

**IN THE MATTER OF: Application for
Resource Consent for the Eastern Bays
Shared Path (WGN190301).**

STATEMENT OF EVIDENCE

Shannon John Watson

1. My name is Shannon Watson and I have been working as a consultant environmental planner at GHD since September 2019. Prior to that I worked at Greater Wellington Regional Council (GWRC) as a Resource Advisor in the Roads of National Significance Team and the Earthworks and Coastal Team for a total of 3.5 years. I have also worked as an environmental planner at Kaipara District Council for 18 months. In total I have 6 years of experience as an environmental planner.
2. I was with GWRC when the application was lodged and have been asked by GWRC to complete the consideration of the project on a secondment basis. I am an intermediate member of the New Zealand Planning Institute.
3. I have been involved in this project since early 2018 where I attended multiple site visits with Ms van Halderen and members of the project team and provided advice during pre-lodgement discussions.
4. I have read and am familiar with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014. I agree to comply with that Code. Other than where I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express
5. This statement is a summary of the findings of my s42A officer's report and addendum to my s42A report dated 8 December 2020; and also responds in part to submissions heard and the evidence presented by the Applicant at the hearing on 15 and 16 December 2020.

Points of clarification

6. I wish to clarify that my s42A addendum was only responding to the additional protection area proposed by the Applicant reflected in the email of Ms Bennett on 18 November 2020 and Dr Uys' responses to the inclusion of the protection area. I did not

address the evidence of Dr Cockrem or Dr Uys' comments in relation to the broader evidence of Dr Cockrem.

7. I also wish to clarify that my use of the word 'entirely' as alluded to in the Applicant's legal submissions was not adding an additional test to the consideration of the proposal. It was intended to reflect that the proposal is consistent with the relevant provisions in relation to some threatened and at risk biodiversity including seagrass and little penguins however not all biodiversity due to the effects on oystercatchers.
8. There are significant positive effects including benefits to health and safety, economic development opportunities, tourism, recreation opportunities, reduction in congestion and emissions and resilience against climate change and sea level rise.
9. I have drawn the conclusion that the majority of adverse effects on the environment can be appropriately mitigated through consent conditions to a point where they are no more than minor or acceptable.
10. At the time of my s42A based on the advice of Dr Uys I held concerns about the potential for effects on oystercatchers to be more than minor and therefore recommended further information be provided from the Applicant in relation to both quantifying and the management of these effects. This was predicated by Dr Uys opinion that that Applicant had not appropriately quantified all of the effects of the project effects to a level where a more certain conclusion could be drawn on the magnitude of the effect.
11. I also acknowledge that the mitigation and management of effects on natural character were to be formalised post-consent, meaning no determination on the level of effects on natural character could be made. However recommended conditions based on expert advice endeavoured to ensure that the outcomes for natural character were likely to be acceptable and I considered this was a reasonable conclusion.

Response to Applicant's evidence

12. The evidence of Dr Allis described that no new areas of seawalls are required. This conflicts with my understanding based on the information presented in the application that pre-construction the proposal will contain 87% seawalls and post construction seawalls will exist across 93% of the project.
13. In Paragraph 111-118 of her evidence Ms McMurtrie identifies conditions recommended in the s42A report and has undertaken an assessment of whether or not these conditions are supported. I comment on these below where I disagree with Ms McMurtrie and/or the proposed conditions of the Applicant.

