

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

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

AND

IN THE MATTER Resource consent application by Hutt City Council
under section 88 of the Act for the Eastern
Bays Shared Path Project

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

AND Hutt City Council Transport Department (Applicant)

Response to Minute 2 of the Hearing Panel

On behalf of Greater Wellington Regional Council (GWRC)

Shannon John Watson

23 December 2020

BACKGROUND

- 1 The Independent Hearing Panel issued Minute 2 on 18 December 2020.
- 2 Minute 2 required responses from the reporting officers on identified matters by Wednesday 23 December 2020.
- 3 Of relevance to this memorandum, paragraphs 10 and 11 of Minute 2 requested the following:
 10. *Mr Watson (GWRC), drawing on the evidence of Dr Oliver, is to provide clarification regarding the PNRP deposition rule (R205): in particular, is deposition limited to deliberate / direct actions, as opposed to an indirect outcome arising over time from natural processes?*
 11. *Mr Watson will also provide advice on how the mitigation recommended by Dr Uys could be applied as resource consent conditions, providing certainty, targets and monitoring against targets, and measures of success. This includes some definition of Dr Uys' recommended extension of the proposed protection areas.*
- 4 This memorandum responds to those matters requiring a response by 23 December 2020 as outlined above.
- 5 Other matters related to GWRC identified in Minute 2 will be addressed separately before 21 January 2021 as required by Minute 2.

DEPOSITION

- 6 I have considered the question raised by the commissioners related to consideration of Rule R205 of the Proposed Natural Resources Plan (PNRP) as notified in July 2015.
- 7 Upon review of the PNRP (2015) I consider that rule R205 is not the most appropriate rule for consideration of deposition inside sites of significance. I consider R209 is the most relevant rule because this specifically provides for deposition inside a site of significance, whereas Rule R205 provides for destruction, damage or disturbance inside sites of significance and associated deposition.
- 8 As there is a rule that specifically provides for deposition inside sites of significance, being Rule R209, this is the most relevant rule. Rule R209 is described in full below (my emphasis added):

*Rule R209: Deposition **inside** sites of significance – non-complying activity*

*Deposition **inside** sites and habitats identified in Schedule C (mana whenua), Schedule E4 (archaeological sites), Schedule F4 (coastal sites), Schedule F5 (coastal habitats) or Schedule J (geological features) in, on or under the coastal marine area, including any associated:*

- (a) disturbance of the foreshore or seabed, and*
- (b) discharge of contaminants*

that is not a permitted activity under Rule R206 or a controlled activity under Rule R207 or a discretionary activity under Rule R208, is a non-complying activity.

- 9 In my view, resource consent is not required under Rule R209 because the deposition activity is not occurring **inside** the site of significance (being the seagrass beds). The wording in the rule (and relevant policies which are associated with deposition in sites of significance) use the term 'inside'. In my view, this means that the deposition activity itself must occur **inside** the site of significance to trigger this rule.
- 10 In response to the commissioners' question, I consider deposition in the context of R209 is limited to deliberate / direct actions **inside** the site of significance and not an indirect outcome arising over time from natural processes.
- 11 If the rule were to apply to activities outside of the site of significance but which may result in deposition of material inside a site of significance at some indeterminate time in future then it would potentially capture a wide range of activities, some of which may not even occur within the CMA, which as a result of waves and tides or other natural processes could transport material inside a site of significance. I do not consider that this was the intent of the rule.
- 12 My assessment of the relevant rules in relation to the beach nourishment on Page 30 of my s42A report reflects consideration against Rule R208 because the deposition activity is not taking place **inside** the site of significance.
- 13 For completeness although assessment of deposition inside a site of significance is not relevant to the rules assessment, Dr Oliver has confirmed potential effects of deposition on the seagrass beds was assessed during her consideration of the application and has been reflected in her comments on the application attached as Appendix I of my s42A report.
- 14 Dr Oliver has also considered the supplementary evidence provided by Ms Fleur Matheson related specifically to deposition and potential effects of deposition on the seagrass beds tabled on Day 3 of the hearing, after Dr Oliver had presented to the hearings panel.
- 15 Dr Oliver has provided an updated response after reviewing the supplementary evidence from Ms Matheson to assist the commissioners. I attach the email response of Dr Oliver as **Appendix A** of this memorandum.

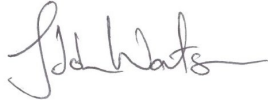
RECOMMENDED AVIFAUNA MITIGATION AS CONDITIONS

- 16 I have considered the comments of the commissioners seeking advice on how the mitigation measures described in the evidence of Dr Uys presented on Day 3 of the hearing could be applied as resource consent conditions.
- 17 I have worked with Ms van Halderen and the applicant's legal counsel to draft a set of conditions to reflect my understanding of the recommendations of Dr Uys. As a result of the relevant avifauna expert's Dr Uys (for GWRC) or Dr Cockrem (for the applicant) being unavailable since the adjournment of the hearing on December 17, these conditions have not been subject to review by the respective avifauna experts. The revised avifauna management conditions are attached as **Appendix B** to this memorandum and include revised indicative protection area extents and the addition of the new protection area south of Bishops Park.
- 18 The conditions presented at the hearing relating to Little Penguins and Shoreline Foragers have been reworked and streamlined to serve as a more integrated suite of conditions. The former Habitat Enhancement Plans (HEP), Little Penguin Management Plan (LPMP) and Shoreline Forager nesting and construction conditions have been amalgamated into one all-encompassing Bird Protection Plan (BPP).

