

IN THE MATTER OF

The Resource Management Act 1991

AND

IN THE MATTER OF

An application made to the Consents
Section of the Gisborne District Council

(Consent Authority)

BY

Eastland Port Limited

(The applicant)

**For the Hearing of the application for the
proposal for the second and final stage of
the Twin Berths Project (TPB)**

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1 Introduction

This is the decision of an independent Hearing Panel comprising Mr Rauru Kirikiri, Ms Bianca Sullivan and Dr Brent Cowie (chair) appointed by the Gisborne District Council (the GDC, the Council) to hear and decide applications from Eastland Port Limited (EPL, the Applicant) for the second stage of their “Twin Berths” port redevelopment. Mr Kirikiri and Dr Cowie were part of the panel that granted resource consents for the first stage of the “Twin Berths”, which primarily involved reconstructing Wharf 7, and which was invaluable to both of us when considering the present applications.

We undertook a site visit on Monday 16 October 2023. We were accompanied by Mr Mark Richards, EPL’s Operations Project Manager, who showed us the location of the five separate components of the proposal, along with some of the redevelopment undertaken in the first stage of the Twin Berths. We are very grateful to Mr Richards for showing us around.

The hearing took place in the GDC’s Council chambers. It commenced on Tuesday 17 October and was adjourned awaiting further discussions between the s42A reporting officers and the Applicant on Thursday 19 October 2023. Those discussions focussed on possible conditions of consent. The Applicant’s right of reply was received in its final form on Tuesday 28 November. It was accompanied by a set of draft conditions agreed between the Applicant and the s42A reporting officers, bar one point regarding noise limits at a nearby Holiday Park.

After reading the right of reply and the draft conditions of consent Dr Cowie and Ms Sullivan were satisfied that they had all the information necessary to make our decision, and so they closed the hearing on Friday 1 December 2023.

Mr Kirikiri did not contribute to reviewing the information or the decision to close the hearing, as he was at that time very ill. We are very pleased to say he is making good progress towards full recovery. To give him the maximum time possible to recover and contribute to the decision, we extended the period for the decision to be made to 30 working days, so the decision was due out by 5 February 2024.

2 The Proposal

2.1 The Applicant’s Proposal

The Twin Berths refers to the redevelopment of the two large wharves, known as Wharves 7 and 8, at the seaward end of Gisborne Port. These are the only wharves where large vessels, most typically those that carry logs offshore, can berth. The other wharves 1-6 are much smaller and are used to berth recreational vessels, fishing boats and tugs.

The operation of Wharves 7 and 8 relies on periodic dredging, with associated offshore disposal of fine sediment, to maintain channel capacity and to enable vessels to turn within the harbour basin. Additionally, there is one access road, Hirini Street, for logging trucks to gain access to log yards that store logs for export via ships berthed at the two large wharves.

The rebuilding of Wharf 7 was initially consented in 2018 and was finally granted in August later that year by the Environment Court following mediation between EPL and various iwi groups. It had been completed shortly before the current hearing took place.

The proposed second stage of the Twin Berths project comprised five separate but inter-related components as follows:

- a. The existing berth at Wharf 8 would be extended towards the sea and the inner breakwater by about 130 metres, with associated reclamation totalling about 900 square metres (m²). This will approximately double the space of the existing wharf, and allow larger vessels of up to 200m in length (versus the current 180m) to berth at this wharf.
- b. Associated with this extension would be a reclamation of about 7,000m² adjacent to the extended Wharf 8, with another reclamation from the lower revetment wall bringing the total affected seabed area to 8,900m². This would enable logging trucks and other vehicles to access the new wharf.
- c. The offshore breakwater on the true left of the river mouth is in poor condition due to erosion, so it was proposed to place 24-30 tonne armour units along each side of the breakwater and cap them with concrete. This would increase the area covered by the breakwater from about 8,000m² to about 10,700m².
- d. Capital dredging of about 140,600 cubic metres of bed material to accommodate larger vessels at Wharf 8, with associated disposal at the “offshore disposal ground” (OSDG).
- e. Improving stormwater collection and treatment facilities in the Southern Log Yard (SLY). This is proposed to be an improved design based on stormwater treatment systems already operating successfully for the Wharfside and Northern log yards, which were installed as part of the first stage of the Twin Berths. For the SLY it involves constructing a secondary treatment process with underground detention chambers, chemical dosing to improve particle settling and lamella clarifiers to remove the flocked particles.

In his evidence Mr Bayley said that these construction works could take up to eight years. EPL anticipates that construction of Wharf 8 extension would occur first, and would be undertaken in parallel with the reclamation and the associated revetment wall reconstruction: all this is projected to take about three years.¹

2.2 Notification and Submissions

At the Applicant’s request the applications were publicly notified in September 2022, with the submission period being extended from the normal 20 days to 30 days. Fifty-six submissions were received, 47 of which supported the applications, one was neutral², and eight opposed the applications.

The parties that supported the application were largely businesses and stakeholders associated with port activities, such as transport operators, forestry companies and owners, civil contractors and agricultural support and supply businesses. We heard from 11 of these submitters during the hearing, along with 4 submitters who opposed the applications.

2.3 Joint Witness Statement (JWS)

Prior to the hearing commencing there were substantive differences between the traffic experts for the Applicant, the s42A reporting officers and Waka Kotahi (the NZ Transport Agency or NZTA). This related particularly to the SH35/Hirini Street intersection, which is used by all heavy traffic coming to and from the Port.

¹ Evidence of Martin Bayley at his Paragraph 65.

² This was from the Department of Conservation.

These differences were largely resolved by a JWS agreed between Ms Judith Malkinson (for the Applicant), Mr Chris Rossiter (s42A), and Mr G Connelly (for NZTA). As a result of this the NZTA largely withdrew its submission opposing the consents sought.

We discuss these matters further in Section 5.6 of this decision.

3 The Hearing

Section 113 of the RMA requires that we provide a summary of the evidence in this decision. In this instance we see little point providing a detailed summary of the expert evidence. Rather we will refer to the expert evidence, and indeed much of the lay evidence, in our assessment of the actual and potential effects of the application.