- Ms McMurtrie agrees that salvage of fish should be supervised by a suitably qualified and experienced person. This has not been reflected in the evidence of Ms van Halderen which only requires initial training and guidance from a qualified ecologist.
- Ms McMurtrie expressed concern about the practicalities of determining whether the water clarity measured outside any 'mixing zone' is a result of any discharge from the site or other sources re-suspended as a result of wind and tides and that it would be similarly difficult to determine whether any films/scums have come from project construction or from boats or other sources. Ms McMurtrie's evidence only appears to respond to concerns about suspended sediment whereas other contaminants associated with the construction process also have the potential to be discharged. The condition in my s42A report seeks to ensure that the effects of all potential contaminant discharges were captured, and is consistent with the requirements of s107 of the RMA. If the Project is confident that avoidance mitigation measures as proposed will ensure that discharges associated with construction can meet the requirements of s107 then this condition should not be of concern. I do not support the removal of this condition.
- Ms McMurtrie comments that setting a limit of 100 g/m³ for suspended sediment in any discharge to the CMA (or stormwater network) would be a more practical option than a reasonable mixing zone condition and is better able to be monitored by the contractor and addressed if there is an issue. I consider both the discharge limit and the reasonable mixing zone condition are required to cover all potential contaminants and not just sediment and sediment laden water.

Seagrass

14. I would like to acknowledge that my understanding of the effects of the proposal on seagrass has changed in response to evidence presented at the hearing. Based on the Applicant's Memorandum 2 and 3 I was of the understanding that all direct effects on seagrass (including deposition) would be avoided and that the only effects on seagrass would be from potential sedimentation effects due to increased turbidity as a result of construction. This also comes back to commissioner Schofield's comments yesterday regarding R205 of the PNRP and why this had not been considered.
15. Evidence presented has indicated that approximately 7m² of seagrass could be lost to deposition as a result of the beach nourishment material translocating seaward and impacting the seagrass beds which I had not previously understood. I therefore wish to change my consideration of effects on seagrass from being less than minor to no more than minor in response to the evidence presented by Dr Oliver and Dr Dawe. I

note that I still consider that effects on seagrass are still consistent with the avoid direction of the PNRP and Policy 11 of the NZCPS.

Policy P29

16. In relation to P29 I wish to confirm that particular regard has been had for the potential for climate change to threaten indigenous biodiversity. I consider that this policy requires potential regard to be given for the effects of climate change and for the need to consider or provide for ecological resilience when designing development and that this has been recognised throughout my s42A report. I do not consider that this policy is intended to be interpreted in the manner in which the Applicant's counsel has proffered. Effects of development do not have less significance or less 'weight' when considering the magnitude or scale of effects because the area subject to development may be lost in future. The effects are required to be assessed against the environment as it is now not what it may be in the future which is not able to be quantified or determined with any certainty.

Meaning of avoid

17. I wish to clarify that my consideration of avoid has been through the lens of no more than minor effects. That is to say it is my understanding that avoid in the context of Policy 11 of the NZCPS and Policy P39A of the PNRP does not mean avoid all effects. My approach to consideration of the application has been that minor (or no more than minor) effects would be consistent with the avoid direction of both the higher and lower order planning documents.
18. I also wish to clarify that Dr Uys is aware of the planning context around 'no net loss' being that in the RMA context there is no strict requirement to achieve 'no net loss' when considering the level of effects and that some loss can be considered acceptable (or minor in RMA context).

Parallel assessment

19. I have assessed the RCP as a discretionary activity (without the gateway) under s104. I note this is in contrast to the approach taken by the Applicant where the regional plans have been bundled together into a non-complying activity status. The legal submissions of the Applicant identify that it is not enough for the proposal to be inconsistent with the relevant provisions of the RCP they must be contrary. I consider the tests are different, the RCP is not assessed under the lens of the gateway test so the proposal does not need to be contrary to the RCP direction.