- 19 In response to concerns about the uncertainty surrounding the delivery of the dog exclusion measures at Sorrento Bay and Rona Bay (Bishops Park) additional measures to ensure an appropriate level of mitigation is achieved, have been included. In summary, should dog exclusion not be able to be delivered the applicant has proposed to:
- (i) Review the fencing options for the Bishops Park and the Sorrento Bay protection areas; and
 - (ii) Provide an additional protection area to the south of the Bishops Park protection area
 - (iii) Investigate alternative dog control measures that may be available and the details of any enforcement or compliance measures that may be implemented, and report back to the Manager, Environmental Regulation, Wellington Regional Council and Manager, Regulatory Services, Hutt City Council.
- 20 The additional protection area south of Bishops Park was agreed in principle between the applicant and Dr Uys as a 'fall-back' option that could address the concerns surrounding lack of certainty in the dog exclusion processes.
- 21 Additional changes to provide more certainty that an acceptable outcome for Little Penguins and Shoreline Foragers will be achieved include (in summary):
- (i) The inclusion of a purpose description and objectives for the BPP, requiring the applicant to maintain or enhance availability of habitat for Little Penguin and Shoreline Foragers comparative to that existing pre-construction
 - (ii) The BPP requires a description of measures, and implementation of those measures, to ensure the protection areas are appropriately managed and maintained to maximise opportunities for habitation by Little Penguins and Shoreline Foragers for the duration of the consents
 - (iii) The Little Penguin protocol requires a description of how any Little Penguins encountered during construction works will be managed (if required) in accordance with best practice
 - (iv) Inclusion of a Pest Management Strategy which includes parameters as to what the \$60,000 allocated to pest control will be spent on and a reporting loop to feed the results of the pest management back to GWRC
 - (v) The identification of high value feeding and roosting habitat and the provision of screening between the Shared Path and these areas where practicable
 - (vi) The requirement for maintenance and monitoring detail to be provided for any planting to be established around the Little Penguin nesting opportunities in the protection areas
 - (vii) The requirement to provide nesting opportunities for Shoreline Foragers where suitable
 - (viii) The requirement to consider the presence of herpetofauna and maintaining areas of skink habitat within the Bishops Park protection area
 - (ix) Specific timeframes on the delivery of the mitigation measures (fencing, signage, pest control, nesting and roosting opportunities) proposed in each protection area.
- 22 Measures of success and targets, and associated monitoring against such targets, is problematic to include as conditions of consent as it is impossible to predict or control human or animal behaviour or other external factors which may impact the success of the mitigation

measures. For example, marine temperatures may impact penguin numbers within Wellington Harbour and if there was a specific target on the number of nesting opportunities that need to be occupied, these targets might not be met because of the lower number of penguins.

- 23 It would also be difficult to tie a failure to meet any quantified targets or measures of success back to the construction or use of the Shared Path given the dynamic environment and the number of external factors outside of the applicant's control which may affect bird behaviour.
- 24 For these reasons' quantifiable targets or measures of success have not been proposed at this time.
- 25 The focus of the conditions has therefore been on:
- a) Ensuring that the design of the mitigation measures is optimised to maximise the opportunities for habitation by avifauna and to ensure the mitigation is maintained and managed at this level for the duration of the consents
 - b) Encouraging behaviour change by increasing the awareness of the risks and pressures facing Little Penguins and Shoreline Foragers through signage and education
 - c) Pest management to reduce the risks and pressures on the Little Penguin and Shoreline Forager populations within the Project Area.
- 26 A workshop will be set-up in early 2021 to work through the attached conditions with Dr Uys and Dr Cockrem. The outcomes of this workshop will be reflected in the conditions presented to the commissioners required before 21 January 2021.



Shannon Watson

23 December 2020

Appendix A: Dr Megan Oliver email commentary on deposition

From: [Megan Oliver](#)
To: [Shannon Watson](#)
Cc: [Anna McLellan](#)
Subject: RE: Seagrass and potential effects of deposition
Date: Tuesday, 22 December 2020 1:35:41 PM
Attachments: [image006.png](#)
[image007.png](#)
[image008.png](#)
[image009.png](#)
[image010.png](#)
[image011.png](#)

Kia ora Shannon

I have read the supplementary evidence statement from Fleur Matheson regarding potential effects on seagrass, and agree with her assessment that, assuming all conditions and changes highlighted in points 18 (a-d) are upheld, the projects impact on the seagrass meadows should be no more than minor.

I would also like to confirm that I have considered the potential effects of deposition by beach nourishment material on the seagrass meadows and conclude, based on evidence provided by Drs Matheson, Allis and Reinen-Hamill, and the large grain size of the material, that deposition is unlikely to be an issue for the seagrass meadows. The large grain size of the beach nourishment material might be expected to roll, with wave action, into areas adjacent to the meadows, possibly nestling in at the eastern edges of the perched meadows, rather than be resuspended and carried over the meadows to be deposited. If the grain size of the sand particles is similar to that already entrained in the seagrass meadows, the addition of sand at the edges has the potential to provide more habitat for the seagrass to 'bed into', assuming all other environmental conditions are favourable for seagrass growth (temperature, clarity, etc).

And finally, I fully support your proposed approach to monitoring of the seagrass beds, including point (e). Nice work.

