

NORTHLAND REGIONAL COUNCIL & WHANGĀREI DISTRICT COUNCIL OFFICER REPORT – S42A ADDENDUM

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1. INTRODUCTION AND PURPOSE

1. The purpose of this s42A Council Officers Report Addendum (**'s42A Addendum'**) is to set out Council Reporting Officer positions¹ on matters raised following the issue of the initial s42A Council Officers Report dated 3 August 2023 (**'s42A Report'**) including the recommended conditions of consent dated 18 August 2023.
2. This addendum covers the following matters:
 - a. Outstanding matters from the s42A Report;
 - b. Additional matters raised;
 - c. Comments on recommended amendments to the condition sets 9 November 2023; and
 - d. Concluding comments.
3. Any changes or updates in position of Council specialists are set out within the Supplementary Technical Memos attached as **Appendix A** and that of the Council Reporting Planners are detailed below.

2. OUTSTANDING MATTERS FROM THE s42A REPORT

4. Outstanding matters raised in the s42A Report (3 August 2023) include:
 - a. Number of cranes required;
 - b. Tug facility detail;
 - c. Surrender of consents;
 - d. Stockpiling on the expansion area;
 - e. Alternative land;
 - f. Turbidity conditions
 - g. Marine ecology effects;
 - h. Avifauna effects;
 - i. Landscape effects on Outstanding Natural Landscapes (**'ONLs'**);
 - j. Recreational mitigation;
 - k. A Place of Significance to Tangata Whenua;
 - l. Adequate cultural mitigation;

¹ Ms Stacey Sharp, Whangārei District Council and Mr Blair Masefield, Northland Regional Council.

- m. Allocation of coastal space; and
 - n. Lapse and Duration.
5. These matters are discussed below.

2.1 Number of Cranes Proposed

6. The Applicant has clarified in the evidence of Mr Khanna (also referred to within Mr Bloomfield's evidence) that four cranes are required for the container terminal.² Mr Brown confirms within his Evidence in Chief that four cranes have been considered through the landscape assessment.³ This is discussed below with regard to the residual landscape effects issue.

2.2 Tug Facility Detail

7. The Applicant has better clarified the tug facility location and shown this on a plan.⁴ Conditions requiring the final design to be certified have been agreed.

2.3 Surrender of Consent

8. The Applicant has identified three consents for potential surrender. The initial concern raised in the s42A Report related to creating a situation where outstanding conditions from those consents to be surrendered may not have been covered by these consent conditions. Following review of s139 of the Resource Management Act ('RMA'), both Council Officers are satisfied this section provides a mechanism for that to be addressed at the time of surrender.

2.4 Stockpiling on the Expansion Area

9. The Applicant's Air Quality Evidence in Chief⁵ confirmed that use of the expansion project area for stockpiling of breakbulk would unlikely breach permitted activity standards and could be appropriately managed through the proposed Dust Management Plan.

2.5 Alternative Land

10. Availability of surplus Channel Infrastructure land was queried. The Applicant advised there was no surplus land available.

2.6 Turbidity Conditions

² Mr Khanna Evidence in Chief, dated 24 August 2023, paras 16(b) and 48(b):

<https://www.nrc.govt.nz/media/eytdrmnu/mahim-khanna-evidence-port-operations.pdf>

³ Mr Brown Evidence in Chief, dated 24 August 2023, para 95,: <https://www.nrc.govt.nz/media/q12kq5hz/s-brown-evidence-landscape.pdf>

⁴ <https://www.nrc.govt.nz/media/02sn3xzo/compiled-plan-set-o14656-and-o14656a-rev-b-july-2023.pdf>

⁵ Mr Curtis Evidence in Chief, dated 24 August 2023: <https://www.nrc.govt.nz/media/qpufbulu/a-curtis-evidence-air-quality.pdf>

11. The Applicant supplied turbidity conditions in its Evidence in Chief⁶. These have been the subject of several workshops between the Northland Regional Council ('NRC') in-house coastal scientist, Mr Masefield, Mr Treloar, Mr Hood and Mr Peterson.
12. The approach, while tested internationally and in Lyttleton, is new to Northland. Proposed amendments have been drafted by Mr Treloar and are included in the attached NRC set. These amendments seek to improve usability and enforceability.
13. These conditions also include ecological assurance monitoring conditions. Mr Lohrer has reviewed these and proposed additional monitoring locations to the east of the dredge area. This matter is discussed below.