We summarise the case for the applicant in Section 3.1 below, and the evidence from submitters at 3.2 below

3.1 The Case for the Applicant

3.1.1 Opening Legal Submissions

In her opening submissions Ms Alana Lampitt from Chapman Tripp raised four main matters as follows:

- a. The weighting to be given to the New Zealand Coastal Policy Statement 2010 (the NZCPS) versus the provisions of the Tairāwhiti Resource Management Plan (TRMP).
- b. The long-established case law³ regarding how the existing environment is to be treated in decisions on resource consent applications, and how she considered this should be applied to our assessments of the effects of traffic and noise in the Applicant's proposal.
- c. Proposed conditions of consent, including their duration and lapse period. In answer to a question, she said that at that stage there were six matters that the Applicant and the reporting officers had some disagreement about in the draft conditions.
- d. What she called remaining matters, which were the relevance of the rail submissions, the management of cultural effects, and Waka Kotahi's evidence on operational traffic management conditions.

3.1.2 Expert Witnesses for the Applicant

The Applicant's expert evidence was filed on 3 October 2023 consistent with the timeframe set down in the RMA. It comprised evidence from the following individuals, who each presented to us at the hearing:

Mr Martin Bayley, the General Manager of Infrastructure and Development at Gisborne Port. His evidence provided a broad overview of the proposed development etc. We refer widely to his evidence in this decision, particularly in relation to cultural values and the positive effects of the application.

Mr Mark Poynter, who is the technical director of marine ecology at 4Sight Consulting, and who gave evidence on the effects of the proposal on the biota in the local and offshore environment. We discuss his evidence in Section 5.2 of this decision.

³ Which is *QLDC v Hawthorn Estate Ltd* CA45/05 2006

Mr Ben Lawrence, an expert on the effects of noise, in this case that potentially generated from the works associated with stage 2 of the Twin Berths project, including potential effects on marine mammals. We discuss his evidence in Section 5.5 of this decision.

Ms Judith Makinson, a Chartered Professional Engineer who specialises in transport engineering, and who gave transport evidence on behalf of the Applicant. We discuss her evidence, primarily via the agreed transport JWS, in Section 5.6 of this decision.

Ms Georgina McPherson, a Planning and Policy Consultant with 4Sight, who gave planning evidence on behalf of the Applicant. We discuss her evidence in several parts of this decision.

We asked that Ms Lampitt circulate her legal submissions a day prior to the hearing commencing; these were received in accordance with our request and we thank her for that.

3.1.3 Closing Legal Submissions

Ms Lampitt's closing submissions in reply were comprehensive and addressed a wide number of issues. The main issues she raised in those submissions were:

- a. The positive effects of the proposal, which we address in Section 5.8 below.
- b. She discussed alternatives. While we have not addressed this issue specifically in the decision, apart from s105 RMA considerations in Section 7, we accept that the Applicant considered all reasonable alternatives to the proposal, and came to a reasoned decision to proceed with the Proposal evaluated in this decision.
- c. In relation to Te Tai Uru, she said that Ms Pewhairanga was invited to join this forum in June 2022, but has not taken up this offer.
- d. The provisions of the NZCPS, which we have considered thoroughly in Section 5.7 of this decision, where we record that we consider the Proposal is consistent with NZCPS, as clarified by the Supreme Court's decision on Port Otago.
- e. She addressed some of the condition sets, and particularly the amendments made in light of further discussions at and after the hearing. We comment on these further in various sections of our decision.

3.2 The Submissions Heard

During the hearing we heard from 15 submitters, 11 of whom supported the applications and four of whom opposed them. We now outline briefly the main matters covered, starting with those who supported the proposal.

3.2.1 Submitters who Supported the Application

We heard from 11 parties who supported the application. They were:

- a. Mr Kevin Pitcher who is a shipping agent for Eastland Shipping Limited.
- b. Mr Mark de Costa, of DeCosta Enterprises, who now mostly export horticultural products.
- c. Mr Warren Rance from the Eastland Wood Council.
- d. Ms Sheridan Ashford of Summit Forests, who own about 5,000ha of forestry land in the region, and now export about 12-15% of the total logs loaded out of Eastland Port.
- e. Mr Scott Hurley of Turners and Growers.
- f. Mr Sean McBride of Juken NZ. Some of what he said is no longer relevant, as the company owned a timber mill on the south side of Gisborne that processed timber for export, but that closed shortly after the hearing was completed.

- g. Mr Mike Knowles, from the NZ Council of Cargo Owners.
- h. Mr Jeremy Raymond from Gisborne Holdings.
- i. Mr Richard Searle from Trust Tairāwhiti, which has two beneficiaries, the GDC and the regional community.
- j. Ms Prue Younger, from the Forest Industry Contractors Association.
- k. Mr Kevin Jones of JQuip, who are a local contracting business.

We do not need to summarise what each of these submitters said at the hearing, but among the main points raised were:

1. The heavy reliance on the port for the export of cut logs from the region, and how the second stage of the Twin Berths project is essential to make log exports more efficient. This includes being able to handle larger vessels, and reducing the time ships have to wait offshore before entering the port. Mr Pitcher for instance said that “at the moment the port is a bottleneck for us”. Mr Rance stated, “the development is long overdue” and Ms Younger said that the contractors she represents need to see a long-term future in forestry, and the Twin Berth demonstrates this. Ms Ashford said that “a wall of wood planted in the 1990’s” is soon to be logged and the Twin Berths are essential if this is to be exported efficiently from Eastland Port. She also said that the Twin Berths will allow larger ships to be loaded and these could then go to markets other than China, such as Korea or India (with associated opportunities for higher prices for exported timber).
2. The further development of the port is essential to add to the resilience of the region. Examples were given how the port was the only point of entry to the region when the three state highways in and out of Tairāwhiti were all closed following Cyclone Gabrielle, and how the state highways and (particularly) rail links are fragile, and so cannot always be relied on for access in and out of the region. For instance, Mr de Costa and Mr Hurley said their companies relied on the port after the cyclone, and Mr Jones, who made several very quotable comments, said that “if the port isn’t running, Gisborne isn’t running”.
3. The further development of the port will also potentially allow horticultural products to be loaded out in containers (Mr de Costa and Mr Knowles), and increase the opportunity for passengers to come ashore from cruise boats anchored off the port (Mr Searle).
4. There was substantial support for how the port was managed, and the longer-term vision embraced within the two stages of Twin Ports. For instance, Mr Hurley “credited the team” for the way they helped after the road closures, and Mr Jones said that “the port has good intent and their leaders are genuine” and that “there’s a few bridges to cross and these guys know how to build a very good bridge”.

3.2.2 Submitters who opposed the application

We heard from four submitters who opposed the application and we summarise the key matters raised by each submitter below.

Waka Kotahi – NZ Transport Agency

Waka Kotahi was represented by two people – Ms Sarah Downs, their regional manager who was present at the hearing, and Ms Letitica Jarrett, who was on a video link. Ms Downs said they were

happy for the consent to proceed with conditions agreed by traffic engineers in the JWS. As a result, the conditions proposed in Ms Jarrett's evidence were withdrawn, except for minor change/clarification to condition 75A (now 76).