Megan

Dr Megan Oliver

Principal Science Advisor - Marine

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From: Shannon Watson <Shannon.Watson@ghd.com>

Sent: 22 December 2020 11:48

To: Megan Oliver <meoliver@doc.govt.nz>

Cc: Anna McLellan <Anna.McLellan@gw.govt.nz>

Subject: Seagrass and potential effects of deposition

Hi Megan

Thanks for the discussion. Attached is the supplementary evidence statement from Fleur Matheson regarding potential effects on seagrass which I believe was tabled after you presented your evidence on Day 3 which revised the beach nourishment methodology and grain size of the material to be used slightly. This can be found here: <https://www.gw.govt.nz/assets/Resource-Consents/Eastern-Bays-Shared-Path/Material-Presented-at-Hearing/Hearing-Doc-SP.44-HCC-Applicant-Fleur-Matheson-Supplementary-Statement-of-Evidence-17.12.2020.pdf>

Just needing you to confirm that you considered potential effects on seagrass as a result of deposition during your consideration of the application and to outline your understanding of the extent of deposition and what the effects of deposition may be and your conclusions on the magnitude of these actual or potential effects (putting in writing what we just discussed).

Below is the proposed approach to monitoring of seagrass beds. I have included (e) below recently as I was concerned there was no provision for remediation or a response to redress adverse effects in the event they occur. Interested to hear your thoughts on the monitoring conditions and whether or not there is anything further you would recommend?

- (c) *Avoid adverse effects on the seagrass beds at south Lowry Bay (as identified in Figure 3 of Appendix C2 of the AEE) from Construction Works and beach nourishment. Measures shall include, but not be limited to:*
 - (i) *Monitoring of seagrass beds in south Lowry Bay before and after Construction Works and beach nourishment to confirm that the beach nourishment works have not resulted in any net loss of seagrass extent and cover through unforeseen physical encroachment into the seagrass beds, increased turbidity or altered hydrodynamics;*
 - (ii) *The monitoring in (i) shall include mapping the perimeter of each seagrass bed and assessing the average plant cover within each bed immediately before works commence, immediately after works have been completed and 1 year after the completion of the beach nourishment works;*
 - (iii) *The results of the monitoring in (i) shall be provided to the Manager, Environmental Regulation, Wellington Regional Council within 1 month of completion;*
 - (iv) *A visual assessment near and around the seagrass beds following beach nourishment to ensure that the nourishment material is not smothering any part of the seagrass beds; and*
 - (v) *Ensuring that the seagrass beds are appropriately marked during Construction Works and beach nourishment to avoid any potential adverse effects. No construction works shall occur within 2m of the seagrass beds.*
- (d) *The monitoring in (c)(i) and (iv) above shall be undertaken by a suitably qualified and experienced person*
- (e) *If monitoring shows that adverse effects on seagrass are occurring (including but not limited to deposition) the Consent Holder shall engage a suitably qualified and experienced person to undertake an assessment of the actual and potential impacts and provide a description of available remedial actions and a programme for their implementation to the Manager, Environmental Regulation, for certification within an agreed timeframe and undertake any remediation actions as soon as practicable.*

Thanks so much for this.

Kind regards

SHANNON WATSON
Environmental Planner

GHD

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Appendix B: Revised avifauna conditions

Ecological Management (EM)

Ref	Condition
<i>Bird Protection</i>	
EM.1	<p>In order to avoid or minimise adverse effects of the Project on Little Penguins and Shoreline Foragers, the Consent Holder shall:</p> <ul style="list-style-type: none"> (a) Seek dog controls in accordance with Condition EM.2; (b) Prepare a Bird Protection Plan in accordance with Conditions EM.3 to EM.3C; (c) Undertake Construction Works in accordance with Conditions EM.4 to EM.4E; (d) Deliver pest management in accordance with Condition EM.5; (e) Deliver the protection areas in accordance with Conditions EM.6 to EM.6E; (f) Deliver rubbish and waste management in accordance with Condition EM.7; (g) Complete a study of variable oystercatchers (Condition EM.8); and (h) Complete a public education awareness programme for avifauna in accordance with Condition EM.9. <p>In relation to:</p> <ul style="list-style-type: none"> (i) pest management the Consent Holder shall provide up to a maximum of \$60,000 to be used to implement the measures set out in the Pest Management Strategy; (j) the protection areas in Conditions EM.6B – EM.6E the Consent Holder shall: <ul style="list-style-type: none"> (i) provide up to a maximum of \$300,000 to be used to establish the protection areas in accordance with the Bird Protection Plan; (ii) provide up to a maximum of \$6,000 per year for the duration of the consents for the ongoing management of the protection areas; (k) the Oystercatcher study in Condition EM.8 the Consent Holder shall provide up to a maximum of \$30,000; and (l) the public education programme in Condition EM.9 the Consent Holder shall provide up to a maximum of \$15,000. <p>All the sums above include GST.</p> <p>The Consent shall report to the Manager, Environmental Regulation, Wellington Regional Council and the Manager, Regulatory Services, Hutt City Council when the monies specified above have been allocated.</p> <p><i>Advice note: The handling of protected wildlife will require permits to be obtained from the Department of Conservation under the Wildlife Act 1953.</i></p>
<i>Dog control measures</i>	
EM.2	<p>The Consent Holder shall within twelve months of the commencement of consent initiate the required statutory process to exclude dogs from:</p> <ul style="list-style-type: none"> (a) the foreshore and beach area of Rona Bay abutting Bishops Park protection area and running for the same length, as shown indicatively in Appendix 1; and (b) the foreshore and beach area of Sorrento Bay from the southern end of the Sorrento Bay oystercatcher protection area and running to the northern end of the Oystercatcher managed works zone, as shown indicatively in Appendix 1. <p>Should the dog exclusions over the foreshore and beach areas outlined above not be successfully delivered the Consent holder shall:</p> <ul style="list-style-type: none"> (c) review the fencing options for the Bishops Park and the Sorrento Bay protection areas; and