2.7 Marine Ecology Effects

Residual Effects Mitigation

14. Mr Masefield considers that unmitigated significant cumulative effects identified by Mr Lohrer and significant effects at the footprint scale identified by Mr Lohrer and Mr Kelly can be addressed by proposed conditions for a shellfish repopulation plan. Mr Lohrer has explained in **Appendix A2** what would be required, and this has informed the proposed condition. On this basis, Mr Masefield is of the view that avoidance of significant adverse effects can be achieved to satisfy NZCPS Policy 11 and its subsidiary Regional provisions.
15. The Applicant may be of the view that these footprint scale effects do not require mitigation because of the Proposed Regional Plan ('PRP') policy directive to apply a systems approach. Mr Masefield is of the opinion that this directive assists in terms of a s104(1)(b) policy assessment, but in terms of a s104(1)(a) effects assessment, these significant residual effects remain in need of appropriate mitigation and a condition for a shellfish repopulation plan has been included in the attached set.

Ecological Assurance Monitoring

16. Through the expert conferencing process, Mr Lohrer proposed additional monitoring north and east of the dredge area. He sets out in **Appendix A2** the rationale and locations for this monitoring, and amendments to the conditions are included in the attached NRC set.

Closed Dredge Season

17. A 2015 Cawthron assessment for NRC included a recommendation for restricting dredging in the Whangarei Harbour to manage ecological and recreational impacts. Mr Lohrer sets out in **Appendix A2** the rationale and locations for this monitoring and amendments to the conditions are included in the attached NRC set and provides the link to this Cawthron Assessment.
18. If the Commissioners are not persuaded by this evidence, in Mr Masefield's opinion, there should at least be a condition to incentivise avoiding this period, and a certification process⁷

⁶ Draft Proposed NRC Conditions, dated 25 August 2023: <https://www.nrc.govt.nz/media/1tmbqzln/b-hood-evidence-planning-attachment-4-clean-nrc-conditions.pdf>

⁷ This could be similar to a winter earthworks approval process.

based on demonstration of why avoiding this season was not practicable. He is of the strong opinion that dredging over consecutive closed seasons must be avoided.

2.8 Avifauna Effects

19. In **Appendix A3**, Ms Webb describes the bird roost as an offset. In the Avifauna & Planning JWS dated 20 September Ms Webb recorded the bird roost as mitigation. On Monday 13 November, Mr Matheson provided a helpful response to the question around “avoidance at impact” and seemed to conclude that offset and compensation were a form of mitigation.
20. Mr Doesburg provides a further submission on this matter. Subject to the attached proposed conditions, developed in conjunction with Ms Webb, Mr Masefield concludes that if the bird roost is maintained for its intended purpose, and monitoring demonstrates avifauna are using it for its purpose, then it will likely achieve avoidance of material harm to rare and threatened avifauna species.
21. As detailed in the Avifauna and Planning Joint Witness Statement⁸, Ms Webb retains her view that additional conditions are required to ensure that the proposed bird roost is maintained in perpetuity and achieves its purpose, and that operational effects on avifauna are managed appropriately. These are discussed below.