Following Waka Kotahi's presentation to the hearing, Ms Jarrett provided a summary of their position on 18 October which highlighted concerns with proposed condition 75A. Waka Kotahi sought that EPL monitor peak freight movements through the SH35/Hirini Street intersection and seek to avoid exacerbating peak traffic volumes at this intersection until upgrade works are completed.

We then received an updated JWS on 19 October which recorded agreement on amendments to condition 75A (now 76), with traffic monitoring requirements until the SH35/Hirini Street intersection is upgraded.

Ms Gillian Ward presented on behalf of the Gisborne Rail Action Group who are opposed to the Twin Berths development because it would lead to additional heavy traffic movements into and from the port. She said that the rail line from the Matawhero log yard should be re-opened, and logs taken there via before being reloaded on to the rail line and taken by train. Ms Ward wants EPL to support the re-instatement of the Gisborne-Napier rail link, and asserted that Eastland Group was the "main obstacle" to not getting the rail link re-instated. She said that the 2011 modernisation of the Napier-Gisborne railway link made it compliant with the containerisation requirements. Four washouts across the line occurred in 2012, and there has been further damage since. She asserted that not having rail has led to loss of awareness of rail and lack of demand, that rail would provide a faster and more cost-efficient way to export, and that there was strong support from Councils and growers for the line to be re-instated.

Ms Karen Pewhairangi spoke on behalf of submissions by **Ms Bree Skinner** and **Ms Carrie Taoho**. Ms Skinner then spoke to her submission. Ms Pewhairangi outlined the significant Māori and pakeha history of the area and the impacts of the Port on the historical and cultural values. She then discussed the submitters' concerns about the impacts of previous Port developments on kororā/little blue penguins, highlighting the number of kororā deaths due to the construction of a seawall east of the proposed development. They referred us to work by kororā expert Professor John Cockrem.⁴ The submitters are part of a group who monitor the health of kororā and criticised the Port's efforts to mitigate effects on kororā and engage with their group.

Mr Winston Moreton gave a somewhat unfocussed oral presentation, having said that he can wander and had been affected by two strokes. Among the main points he made were:

- Cook Landing Site Historic Reserve was a much larger area (although we note this is not affected by the Applicant's proposal, and nor is the 'cone of vision').
- A suggestion that a tunnel could be put under the port for the kororā to get to the reserve.
- An assertion that the Port "runs roughshod over the community", although he has participated in the Port Liaison Group.
- A belief that vibration impacts from trucks passing his house is a health hazard, and this is a social impact that we should consider under sections 5 and 6 of the RMA.
- A request that we "direct" trucks to go down Ormond Road.

⁴ Who we note is a Professor of Endocrinology, with no apparent qualifications in avian science.

- A restated opposition to incremental consenting, and that consents such as the Twin Berths should not proceed until there is a Plan Change (as we understand it covering the port area, which he believes should be designated). He said more people would submit if there was a plan change.

3.3 The Reporting Officers

We heard first from **Dr Gary Bramley**, an ecologist who is a Director and Partner at Ecological Solutions Limited. Dr Bramley's review focused on the effects of the proposal on kororā and commented on the Avian Monitoring and Management Plan (AMMP) prepared for EPL by 4Sight Consulting. He considered that the AMMP takes an "optimistic view" and recommended amendments to the AMMP and provided useful comments on the lifecycle and preferences of kororā and emphasised the need for EPL to obtain a Wildlife Act Authority. We return to his comments in the discussion of effects below.

Dr Shane Kelly, a Director of Coasts and Catchments Limited, addressed his review of the marine ecological and water quality effects of EPL's proposal. He indicated a high level of agreement with Mr Poynter with the key differences between them being the disposal of dredge spoil and the adequacy of the biosecurity management plan (BMP). We discuss these matters further in the discussion of actual and potential effects.

Mr Jon Styles is a Director and Principal at Styles Group Limited and he addressed noise and vibration effects. He had little concern about vibration effects and considered that noise levels from the proposal can be kept to a reasonable level and managed by consent conditions. His remaining concerns centred around noise levels from dredging at the nearby Top 10 holiday park, which we discuss below. He also observed that the port noise contours don't reflect either existing port operations or that of the proposal.

Mr Todd Whitaker is a Director at Planning Works Limited and was the contracted Consent Planner for these applications. He provided a summary concluding statement and we refer to the content of this, alongside his s42A report, throughout this decision. We'd like to record our thanks to Mr Whitaker for his excellent s42A report and constructive contribution to the hearing.

4 The Decision Making Criteria

A total of 26 resource consents were sought by the Applicant to authorise all components of the Twin Berths Stage 2 Proposal.⁵ There was no disagreement between the Applicant and the s42A reporting officers about either what consents were necessary to authorise all the activities, or their activity status. All the applications were for either controlled, restricted discretionary or fully discretionary activities, and were "bundled" and treated as discretionary activities.

As the proposal is classified as a discretionary activity, section 104B of the Act allows us to either grant or refuse one or more of the consents sought. If granted, we may impose conditions under s108.

⁵ One of these consents was under Regulation 9 of the National Environmental Standard for Contaminated Soil. All the others were lodged under the provisions of the Tairāwhiti Resource Management Plan, which covers both District and Regional Authority functions. The consents sought are detailed in Section 2.6 of the s42A report.

Decisions on resource consent applications for discretionary activities are made under the criteria listed in Section 104(1) of the RMA. Subject to Part 2 of the Act, we must have regard to the following matters:

- (a) any actual and potential effects on the environment of allowing the activity; and*
- (ab) any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
- (b) any relevant provisions of*
 - i. a national environmental standard (NES);*
 - ii. other regulations;*
 - iii. a national policy statement;*
 - iv. a New Zealand coastal policy statement;*
 - v. a regional policy statement or proposed regional policy statement;*
 - vi. a plan or proposed plan; and*
- (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

In relation to these matters and the present applications:

- We discuss Part 2 RMA matters in Section 6 below.
- The actual and potential effects of the Applicant’s proposal are discussed in Sections 5.1-5.6 of this decision.
- s104(1)(ab) is not directly relevant.
- The only relevant national environmental standard is Regulation 9 of the NES-contaminated land. It requires that any hazardous substances unearthed during excavation activities be disposed of safely in appropriate facilities. This is to be dealt with via a proposed Contaminated Site Management Plan, the contents of which are specified in Conditions 28 – 35 in our decision. In this instance compliance with the regulation is a controlled activity for which consent must be granted subject to particular conditions. We are satisfied that the conditions of consent are appropriate, and so we do not discuss this further in our decision.
- The relevant national policy statement is the New Zealand Coastal Policy Statement 2010 which we discuss in Section 5.9 of this decision.
- We discuss the relevant provisions of the Tairāwhiti Regional Policy Statement (the RPS) in Section 5.10 below.
- As the RPS is embedded into the relevant regional plan, which is the Tairāwhiti Resource Management Plan (the TRMP), we also discuss this in Section 5.10.