Ref	Condition
	(d) identify, fence off with a rope or equivalent wire fence, and install signage at, the potential additional area south of Bishops Park as shown indicatively in Appendix 1 . (e) investigate alternative dog control measures that may be available and the details of any enforcement or compliance measures that may be implemented, and report back to the Manager, Environmental Regulation, Wellington Regional Council and Manager, Regulatory Services, Hutt City Council.
<i>Bird Protection Plan – preparation and certification</i>	
EM.3	The Consent Holder shall prepare a Bird Protection Plan (BPP) and submit this to the Manager, Environmental Regulation, Wellington Regional Council for certification in accordance with the requirements of Condition GC.5.
EM.3A	The purpose of the BPP shall be to as far as reasonably practicable avoid, but otherwise minimise, adverse effects on Little Penguins and Shoreline Foragers in the Project Area and adjacent areas (including existing revetment, the coastal edge running along the length of the Project Area, and the bird protection areas set out in Conditions EM.6 to EM.6E). The objectives of the BPP shall be to: (a) Maintain or enhance the level of habitat and species diversity post-construction of the Project comparative to that existing pre-construction. (b) Maintain or enhance habitat for Little Penguins and Shoreline Foragers along the Eastern Bays coast comparative to pre-construction of the Project.
EM.3B	The BPP shall be prepared by a suitably qualified and experienced ecologist in consultation with the Little Penguin Interest Group, Eastbourne Dunes Restoration Group and the Mana Whenua Steering Group.
EM.3C	The BPP shall include: <ul style="list-style-type: none"> (a) nesting and construction measures (Conditions EM.4 – EM.4D); (b) staff and contractor training requirements as necessary and reasonable; (c) suggested signage locations and content to be incorporated as appropriate within the BSUDPs under Condition LV.7; (d) opportunities to avoid or further minimise effects on Little Penguins and enhance Little Penguin habitat through detailed design (through linkage to the CEMP in Condition GC.8), including: (e) potential seawall design opportunities to restrict road access for Little Penguins; and (f) potential rock rip rap design opportunities to include key holes for Little Penguin nests; (g) a Pest Management Strategy (Condition EM.5); (h) the final boundary of, fence design for and details of the four bird protection areas to be established (Conditions EM.6 – EM.6E) and Appendix 1; (i) rubbish and waste management (Condition EM.7); (j) a framework for a public education programme for avifauna (Condition EM.9); (k) identification of important habitat for Shoreline Foragers including opportunities for screening or barriers at these areas as provided through Condition LV.7; and (l) a description of measures to ensure the protection areas are appropriately managed and maintained to maximise opportunities for habitation by Little Penguins and Shoreline Foragers for the duration of the consents.
<i>Bird Protection Plan – Nesting and construction measures</i>	
EM.4	Construction Works between 1 July and 31 January (the Little Penguin breeding period) shall not occur within 10m of any active burrows or nests identified in Condition EM.4A(a).

Ref	Condition
EM.4A	<p>The BPP shall address measures to minimise adverse effects on the Little Penguins during construction, including that:</p> <p>(a) Two Little Penguin detection dog surveys, or a detection method approved by a Little Penguin expert appointed by the Consent Holder, must be undertaken within a month prior to the Commencement of Construction in each bay. The purpose is to identify active Little Penguin burrows and nests within the construction area of each bay. No Construction Works shall occur in an area not surveyed in accordance with this provision; and</p> <p>(b) The GPS coordinates for all active burrows and nests identified in (a) must be recorded.</p>
EM.4B	<p>A protocol for managing construction effects on Little Penguins will be prepared to avoid direct effects on nesting and moulting Little Penguins. The protocol will describe how any Little Penguins encountered during construction works will be managed (if required) in accordance with best practice and include a description of measures to ensure that formerly active burrows and nests will not be reoccupied so that Constructions Works can proceed.</p>
EM.4C	<p>A programme for monitoring Little Penguins within or adjacent to the construction area during the Construction Works proportionate to the scale of the works in that area and the number of burrows and nests to determine whether any reasonably practicable steps can be undertaken by the Consent Holder during Construction Works to further reduce adverse effects.</p>
EM.4D	<p>Any outcomes from monitoring under Condition EM.4C shall be applied, as appropriate, to future Construction Works by revising the BPP so that over time processes and responses to minimise effects on Little Penguins are refined and improved. The results of the monitoring shall be provided to the Little Penguin Interest Group and the Manager, Environmental Regulation, Wellington Regional Council within 1 month of completion.</p>
EM.4E	<p>(a) During the nesting season of any Shoreline Forager, no more than 10 working days prior to the Commencement of Construction, the Consent Holder shall engage a suitably qualified and experienced ecologist to undertake a Shoreline Forager nesting survey within the relevant construction area.</p> <p>(b) If any Shoreline Forager nest in the relevant construction area is identified under (a), the Consent Holder shall engage a suitably qualified ecologist to:</p> <ul style="list-style-type: none"> (i) GIS locate and mark on the ground the nest location; (ii) advise on whether or not the nest of the Shoreline Forager contains eggs or chicks; (iii) if it does contain eggs or chicks, advise on the management of Construction Works within 100m of the nest, including: <ul style="list-style-type: none"> A. the use of specific machinery; and B. the use of specific minimisation measures and/or working practices; and (iv) prepare a plan for works incorporating the matters in (iii) which the Consent Holder shall include in the CEMP under Condition GC.7; and <p>(c) If the oystercatcher nest located off the point between Sorrento Bay and Lowry Bay is confirmed by a suitably qualified ecologist to be occupied by a breeding pair then during November no Construction Works shall occur within 100m of the nest while it is so occupied. If the nest is so occupied at other times of the year Construction Works within 100m shall occur under the advice of a suitably qualified and experienced ecologist as to the use of specific machinery and specific minimisation measures and/or working practices.</p> <p>(d) If the oystercatcher nest located off the point between Sorrento Bay and Lowry Bay has resulted in chicks being hatched then no Construction Works within the oystercatcher managed works zone (refer to Appendix 1) shall</p>