2.9 Landscape Effects on ONLs

22. District and Regional policies give effect to the directive avoidance policies relating to avoiding effects on ONL’s of the Regional Policy Statement for Northland (May 2016) (**‘RPS’**) and New Zealand Coastal Policy Statement 2010 (**‘NZCPS’**).⁹
23. Both Council Officers’ interpretation of Mr Farrow’s concerns is that the effects are likely to be experienced by transitory users of the Harbour as they traverse through the narrowed Harbour entrance ‘throat’ that would be further constrained by the reclamation. As such, in accordance with the assessment direction provided by RPS Policy 4.6.1(3)(a), no conflicts with the avoidance ONL policies are identified.¹⁰
24. Notwithstanding, Ms Sharp recommends a condition to reduce the number (and type) of cranes to reflect the scope of the landscape assessment and the Applicant’s operational evidence that four cranes are required (along the berth frontage) to enable the safe and efficient operation of the Port.

2.10 Recreational Mitigation

25. The Recreation JWS addendum, prepared by Mr Jones and Mr Greenaway, contains indicative costings for recommended off-site mitigation options.¹¹ Both Mr Farrow and Mr Brown also

⁸ Dated 20 September 2023: <https://www.nrc.govt.nz/media/1dgnqv4/joint-witness-statement-avifauna--planning-20-september-2023.pdf>

⁹ RPS Policy 4.6.1; and NZCPS Policy 15.

¹⁰ RPS Policy 4.6.1(3)(a) sets out that when considering and assessing adverse effects on the characteristics and qualities of ONL’s, recognise that a minor or transitory effect may not be an adverse effect.

¹¹ Dated 25 September 2023: <https://www.nrc.govt.nz/media/mv2jglv/joint-witness-statement-recreation-addendum-25-september-2023.pdf>

support the off-site mitigation opportunities identified in the Recreation JWS addendum from a landscape perspective.¹²

26. As set out within his Supplementary Technical Memo (**Appendix A5**), Mr Jones considers that the off-site mitigation options set out in the Recreation JWS addendum reflects the minimum mitigation required to offset the current recreational opportunities (as opposed to value) that will be negatively impacted by the proposal. In his opinion, implementation of the recommended mitigation options would reduce adverse effects on recreational opportunities to minor at the local level.
27. In relying on the advice of Mr Jones, Ms Sharp recommends a replacement condition for NP-34-36 (Mair Road Improvement Feasibility Study, noted as an Augier condition) to require the consideration and implementation of the off-site recreation mitigation options recommended by Mr Jones.¹³

2.11 Place of Significance to Tangata Whenua

28. The s42A Report queried whether the site was a Place of Significance to Tangata Whenua for the purposes of RP Policy D.1.4. Ms Chetham provide the equivalent of an RMA s32 analysis of the site against the criteria in D.1.5 and her evidence concludes that it is.
29. Based on the footnote to D.1.4 and the robustness and uncontested nature of Ms Chetham's evidence, Mr Masefield is of the opinion that the values and relevance of the place be given equivalent weight as if it was mapped.

2.12 Adequate Cultural Mitigation

30. At the time of writing, the Applicant's proffered cultural mitigation conditions¹⁴ have been removed from the suite of proposed conditions. Both Council Officers understand direct discussions between the Applicant and iwi/hapū submitters are ongoing with a view of further developing a cultural mitigation package.
31. At the time of writing, both Council Officers understand that mana whenua remain of the view that cultural effects will remain significant and, with particular regard to the loss of connection with place, effects will be permanent and are unmitigable. Notwithstanding this and as presented at the hearing, some iwi and hapū submitters identify that there are opportunities to mitigate, offset, and/or compensate adverse effects and to realise positive effects to tangata whenua. These outcomes are all consistent with the relevant policy guidance.¹⁵

¹² Section 3.2, Landscape JWS.

¹³ For the avoidance of doubt, in Ms Sharp's opinion there is a direct and unequivocal link between the residual significant adverse recreation effects resulting from the proposal (accepted by both recreational experts) and the recommended off-recreational mitigation conditions. The conditions are therefore recommended in accordance with s108 and s108AA of the RMA.

¹⁴ As proposed in the Applicant's Evidence in Chief.