There are no Section 104(1)(c) matters that we consider merit substantive consideration.

5 Evaluation

5.1 Actual and Potential Effects

We see these as being:

- Effects on cultural values and sites.
- Effects on water quality and marine ecology.
- Effects on avian sites, most particularly those of the kororā/little blue penguin.
- Effects on coastal processes.
- Effects of noise and vibration.
- Transportation effects, including those of logging trucks.
- Other potential adverse effects, including those on heritage and archaeological sites, on landscape values, on public access and reserves.
- Positive effects.

5.1 Effects on Cultural Values and Sites

Only one tangata whenua submission was received in opposition to the applications, from a Rongowhakaata submitter, claiming that the proposal would not protect the relationship of Māori with their culture and traditions, including ancestral lands, water, waahi tapu sites and other taonga; nor does it have regard for the fundamental principle of kaitiakitanga. The site on which the wharf is situated was a key mahinga kai and recreation area in days gone by, but this had come under increasing pressure from development over time. The Rongowhakaata submission sought further opportunity to discuss matters raised with iwi. Hitherto attempts to clarify such matters had been less than productive. The panel recognises that more direct engagement between Eastland Port and Rongowhakaata, separate from, or in addition to, the *Te Tai Uru Forum* remains an option. For the moment, however, there seems to be an impasse that the current proposal has highlighted.

The panel was informed that EPL had had mixed success in engaging with tangata whenua through the *Te Tai Uru Forum* and other processes, in its attempts to better recognise and protect cultural values and sites in the Port's projects and operations. This has been ongoing since at least the Wharf 6/7 Consent Order, also referred to below, and appears still to be ongoing with no clear pathway or common understanding in sight. Eastland Port has nevertheless indicated that it will continue to engage constructively with tangata whenua in this project and into the future, through the *Te Tai Uru Forum*, or other processes as appropriate.

In the meantime, it is worth referring to two key pieces of legislation raised in the s42A report on Cultural Values and Sites.

First, the *Takutai Moana Act 2011*, the purpose of which is to:

- (a) ensure the protection of the legitimate interests of all New Zealanders in the marine and coastal area of New Zealand;
- (b) recognise the mana tuku iho exercised in the marine and coastal area by iwi, hapū and whānau as tangata whenua;
- (c) provide for the exercise of customary interests in the common marine and coastal area; and
- (d) acknowledge the Treaty of Waitangi (Te Tiriti o Waitangi).

The s42A report accepts that this Act does apply specific consultation obligations on the part of the applicant in this instance. The panel is satisfied that Eastland Port undertook these obligations to the best of their abilities, and that the shortcomings in the consultation process were essentially beyond their control.

Secondly, the *Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019*, a legal agreement recognising and protecting the continued mana of Ngāti Porou throughout their rohe, includes the Gisborne wharf. The Gisborne District Council is required to take this document into account in any review of key documents in the rohe. No dissenting submissions – in particular from Ngāti Porou – were received relating to this Act.

Ngāti Oneone, the other key iwi in this rohe, also did not submit either in support or opposition to the proposal.

As pointed out in the s42A report the cultural values of the port area have been considered widely previously, in particular in the Wharf 6/7 application process which, as indicated earlier, two members of the current Panel were involved with. The resulting Consent Order supported the establishment of a *Kaitiaki Partnership Group*, inter alia, as a means to foster a closer relationship between Eastland Port and local tangata whenua. That group evolved into the *Te Tai Uru Forum*.

Part of its function was to develop a sorely needed Cultural Values Framework to assist future consent hearings – such as the Twin Berths one. It is our understanding that some work on such a framework has been undertaken, but insufficient to have any impact on this proposal. The panel was not informed on any details of the progress made – or lack thereof – in this regard.

Also included in the terms of reference was the preparation of a Cultural Impact Assessment specifically for the Twin Berths Project. Unfortunately, this also did not eventuate, at least not at the speed required for this hearing. The panel was unclear as to the reasons for the delay.

Under the circumstances we did not regard the absence of such an assessment – or the lack of a Cultural Values Framework – reason not to proceed with the proposal. Eastland Port had demonstrated to our satisfaction that they had made every effort to consult with tangata whenua in good faith, and are prepared to continue to do so moving forward.

5.2 Effects on Water Quality and Marine Ecology

We heard from two experts on marine ecology, who were Mr Poynter for the Applicant and Dr Kelly, one of the s42A reporting officers. There were only relatively minor differences between them at the time of the hearing, and these have been subsequently resolved in discussions that led to the draft conditions of consent.

There was a very high level of agreement between these two experts about the values of the marine ecosystems potentially affected by the Applicant's proposal. In particular:

1. The ecological values of the benthic community in the sediment of the inner to mid harbour is low, and those values in the area proposed to be reclaimed are low-medium.
2. Similarly, the sub-tidal parts of the inner and outer breakwaters have low ecological values.
3. The ecological values of sediment in the Port Navigation Channel (PNC), which extends well offshore, is low-medium for the inner section and medium-high for the outer section. Reef habitat within the PNC is of low ecological value, although reefs either side of the PNC are of high ecological value.

4. The benthic fauna in the offshore disposal ground (OSDG), which is off the mouth of the Waipaoa River, is moderately diverse and characterised by common taxa.

Given these generally low ecological values in the areas potentially affected by the Proposal, Mr Poynter and Dr Kelly agreed that:

1. Water quality standards for colour and clarity in the inner harbour and the PNC will sometimes not be met when, for instance, dredging is taking place. However, no water quality effects should result from mobilisation of heavy metals in the sediment.
2. Improved stormwater treatment in the discharge from the SLY will reduce suspended sediment inputs to the harbour basin, but the associated improvement in water clarity will not be readily discernible in the usually turbid waters of the harbour basin.
3. The ecological effects of dredging within the inner harbour will be low.
4. The risk of any adverse off-site ecological or water quality effects from the reclamation is very low, provided appropriate sediment controls are in place.
5. Further disposal of sediment from capital port dredging on the ecological values of the OSDG are likely to be low. Dr Kelly however believed that as greater volumes of sediment than had been deposited in the past were proposed to be deposited at the OSDG from implementation of the Proposal, some additional monitoring should be carried out. We agreed with his view, and this has been incorporated into the conditions of consent.
6. The medium-long term ecological effects of the outer breakwater reconstruction will be low, but Dr Kelly expressed some concern about potential construction effects on the habitat of juvenile crayfish.