Ref	Condition
	<p>occur within the months of December and January unless a suitably qualified ecologist has determined that the chicks have not survived or they can fly. If non-flying oystercatcher chicks are present within the oystercatcher managed works zone (refer to Appendix 1) during February then Construction Works within the oystercatcher managed works zone (refer to Appendix 1) shall occur only if a suitably qualified and experienced ecologist determines that work with specific machinery and specific minimisation measures and/or working practices can proceed without endangering the chicks.</p>
<i>Bird Protection Plan – Pest Management Strategy</i>	
EM.5	<p>The Consent Holder shall prepare a Pest Management Strategy, to form part of the BPP, aimed at providing pest management in:</p> <ul style="list-style-type: none"> (a) primarily, the four bird protection areas specified in Conditions EM6 to EM.6E; and (b) secondly, the adjacent Eastern Bays coastal environment affected by the Construction Works. <p>The purpose of the Pest Management Strategy is to identify appropriate locations and type of pest management measures and opportunities to utilise the \$60,000 in Condition EM.1 including working with existing pest management programmes in the adjacent Eastern Bay communities.</p> <p>The Pest Management Strategy shall as a minimum;</p> <ul style="list-style-type: none"> (i) Identify times of year and/or locations where litter and pests may be an issue and link with Conditions EM.7 and LV.7, and (ii) below; (ii) Cover the full length of the Shared Path, with more intensive actions for the protection areas and any identified areas in (i); (iii) Identify times of year to focus pest management (e.g. when chicks are hatching); (iv) Include strategies describing how the applicant will engage and educate the community on the presence of birds and the impact of pests on these birds through signage and community outreach programs through Condition EM.9; and (v) Establish mechanisms to report annually to the community and the Manager, Environmental Regulation, on the success of the Pest Management Strategy. <p>Any outcomes from monitoring of the success of the Pest Management Strategy shall be applied, as appropriate, to future pest management by revising the Pest Management Strategy so that over time processes and responses to minimise effects on coastal avifauna as a result of pest animals are refined and improved.</p>
<i>Bird Protection Plan – bird protection areas</i>	
EM.6	<p>The Consent Holder shall establish, utilising the up to \$300,000 in Condition EM.1 protection areas in general accordance with Appendix 1 at the following indicative locations:</p> <ul style="list-style-type: none"> (a) an oystercatcher protection area at Sorrento Bay (Condition EM.6B); (b) a penguin protection area at Whiorau Reserve (Condition EM.6C); and (c) penguin and shorebird protection areas at: <ul style="list-style-type: none"> (i) Bishops Park (Condition EM.6D); and (ii) HW Shortt Park (Condition EM.6E).
EM.6A	<p>The bird protection areas set out in Conditions EM.6C, EM.6D and EM.6E shall include:</p> <ul style="list-style-type: none"> (a) opportunities to enhance Little Penguin habitat within the protection areas including providing and maintaining a minimum of 100 nesting opportunities across the three protection areas; and (b) opportunities for Shoreline Forager nesting where suitable.
EM.6B	<p>The Sorrento Bay oystercatcher protection area shall include the following:</p>

