern.</p> <p>This site is one of only two sites in the Wellington Region to support a breeding population of NI fernbird, comprising at least 50% of the regional population of this species.</p> <p>The Waikanae Estuary is one of only a handful of relatively large estuaries in the Wellington Region and is therefore a regionally important stop-over site for several migrant shorebird species such as NZ pied oystercatcher and bar-tailed godwit.</p>	All year round important summer site for Arctic-breeding shorebirds; important winter site for NZ-breeding shorebirds; year-round habitat for NI fernbird.
Waitohu Stream mouth	5489272	1779143	Five threatened or at risk species are known to be resident or regular visitors to this site: red-billed gull, variable oystercatcher, banded dotterel, pied stilt and caspian tern.	None
Wellington south coast (Sinclair Head/Te Rimurapa to Owhiro Bay)	5421200	1748110	Five threatened or at risk species are known to be resident or regular visitors to this site: black shag, variable oystercatcher, red-billed gull, white-fronted tern and NZ pipit.	None
Wellington Harbour (Port Nicholson) foreshore; Pencarrow sewer outfall to Burdan's Gate	5419043	1756400	<p>Seven threatened or at risk indigenous bird species are known to be resident or regular visitors to this habitat: banded dotterel, variable oystercatcher, red-billed gull, pied shag, black shag, little black shag and NZ pipit.</p> <p>This habitat is one of less than half a dozen along the south Wellington coastline that supports a coastal breeding population of banded dotterels.</p>	1 August – 1 February Banded dotterel breeding
Wellington Harbour (Port Nicholson) foreshore; northern end of Day's Bay to Point Howard	5430275	1759779	Five threatened or at risk indigenous bird species are known to be resident or regular visitors to this habitat: variable oystercatcher, red-billed gull, black shag, little black shag and pied shag.	None

Schedule F2c: Significant Habitats for indigenous birds in the coastal marine area				
Habitat extent	NZTM 2000 Northings	NZTM 2000 Eastings	Description	Critical periods
Wellington Harbour (Port Nicholson) foreshore; Worsler Bay boat club to Point Dorset	5423790	1753504	Four threatened or at risk indigenous bird species are known to be resident or regular visitors to this habitat: variable oystercatcher, red-billed gull, pied shag, and white-fronted tern.	None
Wellington Harbour (Port Nicholson) foreshore; Palmer Head to Lyall Bay	5421979	1750808	Four threatened or at risk indigenous bird species are known to be resident or regular visitors to this habitat: little penguin, red-billed gull, variable oystercatcher and white-fronted tern.	None
Wellington Harbour (Port Nicholson) foreshore; Te Raekaihau Point to Ohiro Bay road end	5421200	1748110	Five threatened or at risk indigenous bird species are known to be resident or regular visitors to this habitat: red-billed gull, reef heron, variable oystercatcher, black shag, white-fronted tern.	None
Wellington Harbour (Port Nicholson) – inland waters	5428317	1754912	<p>Five threatened or at risk species are known to be resident or regular visitors to Wellington Harbour (Port Nicholson): little penguin, fluttering shearwater red-billed gull, caspian tern &amp; white-fronted tern.</p> <p>The harbour provides foraging habitat for the majority of the regional population of spotted shags.</p> <p>Large numbers (up to several thousand) fluttering shearwaters enter the harbour during winter months to rest and feed, at times comprising a large, but unknown proportion of the Cook Strait population of this species.</p> <p>Wellington Harbour (Port Nicholson) provides foraging habitat and access for little penguins to several large, secure nesting colonies on Matiu/Somes, Mokopuna and Makaro/Ward Islands.</p> <p>Indigenous diadromous fish migrating to and from the rivers draining to the harbour pass through the harbour during their migration. The Kaiwharawhara Stream, the Korokoro Stream, Te Awa Kairangi/Hutt River and their tributaries are recognised for their migratory indigenous fish values (Schedule F1).</p>	<p>All year round</p> <p>Year-round foraging habitat for spotted shags</p> <p>Winter</p> <p>Important winter habitat for fluttering shearwaters</p> <p>1 July – 1 March</p> <p>Little penguin breeding</p>