At the time of the hearing there was some disagreement between Dr Kelly and Mr Poynter about how biosecurity risks, including for instance the Mediterranean Fan Worm, were to be managed by the Applicant. In the final set of consent condition these matters had been resolved via the preparation of a Marine Pest Management Plan, which is provided for in Conditions 43-45 of the consents we have granted. On a similar theme Conditions 45-49 require incoming boats to be inspected for potential pest species before entering the port, along with a reporting process should any be found.

Our overall conclusion is the effects of the Applicant's proposal on water quality and sediment dwelling fauna both within the harbour basin and off shore will be low, provided appropriate controls are in place.

5.3 Effects on Avian Sites

The main concern about the effects of the proposal upon avian (bird) habitats were potential effects on kororā, or little penguins, which have recently been found to nest among the rocks along the distal seaward edge of the revetment seawall. Part of the revetment wall will be reconstructed during the reclamation increasing the size of the SLY. While other species, such as red-billed gulls and white fronted terns do on occasions roost on structures such as the outer breakwater, they are not known to nest in any part of the port.

The Applicant had addressed this issue in the AEE in work undertaken by 4SIGHT Consulting, and via the evidence of Mr Poynter. Dr Gary Bramley had prepared a s42A supplementary report on the kororā, and several submitters, notably Bree Skinner and Karen Pewhairangi, speaking for submitter Carrie Taoho, spoke about their experiences with kororā. 4SIGHT Consulting had prepared a draft AMMP, which was appended to the evidence of Mr Poynter. Both Mr Bayley and Mr Poynter alluded

to an e-mail from the Department of Conservation stating that the AMMP was “fit for purpose” and provided some detailed, and generally supportive, comment.

It is not surprising that kororā have been found along the revetment wall, as they are frequently found nesting within rocks placed to control erosion along the marine margins of, for instance, ports or roads. A very recent example was of nests being found along the constructed rocky foreshore of the SH2 motorway (and the cycleway, which is being reconstructed) between Petone and the bottom of the SH1 road up the Ngaraunga Gorge. In his s42A evidence Dr Bramley spoke of other examples, such as the redevelopment of the Picton Ferry terminal, and he also spoke about this in his oral presentation to us.

Some submitters, notably Bree Skinner, asserted that kororā habitat would have been destroyed during the construction of the seawall revetment. She cited Dr Cochrane’s report as supporting this assertion.

That is not our understanding. Historically little or no kororā habitat would have existed along this section of the coast, as there would be nowhere safe for the penguins to find shelter to breed and raise their young. Rather, the construction of large rock protection structures in intertidal areas creates habitat for kororā to nest and breed.

Regardless, significant numbers of kororā now nest and breed along the seaward margin of the revetment wall, and adverse effects on the birds present need to be avoided. Dr Bramley warned us that in his experience EPL may have to manage more birds and in more challenging situations than might be expected. He also said that kororā can be hard to find, and as they live in crevices, burrows can be hard to get to and it takes nocturnal surveys to find most birds. EPL have constructed some wooden artificial “burrows” for birds to nest in as an interim measure.

Kororā are very site attached. Dr Bramley said birds will often return to their original burrows up to three times before they resettle elsewhere. Asked about the best time to re-locate the birds, he said that although he was not familiar with the exact timing of the breeding and moulting seasons in Gisborne, he said that the kororā rely on their burrows for much of the year. They cannot be moved when eggs or chicks are present, so they have to be moved before breeding starts, which he expected would be sometime in spring. Pit tags can be used to track birds once they have been moved, to ensure they do not return to their original burrows. He said ideally winter would be the best season to reconstruct the revetment wall, but acknowledged this might be difficult because of storms and big seas being more prevalent.

Dr Bramley considered that the draft AMMP that had been prepared for the Applicant takes what he considered “an optimistic view”. He acknowledged however that the Applicant has time on their side to undertake more comprehensive survey work and then seek the necessary Wildlife Act Authority to move the birds prior to reconstruction of the revetment wall.

We broadly accept what Dr Bramley told us. He also received strong endorsement from a submitter in the audience representing Forest and Bird, who said “Gary had summarised it very well”.

Clearly EPL will have to manage the kororā population along the seaward margin of the revetment wall very carefully. The AMMP is critical to this, as it will outline detailed procedures for managing the birds. We made it clear at the hearing that we expected the AMMP to be of a very high standard, and to be both prepared and reviewed by independent experts. Of all the potential effects of the

Applicant's proposal this is the issue that concerns us most, and we are very keen to see effects on the kororā avoided altogether. For this reason, we have amended proposed condition 37 to require avoidance of mortalities to kororā" or adverse effects on their breeding success, during the implementation of the proposal.

5.4 Effects on Coastal Processes

The Applicant had commissioned MetOcean Solutions, Worleys and Tonkin and Taylor to appraise the potential effects of the proposed redevelopment associated with the second stage of the Twin Berths on coastal processes. Their reports were reviewed by Dr Terry Hume, one of the s42A reporting officers and who is a specialist coastal geomorphologist.

After reading this material Dr Hume concluded that "there are no significant issues outstanding or effects within my area of expertise which would not support the granting of consent". He then listed three matters in his area of expertise that could be addressed through appropriate consent conditions. The three matters involved are: monitoring of the OSDG; monitoring of predicted sediment discharges to the CMA from construction works; and monitoring the effects of dredging and disposal on surf breaks. We consider that these matters are addressed well by the consent conditions.

5.5 Effects of Noise and Vibration

As neither Mr Lawrence for the applicant nor Mr Styles for GDC had any technical concerns regarding vibration, we do not consider this potential effect further. The key noise effects considered were from additional logging truck movements, from construction, including dredging, and from the operation of Wharf 8 following construction. Mr Whitaker noted in his s42A report that surrounding property owners had raised considerable concerns about noise during the Wharf 6 and 7 consent process, however these effects did not eventuate and so did not have the same focus during this process. We note that EPL engaged with the local community through the Port Liaison Group and have invested in monitoring and managing noise effects as part of compliance with existing consent requirements.