Ref	Condition
	<ul style="list-style-type: none"> (a) fencing of the boundaries as in general accordance with Appendix 1 and as specified in the BPP with a minimum standard to keep dogs out; (b) screening, as appropriate, including through planting measures; (c) pest management measures in accordance with the Pest Management Strategy provided under Condition EM.5; (d) A Planting Plan to outline areas of planting surrounding nesting opportunities or the maintenance of vegetation-free areas as appropriate. The Planting Plan shall include as a minimum: <ul style="list-style-type: none"> a. The species that are proposed to be planted, the size of the plants and the density of planting; b. A timeline for completion of proposed planting; and c. Details of the maintenance and management of the planting and management of pest plants. (e) signage identifying the protection area and its values; and (f) provisions as appropriate to respond to, and provide ecological resilience to, sea level rise. <p>The following timeframes shall apply to the Sorrento Bay oystercatcher protection area:</p> <ul style="list-style-type: none"> (g) fencing and screening (as appropriate) must be completed within three months following Commencement of Construction (see (c) and (d) above); (h) pest management measures must be installed and operational within three months following Commencement of Construction (see (e) above); (i) planting shall commence be undertaken in accordance with the timeframes specified in the Planting Plan (see (f) above); and (j) signage must be installed within three months following Commencement of Construction (see (g) above).
EM.6C	<p>The Whiorau Reserve penguin protection area shall include the following:</p> <ul style="list-style-type: none"> (a) fencing of the boundaries in general accordance with Appendix 1 and as specified in the BPP with a minimum standard to keep dogs out; (b) pest management measures, in accordance with the Pest Management Strategy provided under Condition EM.5; (c) A Planting Plan to outline areas of planting surrounding nesting opportunities or the maintenance of vegetation-free areas as appropriate. The Planting Plan shall include as a minimum: <ul style="list-style-type: none"> a. The species that are proposed to be planted, the size of the plants and the density of planting b. A timeline for completion of proposed planting c. Details of the maintenance and management of the planting and management of pest plants. signage identifying the protection area and its values; (d) signage identifying the protection area and its values; (e) opportunities to enhance Little Penguin habitat within the protection area in accordance with Condition EM.6A; and (f) provisions as appropriate to respond to, and provide ecological resilience to, sea level rise. <p>The following timeframes shall apply to the Whiorau Reserve penguin protection area:</p> <ul style="list-style-type: none"> (g) fencing must be completed within nine months following Commencement of Construction (see (a) above); (h) pest management measures must be installed and operational within nine months following Commencement of Construction (see (b) above); (i) signage must be installed within nine months following Commencement of Construction (see (d) above);

Ref	Condition
	<ul style="list-style-type: none"> (j) detailed design of habitat enhancement for the Little Penguins must be finalised, and nesting opportunities must be installed, within nine months following Commencement of Construction (see (e) above); and (k) planting shall be undertaken in accordance with the timeframes specified in the Planting Plan (see (c) above).
EM.6D	<p>The Bishops Park penguin and shorebird protection area shall include the following:</p> <ul style="list-style-type: none"> (a) fencing of the boundaries in general accordance with Appendix 1 and as specified in the BPP; (b) pest management measures, in accordance with the Pest Management Strategy provided under Condition EM.5; (c) A Planting Plan to outline areas of planting surrounding nesting opportunities or the maintenance of vegetation-free areas as appropriate. The Planting Plan shall include as a minimum: <ul style="list-style-type: none"> a. The species that are proposed to be planted, the size of the plants and the density of planting; b. A timeline for completion of proposed planting; and c. Details of the maintenance and management of the planting and management of pest plants. signage identifying the protection area and its values; (d) signage identifying the protection area and its values; (e) retention of area(s) of marram grass located within the protection area; (f) pedestrian accessways through the protection area at selected points; (g) consideration of the presence of herpetofauna and maintaining areas of skink habitat within the protection area; (h) opportunities to enhance Little Penguin habitat within the protection area in accordance with Condition EM.6A; (i) opportunities to enhance Shoreline Forager habitat, including wooden poles providing further safe roosting habitats; and (j) provisions as appropriate to respond to, and provide ecological resilience to, sea level rise. <p>In relation to the above matters all plans for, and works undertaken within, the Bishops Park protection area shall ensure that erosion and wind blown sand effects are avoided or minimised.</p> <p>The following timeframes shall apply to the Bishops Park penguin and shorebird protection area:</p> <ul style="list-style-type: none"> (k) fencing (including rope demarcation) must be completed within twelve months following Commencement of Construction (see (a) above); (l) pest management measures must be installed and operational within twelve months following Commencement of Construction (see (b) above); (m) planting shall be undertaken in accordance with the timeframes specified in the Planting Plan (see (c) above). (n) signage must be installed within twelve months following Commencement of Construction (see (d) above); and (o) detailed design of habitat enhancement for the Little Penguin and Shoreline Foragers must be finalised, and roosting measures must be installed, within six months following Commencement of Construction (see (h) and (i) above).
EM.6E	<p>The HW Shortt Park penguin and shorebird protection area shall include the following:</p> <ul style="list-style-type: none"> (a) fencing of the boundaries in general accordance with Appendix 1 and as specified in the BPP; (b) pest management measures in accordance with the Pest Management Strategy provided under Condition EM.5;