¹⁵ See 11.3.1.6 of the s42A Report

32. Both Council Officers are of the position that it is up to mana whenua to both assess and determine the extent of cultural effect on them, and in association with that responsibility, are best placed to advise the Applicant on appropriate cultural mitigation to address those effects.
33. For that reason, no cultural conditions are contained within the Council condition sets attached as **Appendices B** and **C**. It is anticipated that the Applicant will likely submit a final set of conditions, updated through discussions with mana whenua prior to the hearing being closed.
34. This matter therefore remains live in this hearing and in both Council Officers' view, it is a highly pertinent matter that carries material weight.

2.13 Allocation of Coastal Space

35. The reading of the RPS Policy 4.8.1 to require demonstration of demand or need for the intended use of the coastal space was queried in the s42A Report¹⁶. Mr Doesburg and others have provided legal submissions that do not support this reading.
36. The narrative in the s42A Report continued on conclude that the actual issue may be more related to duration¹⁷ and that in the absence of demand the policy guidance is toward a shorter duration. This is discussed next.

2.14 Lapse and Duration

37. With regard to the coastal reclamation permits, there is a tension between needing longer terms of lapse and duration to increase investment certainty and weather the political vagrancies of our infrastructure funding prioritisation, versus shorter terms to deal with uncertainties in a changing environment and an expectation that resource consents will be exercised rather than used to protect future positions.
38. In the opinion of Mr Masefield, much of the tension in this case is arising from the Applicant's attempt to utilise a resource consent process to achieve the outcomes of a designation. That is understandable because the designation pathway is not available to the applicant.

Lapse

39. Mr Doesburg has provided useful submissions on both these issues. From these, Mr Masefield maintains that a 10-year lapse period strikes the appropriate balance between efficient use of time and resources to reconsider this matter if consents were not exercised and reconsider the appropriateness of the activity and how the existing environment may have changed.

Duration

40. Turning to duration, Mr Masefield supports the 35 years for the structures and discharges given the scale of investment. In Mr Masefield's opinion, an unlimited duration of the reclamation permit is wholly inappropriate. He considers its maximum would logically be the same maximum specified duration for the other regional permits.

¹⁶ Refer section 11.3.1.9

¹⁷ Refer 11.3.1.9 para 475

41. There are a number of reasons why Mr Masefield considers an unlimited duration is inappropriate, and two in particular are:
 - a. Planning blight – the unlimited duration with no certainty of and reliance on third party investments to implement, imposes unreasonable blight on affected parties, not least Iwi and Hapū. Unlike designations, affected parties have no recourse to compensation; and
 - b. Static conditions – the Applicant has chosen to promulgate static conditions that do not account for changes through time. In a dynamic coastal environment, with the addition of predicted sea level and climatic changes, the conditions are inadequate to support an unlimited duration, possibly even a longer duration.
42. Mr Masefield is of the opinion that an unlimited duration could have the effect of granting the activity in perpetuity, or at least until transport infrastructure that a third party would provide¹⁸ is in place to enable it to exercise the consents. In each lapse extension the applicant would simply say “we have done all we can but are waiting on these third-party investments, we need another 10 years”.
43. Mr Doesburg has again provided useful submission on this point. In Mr Masefield’s view, 35 years is the maximum duration. A decision for this length would need to be based on certainty of the conditions adequacy to adapt to change over this duration and remain adequate to appropriately manage the future effects, and maintains an outcome that delivers on the policy basis for the decision.
44. On the basis of the proposed conditions, Mr Masefield considers a duration beyond 20 years appears challenging to justify.

3. ADDITIONAL MATTERS RAISED

45. Additional/new matters raised following the issue of the s42A Report (3 August 2023) include:
 - a. Activity status;
 - b. Social Impacts;
 - c. Groundwater discharges;
 - d. Suitability of coastal modelling;
 - e. Application of the Regionally Significant Infrastructure policies; and
 - f. Benefits of a Regional container terminal.