There was general agreement between Mr Lawrence and Mr Styles as to the noise levels likely to result from the proposal, however there was some disagreement as to the effects of this noise. Long term noise data from a monitor on the roof of the Portside Hotel was used for the assessment, along with noise surveys. Mitigation and management measures are proposed to be implemented via a Construction Noise Management Plan (CNMP), which is incorporated into conditions 54-56 of the consent we have granted.

Mr Lawrence and Mr Styles expect that both construction and post-construction operational noise levels will exceed the TRMP limits (that is, have noise levels that exceed the Port noise contours). We were informed by the experts that the port noise contours in the TRMP are outdated both for the existing port area and the proposed wharf 8 extension. This is unhelpful and we have factored this into our considerations of the noise effects.

The closest noise receptors to the proposed activities are within the Port noise contour, across the Tūranganui River from the Port. These areas are subject to façade controls, which require building treatments to ensure that the internal noise levels are within specified noise limits. This is useful for buildings such as the Portside Hotel and 100 Customhouse Road apartments, but Mr Styles raised concerns about noise levels for those staying at the nearby Waikanae Beach Top 10 Holiday Park.

While the Port have proposed mitigation for most construction and operational noise effects, noise effects from dredging, particularly at night, remained a potential issue at the hearing. Mr Styles informed us that cumulative nighttime noise levels could be as high as 53 dB depending on the dredge vessel that is used. Noise levels vary between dredge machines, but we accept that EPL will have little control over what dredge vessel is used and that other measures will be needed to manage the noise effects from dredging.

Mr Styles remained concerned about noise levels at the Holiday Park from night-time dredging and there was disagreement between EPL and GDC as to appropriate conditions to mitigate this effect. Mr Styles' view was that noise levels at the Holiday Park from dredging should have to comply with the noise limits in proposed condition 3. EPL proposed that this was not practical and proposed an additional condition 3A that addresses the measures that EPL will take if noise levels are predicted to exceed the night-time values in condition 3. These measures include:

1. confirming that the night-time dredging cannot practicably be carried out during the day;
2. using quieter dredging methods, where practicable, for any dredging at night;
3. informing the Holiday Park owners prior to carrying out any night-time dredging; and
4. engaging with the owners of the Holiday Park, including an offer to construct an extension to the existing acoustic fence where noise levels are above 50 $L_{Aeq}(15 \text{ min})$ at any campsite at the Holiday Park.

Mr Bayley addressed us orally at the hearing to explain how a dredge vessel is contracted. We accept that EPL have little control over the vessel they use and consider that accepting Mr Styles' recommendation could be setting EPL up for non-compliance with condition 3. We agree with Mr Lawrence that the mitigation proposed by EPL is appropriate, with the proviso that the extension of the acoustic fence should be offered prior to the commencement of any dredging, rather than "*where dredging noise is predicted or measured to exceed the night-time noise limits*" as proposed by condition 3A.

We note that Mr Raymond from Gisborne Holdings, who own and operate the Holiday Park, indicated that they have had constructive discussions with EPL and are comfortable that the effects can be managed.

Underwater noise effects were identified as an issue through the AEE and s42A report, with underwater noise largely being generated from piling and dredging activities. Discussions between Mr Lawrence and Mr Styles, both at and after the hearing, have resulted in agreement as to appropriate monitoring and mitigation measures. These are included in the CNMP provided for in consent conditions and include:

- (a) the use of bubble curtains to reduce the propagation of underwater noise from pile driving;
- (b) soft starts to pile driving to enable marine mammals to vacate the area;
- (c) the use of trained marine mammal observers and stop-work procedures when marine mammals are observed in established shutdown zones; and
- (d) regular maintenance of dredging equipment to reduce underwater noise levels.

Mr Bayley indicated that EPL had to drill then drive the piles when constructing Wharf 7 which considerably reduced the noise levels. He expects that the same method will be used for constructing Wharf 8.

Overall, we consider that the noise effects will be acceptable and are satisfied that the mitigation and management, through the consent conditions and the associated CNMP, will be best practice for the types of activities that are proposed.

5.6 Transportation Effects

The proposed further development of the port by EPL will enable larger ships to enter the port and so will very likely result in more heavy traffic movements on roads that are used to get to the port. How this issue is dealt with was the subject of a JWS agreed between Mr Chris Rossiter, a transportation engineer from Stantec NZ representing the GDC, Mr Glen Connelly, a senior safety engineer employed by Waka Kotahi/NZTA, and Ms Judith Malkinson, a transport engineer representing EPL.

The main focus of the JWS was on the SH35/Hirini Street intersection, as all heavy traffic coming to and from the port must pass through this very busy intersection. It currently operates at a “poor level of service” at peak periods. There have been more crashes than might be expected at this intersection, but apart from one serious injury event to a cyclist taking a “short cut” through the service station beside the intersection, none of the crashes involved more than minor injuries.

The current preference for upgrading the intersection is an 11m roundabout, with an estimated cost of about \$5million. Our reading of the JWS is that there is currently an impasse between the NZTA and GDC on the priority afforded to this upgrade, and how it will be funded⁶. In the meantime, some interim improvements for pedestrian and cyclist safety could go ahead.

While there were some minor disagreements between the experts, they all agreed that the Wharf 8 redevelopment will allow for more logs to be loaded at the port, and so will involve more logging truck movements. Importantly, they all agreed that “capacity issues at the existing SH35/Hirini St intersection are not a reason to deny resource consent as the proposal is unlikely to exacerbate existing peak hour conditions”.⁷ We support that finding.

The experts supported a Construction Traffic Management Plan as a means to mitigate and manage effects of temporary increases in traffic during construction, which they noted could last several years.

The conditions of consent agreed by the parties are included in the final set of conditions presented to us. They are conditions 74-76, with the latter condition requiring EPL to monitor traffic movements at the SH35/Hirini Street intersection until such time as it has been upgraded. Further monitoring is required on one of the roads leading to the port.

We support the “traffic” conditions as recommended to us, and they are included in the full conditions of the consents we have granted.

The submission made by Ms Ward on behalf of the Gisborne Rail Action Group raised two main issues – the restoration of the rail link between Gisborne and Hawke’s Bay, and us requiring the Applicant to use the existing rail link to the Matawhero log yard.

Neither of these are matters relevant to the present applications. We very much doubt that, given the massive damage to the rail link in Cyclone Gabrielle, it will ever be repaired. Indeed, since the

⁶ JWS at Paragraph 37

⁷ JWS at Paragraph 59

hearing was completed the new coalition government has said it has no intention to re-instate the rail line; rather its focus will be on making the State Highway 2 link more resilient.