20. In my s42A I was unable to reach a conclusion where granting under the RCP could be recommended because of the potential for the effects to be more than minor. As a result the proposal could not be considered consistent with the direction of Policy 11 of the NZCPS, or the directive lower order provisions of the RPS which gives effect to the NZCPS, or what I consider to be directive provisions of the RCP which are aligned (but do not give effect given the NZCPS came after the RCP) with Policy 11 of the NZCPS, all of which seek to protect Threatened and At Risk species and their habitats through avoidance of adverse effects. Having regard to Part 2 I considered the enabling aspects of the definition of sustainable management however my understanding is that King Salmon has determined that these enabling factors must be achieved at the same time as the bottom lines, particularly relevant in this case is the safeguarding of ecosystems. Because of concern about the ability to assess the magnitude of effects I did not consider the proposal could be justified through reference to Part 2 on the basis of its significant positive effects when the proposal may fail to safeguard the lifesupporting capacity of oystercatchers and their ecosystem.
21. Under the PNRP the application is considered a non-complying activity which means the project must meet the gateway test, being effects no more than minor or not contrary to the objectives and policies of the plan. Because effects on oystercatchers were potentially more than minor the proposal could be contrary to the directive avoid provisions of the PNRP, which mirror that of Policy 11 of the NZCPS, and therefore neither limb of the gateway test could be met.
22. A weighting assessment was not undertaken because the conclusions reached under the RCP and the PNRP were the same being that further information was required. In the event a weighting assessment had been required, notwithstanding the PNRP is under appeal to the Environment Court, I consider the PNRP would have held more 'weight' because:
- It is considered to have been competently prepared having been through a robust consideration process
 - The PNRP implements a coherent pattern of integrated objectives and policies
 - Does not consist of incomplete coverage (the RCP was operative before the NZCPS and therefore does not give effect to the provisions of the NZCPS in the same way the PNRP does)

Oystercatchers

23. Since my s42A report a number of additional measures to manage effects on oystercatchers have been proposed by the Applicant as presented in the evidence and rebuttal evidence of Dr Cockrem and Ms van Halderen. I will not repeat these here.
24. Dr Cockrem considers the net adverse effects of the project on oystercatchers, when all of the additional measures to manage effects of loss of habitat are taken into account, are likely to be less than minor.
25. On the advice of Dr Uys I am concerned about the lack of certainty in the implementation of some of the mitigation measures proposed and certainty as to their effectiveness as foraging and breeding habitat for oystercatchers given the protection areas will not extend to the lower foreshore where oystercatchers are likely to feed. Namely, the dog exclusion processes fall outside of the RMA and there is no certainty that this mitigation can or will be implemented and the importance of this issue in addressing the effects. I also have difficulty seeing a post-construction survey as mitigating the actual effects of the construction of the shared path.
26. Dr Uys has reached the conclusion that effects on oystercatchers can be considered minor on the basis that following mitigation measures are recommended:
 - Extension of the protection area at Bishops Park
 - Effective dog control
 - Ongoing litter and pest management
 - Appropriate signage and education and compliance with that signage
 - Addition of screening between feeding and roosting habitat and the shared path if, and where practicable.
27. I acknowledge that there will always be an element of uncertainty in the proposal because it is impossible to control both human and animal behaviour. However, subject to conditions that provide a high level of certainty that a successful outcome in relation to oystercatchers will be achieved, I accept the conclusions of Dr Uys, that oystercatchers may experience a loss of habitat but that this can be avoided, mitigated or remedied to a level where I consider the adverse effects can be considered minor and therefore acceptable.

Conditions where the Applicant and I are in disagreement

28. I have considered the revised conditions proposed by the Applicant and respond to these below. I consider that further refinement of these conditions is required and I

welcome to continue to work with the Applicant to reach agreement on as many of these conditions as practicable to the extent that this would assist the commissioners.