3.1 Activity Status

¹⁸ Marsden Rail Link and Four Lanes Auckland - Northland

46. Ms Sharp maintains the position that the Whangārei District Council ('WDC') land use consents warrant consideration as a Non-Complying activity and makes the following additional comment in response to the matters discussed throughout initial hearing proceedings:
- a. As noted by the Chair, the PORTZ clearly distinguishes between *Port Activities* and *Industrial Activities* as separate activities, raising the question of why then would the WDP consider those activities as being the same in another Zone.

The distinction between *Port Activities* and *Industrial Activities* within the PORTZ is, in Ms Sharp's opinion, a reflection of the PORTZ land use management regime¹⁹ as opposed to a wider WDP position that the two are fundamentally different. In Ms Sharp's opinion, the opposite is suggested – that the association/relationship between *Port Activities* and *Industrial Activities* is acknowledged by the WDP, both in the activities listed in the Port Activities definition²⁰ and as the PORTZ Industrial Activity rules include a specific reference and link back to *Port Activities*.²¹

47. A s104D 'Gateway Test' is undertaken below. For completeness and in the instance the Panel determine that the proposal does not meet the definition of any listed activities within the NOSZ rules, Ms Sharp considers that the WDC consents would retain a Discretionary activity status overall (via recourse to Rule NOSZ-R1).

Gateway Test

48. In accordance with s104D(a), Ms Sharp considers that the effects arm of the 'Gateway Test' is not met in this instance, as significant residual adverse recreation and landscape effects are generated by the proposal.²²
49. With regard to the s104D(b) policy arm and further to the assessment provided within the Section 12.2.3 of the s42A Report, overall and on balance, Ms Sharp concludes that whilst several aspects of the proposal do not sit comfortably with the policy direction of the WDP,²³ she does not consider that the proposal is contrary to the objectives and policies of the WDP overall. Reasoning is set out below:
- a. The proposal enables the continued efficient and effective operation and expansion of Northport, identified as RSI;

¹⁹ *Port Activities* are permitted throughout the PORTZ, in Port Operations Area A ('Area A'), Port Management Area B ('Area B'), and Port Management Area C ('Area C'). Industrial Activities, not associated with port operations, are discouraged (Non-Complying activity status) from establishing within Area A as that land is to be protected for use by the Port but have more enabling activity statuses in Areas B and C, dependent on the activity.

²⁰ The only WDP defined activities listed within the Port Activities definition are those identified as industrial activities in the nesting table (*Storage* and *Repair and Maintenance Services*).

²¹ The rule titles/headings for PORTZ-R18 Manufacturing, PORTZ-R19 Storage, PORTZ-R20 Repair and Maintenance Services, and PORTZ-R24 Waste Management Facilities all expressly note exemptions for Port Activities.

²² Based on the advice of Mr Jones, recommended conditions reduce effects on recreational opportunities to minor. The off-site mitigation is not however understood to mitigate the loss of recreational value, which Mr Jones considers remains significant.

²³ Namely those relating to tangata whenua, the use of public esplanade reserve (NOSZ land) for port activities.

- b. Subject to recommended conditions, environmental effects are generally mitigated to appropriate levels. Where specific effect thresholds aren't specifically identified within policies (e.g. recreation) guidance is taken from the RPS policy directive to allow minor adverse effects from RSI;
- c. The proposal is not contrary to the consultation and involvement in decision-making 'thread' of the tangata whenua policies, noting the pre-lodgement consultation undertaken and commissioning of cultural assessments;
- d. The proposal does not sit comfortably with the more substantive policy direction relating to tangata whenua, which contain directions to *recognise and provide for* the relationship of Māori and culture/traditions, *ensure* that land use and development does not adversely affect taonga and that coastal areas of significance are maintained and enhanced, and to *enable* tangata whenua to exercise rangatiratanga and kaitiakitanga. Acknowledging the WDC consents are largely limited to construction works above MHWS and the use of the reclamation and esplanade reserve, Ms Sharp considers it is possible that conditions could be drafted (in collaboration with mana whenua) to achieve some of the outcomes specified above – however, these are not currently available to consider; and
- e. When considering the primary purpose of the NOSZ is to provide for and protect land for conservation activities, the acquisition and use of the esplanade reserve for a port expansion is considered to be contrary to the overarching policy framework of the NOSZ. Acknowledging this element of the proposal is a relatively small component, and reading the policy provisions as a whole, this conclusion does not lead Ms Sharp to conclude that the proposal is contrary to the objectives and policies of the WDP overall.