Both this, and the use of the Matawhero rail link are out of scope of the present applications, and for the reasons listed in Ms Lampitt's opening submissions⁸ we cannot consider these issues in our decision. For the same reason we cannot "direct" trucks to go along Ormond Road, as was sought by Mr Moreton.

5.7 Other Potential Effects

Under this heading we consider effects on landscape, heritage and archaeological sites, public access and reserves. While in this decision we quote only Mr Whittaker, Ms McPherson in her planning evidence on behalf of the Applicant came to very similar conclusions about these potential effects.

Mr Whittaker addressed landscape issues in paragraphs 218-222 of his s42A Officer's report. At his paragraph 220 he said (slightly paraphrased):

"Having visited the land-based viewpoints of the port on many occasions and reviewing the landscape report prepared by the Applicant, I am satisfied that while there will be some modification to the coastal margin and interface of port operations along the CMA, these effects will not give rise to an inappropriate or significant level of effects".

He also considered that the proposal would not affect "Cook's Cone of Vision", and so was not a matter for us.⁹

We agree with these assessments.

"Boat Harbour", which is located off the end of the SLY and the breakwater, is a heritage site as it was recorded in Cook's diaries as his first shore landing in New Zealand. Heritage NZ had submitted on the applications because they could affect Boat Harbour.

Heritage NZ withdrew its right to be heard after discussions with EPL. Specific mitigation measures were proposed. Mr Whittaker concluded that "based on the updated advice from Heritage NZ and the proposed mitigation measures I am satisfied that any effects on Boat Harbour can be appropriately managed and/or avoided".¹⁰

We accept his advice on this matter.

There are no known archaeological sites that could be affected by the Proposal.

Regarding public access and reserves Mr Whittaker said that as the reclamation is adjacent to an operational port with no linkage or connection to other public walkways, there is "little merit" in requiring an esplanade or strip in this area, and that "it is not recommended" that public access be promoted over the reclamation.¹¹

We agree entirely with this advice.

⁸ At her Paragraph 65.

⁹ At his 217

¹⁰At his Paragraph 196.

¹¹ At his Paragraphs 240 and 241.

5.8 Positive Effects

As outlined in the evidence of Mr Bayley, the closing submissions of Ms Lampitt and the submissions in support of the Applications there are several positive effects from granting the applications. These include:

- a. Increasing the efficiency of port operations by allowing larger ships to berth at Wharf 8.
- b. Providing opportunities to export to additional markets, and potentially provide for horticultural exports directly from the port.
- c. Enabling more cut logs to be exported to deal with the “wall of wood” coming in 5-10 years.
- d. Improving the resilience of local communities, and particularly Gisborne City, because as shown in the aftermath of Cyclone Gabrielle all land transport routes to and Tairāwhiti can be closed by extreme events, and the port then becomes a vital lifeline access to and from the region.

5.9 New Zealand Coastal Policy Statement 2010 (NZCPS)

We have given strong emphasis to the Objectives and Policies of the NZCPS. This is because the coastal provisions of the Tairāwhiti Resource Management Plan (TRMP) predate the 2010 version of the NZCPS, and are based on the now obsolete 1994 iteration of the NZ Coastal Policy Statement. As Ms Lampitt said in her opening submissions *“there can be no assumption that the TRMP provisions give effect to the NZCPS policies, and specific consideration of the NZCPS is appropriate and required”*.¹²

Mr Whitaker correctly identified the relevant provisions of the NZCPS from para 326 of his s42A report and the proposal was assessed against these provisions in the AEE, s42A report and the evidence of Ms McPherson. The key issue is how the competing directions of the “protection” policies 11, 13 and 15 are to be managed alongside the enabling Policy 9. Policy 9 reads:

Policy 9 Ports

Recognise that a sustainable national transport system requires an efficient national network of safe ports, servicing national and international shipping, with efficient connections with other transport modes, including by:

- (a) ensuring that development in the coastal environment does not adversely affect the efficient and safe operation of these ports, or their connections with other transport modes; and*
- (b) considering where, how and when to provide in regional policy statements and in plans for the efficient and safe operation of these ports, the development of their capacity for shipping, and their connections with other transport modes.*

This matter was addressed in the recent Supreme Court decision in *Port Otago*.¹³ Ms Lampitt’s closing legal submissions provided a useful discussion of the *Port Otago* decision and summarised the Court’s direction as follows:¹⁴

*The Court agreed with the finding in King Salmon that “avoidance” policies have a directive character and provide “something in the nature of a bottom line.”*¹⁵ However, after

¹² Opening submissions of Alana Lampitt at Paragraph 20

¹³ *Port Otago Ltd v Environmental Defence Society Inc* [2023] NZRMA 422; [2023] NZSC 112 (SC), (*Port Otago*)

¹⁴ At para 34

¹⁵ *Port Otago*, at [64], quoting *King Salmon*, at [132].

undertaking a careful analysis of the policies, the Court found that the “ports” policy also has a directive character due to the combined effect of the terms ‘recognise’ and ‘require’.¹⁶ The Court’s unanimous decision was that there can be no presumption that one directive policy will always prevail over another,¹⁷ and that by applying a “structured analysis”,¹⁸ an enabling policy may legitimately overcome an equally directive protectionist policy.¹⁹

Ms Lampitt referred to the “structured analysis” undertaken by Ms McPherson in her evidence. Ms McPherson concluded that the proposal is not in conflict with any of policies 11, 13 and 15 (the avoid policies) but, if it was, it would still satisfy the *Port Otago* tests through being clearly consistent with the enabling Policy 9. Her view, which we share, is that the proposal “*is necessary to protect and enhance the existing Port facilities and support national and international shipping*”.²⁰

Mr Whitaker had similar views and concluded in his Supplementary Statement of Evidence at the hearing that:

Overall, I am satisfied that the scope and nature of the Stage 2 Twin Berth project is such that where the avoid policy directives of Policy 11 (Indigenous Biodiversity), Policy 13 (Natural Character) and Policy 15 (Natural Features and Landscapes) are engaged, then the design, nature and mitigation measures adopted and presented with the application satisfy the policy directives, either outright, or with due recognition and weighting given to Policy 9 (Ports).²¹

Overall, we are satisfied that the proposal is consistent with the NZCPS.

5.10 The Tairāwhiti Resource Management Plan (TRMP)

The TRMP is a combined Regional Policy Statement (RPS) and regional plan for the Gisborne District, which covers all resource management provisions in the Tairāwhiti region apart from freshwater (which is not relevant to these applications). The regional plan incorporates a specific Port Management Zone that provides for port operations and development in the context of it being a “major regional transport facility”.