Ref	Condition
	<p>(c) A Planting Plan to outline areas of planting surrounding nesting opportunities or the maintenance of vegetation-free areas as appropriate. The Planting Plan shall include as a minimum:</p> <ul style="list-style-type: none"> a. The species that are proposed to be planted, the size of the plants and the density of planting; b. A timeline for completion of proposed planting; and c. Details of the maintenance and management of the planting and management of pest plants. signage identifying the protection area and its values; <p>(d) signage identifying the protection area and its values;</p> <p>(e) opportunities to enhance Little Penguin habitat within the protection area in accordance with Condition EM.6A;</p> <p>(f) opportunities to enhance Shoreline Forager habitat, including wooden poles providing further safe roosting habitats; and</p> <p>(g) provisions as appropriate to respond to, and provide ecological resilience to, sea level rise.</p> <p>In relation to the above matters all plans for, and works undertaken within, the HW Shortt Park protection area shall ensure that erosion and wind blown sand effects are avoided or minimised.</p> <p>The following timeframes shall apply to the HW Shortt Park penguin and shorebird protection area:</p> <ul style="list-style-type: none"> (h) fencing must be completed within twelve months following Commencement of Construction (see (a) above); (i) pest management measures must be installed and operational within twelve months following Commencement of Construction (see (b) above); (j) signage must be installed within twelve months following Commencement of Construction (see (d) above); (k) detailed design of habitat enhancement for the Little Penguin and Shoreline Foragers must be finalised, and roosting measures must be installed, within twelve months following Commencement of Construction (see (e) and (f) and above); and (l) planting shall be undertaken in accordance with the timeframes specified in the Planting Plan (see (c) above).
<i>Bird Protection Plan – rubbish and waste management</i>	
EM.7	The Consent Holder will undertake a six-monthly rubbish clean up along the Shared Path and its adjacent beaches which will involve two staff and a vehicle proceeding along the Project Area collecting litter for a working day for the duration of this consent.
<i>Bird Protection Plan – variable oystercatcher study</i>	
EM.8	<p>The consent holder shall commission a suitably qualified ecologist to lead a before and after study of variable oystercatchers in the Project area (the Eastern Bays from Point Howard to Sunshine Bay and including Windy Point) including the influence of the Project on variable oystercatchers and their behaviours.</p> <p>The study shall include recommendations, if any, on operational (such as pest management) or design (such as signage) responses that could be implemented within the existing consents by the Consent Holder to optimise outcomes for Oystercatchers within the Project area.</p> <p>The study shall be completed and results provided to the Manager, Environmental Regulation, Wellington Regional Council, and made publicly available, within five years of the Completion of Construction of the Project.</p>
<i>Bird Protection Plan - education</i>	

Ref	Condition
EM.9	<p>The Consent Holder shall carry out a public educational campaign aimed at recognising, protecting, and raising public awareness of avifauna in the Project Area, including variable oystercatchers. The campaign shall:</p> <ul style="list-style-type: none"> (a) commence within nine months of commencement of consents; (b) continue for a minimum of five years; and (c) provide current information on variable oystercatchers within the Project Area and how to minimise or prevent risks and threats to oystercatchers in the Project Area.