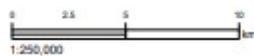
# Significant habitats for indigenous birds in the coastal marine area (Schedule F2c) - Wellington Harbour

Map 18-Insert 18.i



This version of the map is not complete. The version of this map available online through the online web map viewer shows the complete, detailed information on a GIS overlay that is not shown on this hard copy. The online version is available on the Council's website at <https://mapping.gw.govt.nz/gwrc/> (select theme [Proposed Natural Resources Plan 2045](#)) and can be accessed from the Council offices or public library.

- State Highway
- Significant habitat for indigenous birds in the CMA
- Region boundary line
- ✕ Wellington Harbour - inland waters also included in Schedule F2c



Basemap: World Oceans Base  
Projection: NZTM 2000

  
**greater WELLINGTON**  
 REGIONAL COUNCIL  
 Te Pahi Māhau Te Aho

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 NaturalVue, NINA, Esri, DeLorme, NaturalVue  
 Topographic and Cadastral: LINZ & CoreLogic Ltd

**Figure 2: Schedule F5 of the Proposed Natural Resources Plan (Decisions Version)**

Schedule F5: Habitats with significant indigenous biodiversity values in the coastal marine area		
Habitat	General descriptor	Known locations
Saltmarsh	<p>A variety of saltmarsh species (scrub, sedge, tussock, grass, reed and herb fields) grow in the upper margins of most NZ estuaries where this vegetation stabilises sediments transported by tidal flows. Saltmarshes have high biodiversity and are amongst the most productive habitats on earth.</p> <p>Saltmarshes are sensitive to a large range of pressures, including reclamation, margin development, flow regulation, grazing, sea level rise, wastewater contaminants and weed invasion.</p>	<p>Saltmarsh occurs at the margins of estuaries region wide, though the historical extent and quality of saltmarsh has been severely depleted in most estuaries.</p>
Seagrass	<p>Seagrass grows in soft sediments in NZ estuaries where its presence enhances estuarine biodiversity. Seagrass is highly valued ecologically for the ecosystem services it supports, such as, primary production, nutrient recycling, sediment stabilisation, and as a nursery for fish and invertebrates. Seagrass is also an important forerunner to the establishment of healthy saltmarsh on tidal flats.</p> <p>Though tolerant of a wide range of conditions, seagrass is vulnerable to high levels of suspended sediments, <a href="#">high levels of nitrogen</a>, and poor sediment quality.</p>	<p>The largest seagrass beds in the region are in Pauatahanui inlet, Te Awarua-o-Porirua Harbour. Seagrass occurs as small remnant beds in many other estuaries region wide.</p>
Seal haul-outs	<p>Seals need to come onto land to rest and breed. While they may be above mean high water springs for some of the time, they need unencumbered access to the foreshore and water.</p> <p>Seals are particularly sensitive to disturbance during the breeding season (mid November to mid-January), but will be disturbed by loud noises, construction activity and vehicles at all times when they are ashore.</p>	<p>Known seal haul outs in the region include Pariwhero/Red Rocks, Turakirae Head and Cape Palliser</p>
Sponge garden	<p>Sponges are sedentary, filter feeding metazoans that can encrust hard surfaces, or anchor themselves in mud, sand, or gravel. Hotspots of species diversity, density, richness, or endemism are known as sponge gardens.</p> <p>Sponge gardens create three-dimensional biogenic habitat for associated flora and fauna.</p>	<p>Pukerua Bay</p>
Subtidal rocky reefs	<p>Subtidal rocky reefs generally have high levels of species richness because of the large number of microhabitats. This richness is frequently augmented by biogenic 3-dimensional habitats created by reef species as well as high levels of biotic interaction.</p>	<p>Subtidal rocky reefs occur along the majority of coast in the Wellington region. Notable exceptions are the sandy beaches north of Paekakariki and in Palliser Bay.</p>