- 28.1 Noting that consents for breaching construction noise standards have not been sought I am concerned about the provision of such site-specific provisions being included in the CEMP. However, if 'scope' is not considered a material issue to the commissioners I consider the provision of a Construction Noise Management Plan (and consequential changes to conditions requiring appropriate certification processes) to ensure that the best practicable option with regard to construction noise is implemented and maintained at all times is an appropriate response.
- 28.2 The removal of the requirement for a landscape architect to be involved in the selection of revetment rock is not supported. I consider that involvement of a landscape architect in the selection of revetment rock will serve a useful purpose in minimising impacts on natural character in the event more than one suitable rock source is identified. I consider an amendment which explains the circumstances in which a landscape architect may be relevant would be a suitable compromise.
- 28.3 I do not support Ms van Halderen's condition related to maintenance as this only focuses on the structures and not potential effects on the coastal environment as a result of the presence of the structures. The recommended consent condition in my s42A report sought to ensure that any unintended or unforeseen consequences of the project works in relation to instability, erosion or scour on the coastal environment attributed to the project remain the responsibility of the consent holder and can be remedied as soon as is practicable. However, I support an amendment to make it clear that it is not all structures but only seawalls and structures that require occupation of the CMA that fall within the ambit of the condition.
- 28.4 I support the addition of the proposed condition requiring the commissioning of a study to assess the effects of the Project on oystercatchers as I agree that this will be a valuable exercise. However, I question the merits of this condition as a mitigation measure as proffered.
- 28.5 I do not support the removal of my recommended condition requiring inclusion of a Pest Management Plan which included minimum requirements for what the pest management should include. I consider that this condition shall remain

in place unless the Applicant can provide suitable parameters or guidance as to the use of the \$60,000 for pest management.

- 28.6 I consider that given the significance and sensitivity of seagrass that any monitoring of the effects of the project in relation to seagrass is required to be undertaken by a suitably qualified ecologist.
- 28.7 Having regard for the limited options to monitor passage in intertidal locations and on the basis that the culvert structures are not being replaced only extended the revised conditions proposed by Dr James are supported. I also support the revised distance of 10 m (rather than 20 m) between beach nourishment material and culvert outlets.
- 28.8 Direction in the condition requiring the BNP to be prepared in consultation with a suitably qualified ecologist would my address concerns about the beach nourishment methodology and potential effects on benthic fauna as a result of smothering and crushing during initial placement.
- 28.9 I do not support the inclusion of the 'hierarchy' in the LUDP/BSUDP for the reasons expressed by Mr Head and Ms Hamilton and Ms Fiona Christeller in her submission. As commissioners have already heard the hierarchy results in risks that the respective elements or factors will not be considered equitably and may give rise to 'weighting' which may result in adverse outcomes from a design perspective.
- 28.10 I recommend the inclusion of an advice note in LV.3 directing that the LUDP be prepared with regard to the requirements of NZS 4121 Design for Access and Mobility – Buildings and Associated Facilities to capture the intent of the previously recommended condition. .
- 28.11 Addition of conditions related to the Mana Whenua Steering Group – I support the addition of these conditions.

Additional minor amendments to conditions

29. Amendment to Condition LV.4 - I recommend that the LUDP be required to reflect all relevant management plans as I consider there are management plans outside of the SRHP that are also relevant.
30. Upon reflection of the evidence presented during the hearing I agree that the conditions around the LPMP and the HEP related to monitoring and management could be revised to provide more certainty that an acceptable outcome for penguins and shorebirds will be achieved. Although the HEP will be tied to the reclamation consent

and will endure in perpetuity, for clarity I consider the parameters highlighted in the HEP also need to reflect that maintenance of the HEP will endure in perpetuity I also consider that further provision for monitoring is required and clarity and certainty surrounding the duration of monitoring be provided.

Natural character

31. I agree the GC.5 suite of consent conditions should require certification or reference to include a suitably qualified and experienced reviewer to be involved in the review of all management plans

Conclusion

32. I still contend with the conclusions in my s42A report, being that provided there is a satisfactory outcome with respect to the management of effects on oystercatchers, the being that 'no more than minor' adverse effects can be achieved, the proposal would be generally consistent with the direction in the relevant statutory planning documents, and the proposal would promote the sustainable management of natural and physical resources in accordance with the purpose of the Act. Although there are a number of adverse effects on the environment, with resolution of effects on oystercatchers, I consider that the benefits would outweigh the adverse effects and that the adverse effects could be avoided, remedied or mitigated to an acceptable level.