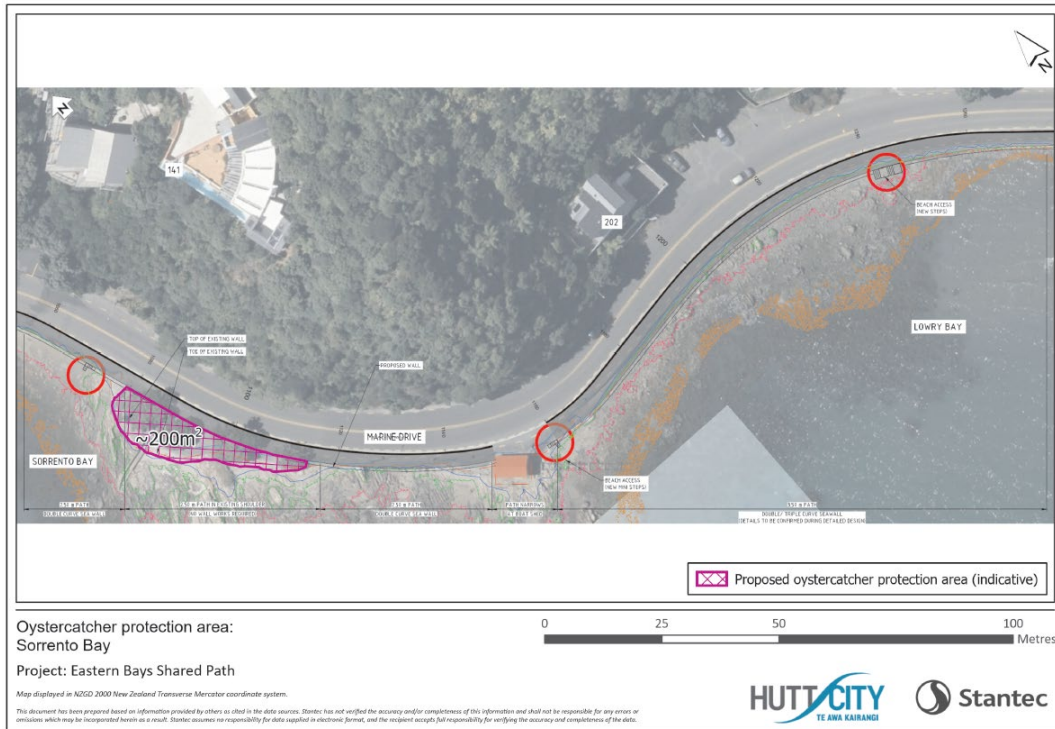
APPENDIX 1: PROTECTION AREAS

Overview



BIRD PROTECTION AREAS

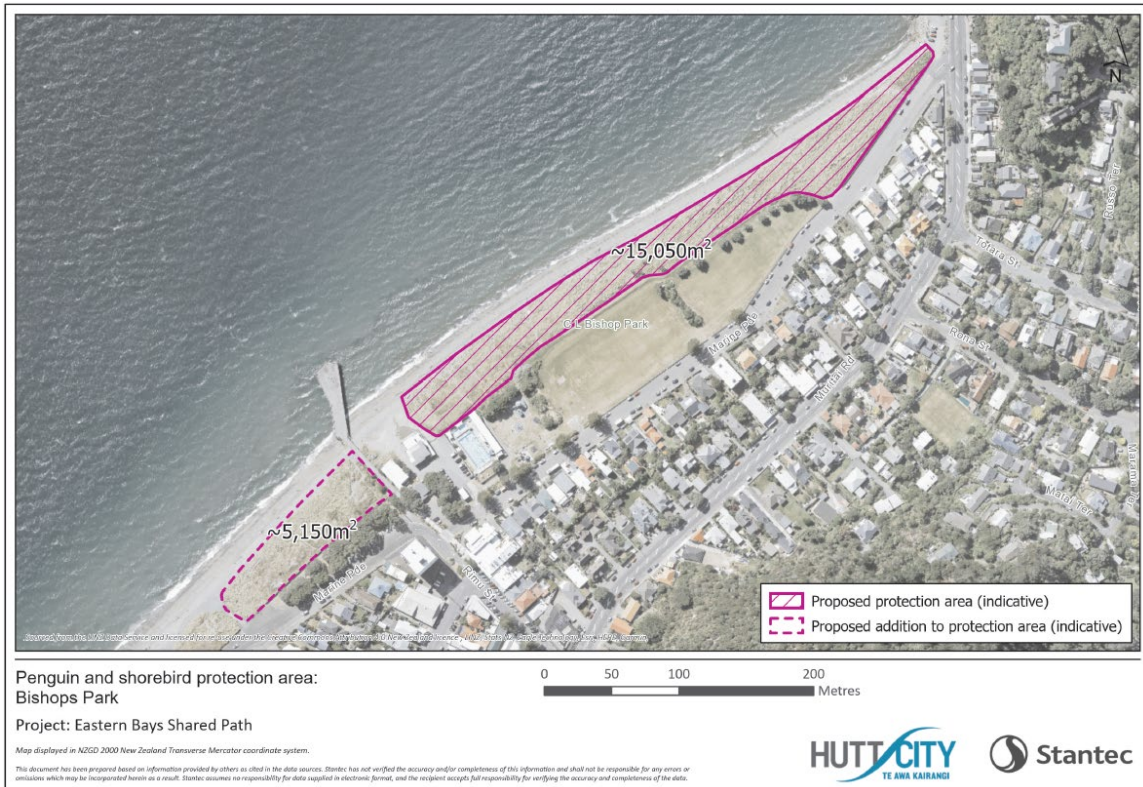
1. Sorrento Bay oystercatcher protection area



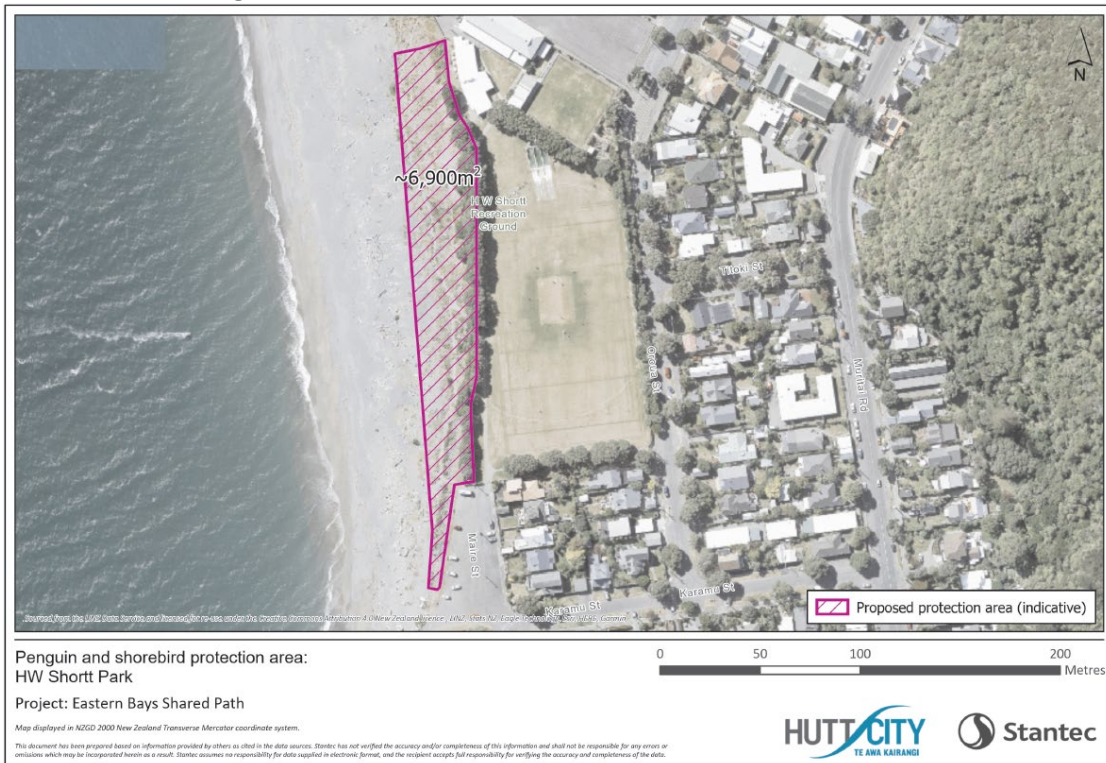
2. Whiorau Reserve penguin and shorebird protection area



3. Bishops Park penguin and shorebird protection area



4. HW Shortt Park penguin and shorebird protection area



OYSTERCATCHER MANAGED WORKS ZONE