Both Ms McPherson for the Applicant and Mr Whittaker in his Section 42A report provided very detailed evaluations of all the relevant provisions in both the RPS and Regional Plan sections of the TRMP. Their overall conclusions were that (inappropriate) noise rules aside, the applications are broadly consistent with the TRMP, and certainly there are no provisions in either document that weigh substantially against granting any of the applications.

We do not think it necessary to repeat those evaluations in this decision. We have read their detailed evaluations, and we agree that the provisions of RPS or of the Regional Plan do not provide any reason not to grant all the consents sought by the Applicant.

¹⁶ *Port Otago*, at [69] and [77].

¹⁷ At [77].

¹⁸ At [78-79].

¹⁹ At [75].

²⁰ Ms McPherson’s evidence at para210.

²¹ Paragraph 9.

6 Part 2 of the Act

Section 104(1) of the RMA states that the matters to be considered must be done so subject to Part 2 of the Act. We note that the Court of Appeal's decision in *RJ Davidson v Marlborough District Council*²² clarifies how to approach the directive by section 104(1) to consider provisions subject to Part 2. It directs that there is no need to consider Part 2 unless there is invalidity, incompleteness or uncertainty of meaning in the statutory planning documents.

In this case, there is no conflict between relevant objectives or policies that would benefit from consideration against Part 2. We have concluded that the proposed activities are consistent with the relevant statutory documents, in particular the NZCPS. With reference to *Davidson*, we find that there would be no benefit to our evaluation of the proposal from consideration of Part 2.

7 Sections 105 and 107 of the RMA

Section 105(1) of the Act requires that we must, in addition to s104 considerations, have regard to any discharge to coastal water by considering:

- a) *the nature of the discharge and the sensitivity of the environment to adverse effects;*
- b) *the applicant's reasons for the proposed choice; and*
- c) *any other possible alternative methods of discharge, including discharge into any other receiving environment.*

The proposal embraces two activities that will "discharge" to water within the harbour basin. The first is from capital dredging, such as deepening the channel to allow larger ships to berth at Wharf 8. As we have discussed in Section 5.2 above, the ecological values of the areas to be dredged are low, the effects of dredging are low: clearly there is no alternative receiving environment.

The only direct ongoing discharge to water will eventually be of treated stormwater from the SLY. It will reduce contaminant concentrations, most notably of suspended sediment, when compared to the present discharge. The discharge is to an environment already greatly modified by port activities, including dredging, with low existing water quality which "naturally" has high suspended concentrations. For this reason, we consider the sensitivity of the environment to adverse effects of a treated stormwater discharge to be very low.

The Applicant has chosen to improve the standard of the discharge, with treatment based on upgrades to stormwater treatment at the other two log yards at the Port, both of which are operating successfully to reduce suspended solid concentrations in stormwater run-off to water. We consider this to be a good reason for choosing to upgrade the SLY treatment system.

There are no feasible alternative receiving environments for the discharge.

The provisions of s107 apply to all applications for permits to discharge contaminants to fresh or coastal water. It has three limbs, of which two are relevant to our decision:

²² [2018] NZCA 316

- s107(1), which in summary states that “after reasonable mixing the contaminant discharged either by itself, or in combination with the same, similar or other contaminants” cannot give rise to any one of five listed characteristics: which include “*the production of any conspicuous oil or grease films, scums or foams or floatable or suspended materials*” (s107(1)(c)), result in “*any conspicuous change in colour or visual clarity*” (s107(1)(d)), cause “*any emission of objectionable odour*” (s107(1)(e)), or “*have any significant effects on aquatic life*” (s107(1)(g)).
- Section 107(2) then lists three possible circumstances in which s107(1) provisions can be “exempted” consideration: in summary these are where the discharge is of a temporary nature, or exceptional circumstances prevail, or that the discharge is associated with essential maintenance.

Any discharge of sediment from capital dredging will at times likely have a “conspicuous effect on colour and visual clarity” of water in the harbour basin, but this will a temporary effect and so is allowed for under the provisions of s107(2).

The discharge of treated stormwater will have less effects on water colour and clarity in the harbour basin than the current untreated stormwater discharge has. We do not expect it alone to breach any s107(1) standards.

Accordingly, we consider the Applicant’s proposal to be consistent with both s105 and s107 of the RMA.

8 Decision

We have decided to grant the applications by EPL for the following consents, which are attached to this decision:

CP-2022-111365-00
 CD-2022-111366-00
 CC-2022-111367-00
 CR-2022-111368-00
 CO-2022-111369-00
 NC-2022-111370-00

The main reasons for this are:

- The Wharf 8 extension will improve the safety and efficiency of the Port;
- The effects of construction and operation can be adequately mitigated and managed through consent conditions, including prescriptive sets of conditions requiring several management plans be prepared by the Applicant and then audited;
- Initial differences about management and monitoring of the SH35/Hirini Street intersection have been resolved between the parties; and
- The treatment upgrade to the SLY stormwater discharge will result in improvements in water quality when compared to the existing discharge.

9 Conditions of Consent

By the time the right of reply was received there was almost total agreement between the Applicant and the s42A reporting officers about the draft conditions of consent. The only disagreement related to night-time noise levels at the Holiday Park from dredging activities. We addressed this in Section 5.5 above, where we accepted EPL's recommended condition 3A albeit with an amendment to require an extension to the existing acoustic fence prior to dredging commencing.

This level of agreement is in our experience very uncommon, and we strongly commend the experts for the Applicant and the reporting officers for reaching almost total consensus about the draft conditions. This of course does not mean that we would accept all the conditions agreed by the Applicant and the officers. We have been through these line by line, and have made a number of amendments, particularly to ensure the consents are only granted for 35 years and 15 years respectively (as drafted they could have been for years longer than that) and that abbreviations are not used for some terms such as hectares and cubic metres. We have also made a minor change to condition 35 to refer specifically to an avian ecologist, and have made significant amendments to condition 37, which sets higher standards for the management of the kororā population within the revetment seawall. We explain the reasons for this in Section 5.3 above.

Finally, we want to express our thanks to the co-operative approach adopted by the Applicant and the s42A reporting officers. This was shown in the level of agreement about the actual and potential effects of the proposal, and the relevant planning instruments and how they should be interpreted. In particular, it led to a very substantial consensus about what terms and conditions the various consents sought by the Applicant should be granted on. As explained above, we have largely, but not entirely, agreed with the conditions they reached by consensus.



Dr Brent Cowie, Chair



Ms Bianca Sullivan, Commissioner



Mr Rauru Kirikiri, Commissioner

this day on 5 February 2024