Precedent

- 50. In considering precedent as an 'other matter' to consider under s104(1)(c), Ms Sharp does not consider this proposal will set a precedent for other Non-Complying activity consent applications made to undertake Industrial Activities within the NOSZ.
- 51. In Ms Sharp's opinion, there are unique and distinguishing circumstances in this instance as, despite maintaining the position that consent is required as an *Industrial Activity*, consideration is given to the purpose for the acquisition of the esplanade reserve, being to enable an expansion of a regionally significant Port. As there is only one regionally significant Port (and therefore one PORTZ) in the Whangārei District, Ms Sharp does not consider approving consent, in these circumstances, would set a precedent in considering consent applications to undertake *Industrial Activities* within the NOSZ.

Conclusion

- 52. In conclusion, Ms Sharp agrees with the Applicant's planning experts that the issue of WDC activity status is largely academic and has little material impact on the consideration of the WDC consents. In Ms Sharp's opinion, a Non-Complying activity status does not present an impediment to the granting of the WDC consents, nor will the granting of consent set an adverse precedent for other Non-Complying resource consent applications within the NOSZ.

3.2 Social impacts

53. Commissioner Leersnyder enquired about social impacts and a social impact assessment. This matter was expressly considered by Council Officers at the s88 and then s92 stage of the consent process.
54. Due to the site specific (rather than linear) nature of the project, effects are somewhat contained and the identifiable social effects were considered to be addressed by stand-alone technical assessments, particularly noise and recreation. The communication and engagement aspects of managing social impacts has been addressed via conditions, particularly those requiring a website and a Stakeholder and Communications Plan, and these conditions were also informed by public submissions.
55. Reotahi submitters at the hearing identified the unpredictability of sharp noises as the most disturbing effect. In response, additional conditions requiring publication of real time noise monitoring on the website is proposed, to assist these affected parties to understand how Port noise standards are/are not being complied with. Further, that the Northport shipping schedule is updated to highlight where night-time loading events are planned and a subscription service is established, enabling members of the public to receive regular updates on Port activities if of interest. This is discussed below.

3.3 Contaminant discharges to groundwater

56. Commissioner Leersnyder raised a point in questioning of Mr Blackburn regarding discharge of contaminants to groundwater from the unlined Stormwater system. The Applicant has technically applied for the activity under PRP rule C6.4.6, however this element is not described or assessed in the proposal or considered in the s42A Report.
57. Mr McLaren addresses this in the attached supplementary technical memo (**Appendix A6**) and proposed a solution via a Groundwater Management Plan.

3.4 Coastal modelling

58. The adequacy of the coastal (hydrodynamic and morphodynamic) modelling to inform decision making, largely due to 'real world' calibration, was raised by the Patuharakeke Trust Board and leaned into by other submitters.
59. Mr Treloar, who provided Coastal Process expertise for the s42A Report, sets out in **Attachment A1** his relevant expertise with regard to coastal modelling and provides his opinion that adequate calibration has occurred to reliably inform the decision making, and that it is reasonable to assume that sea level rise will not alter that sediment transport regime in the harbour.

3.5 Application of RSI policies

60. In response to evidence of Ms Kirk, Mr Doesburg has provided submission on the application of the three cascading Regionally Significant Infrastructure policies of the Regional Plan. This is the approach Mr Masefield and Ms Sharp have applied in their application of these policies to this proposal.

3.6 Positive effects

61. Through the hearing a number of submitters raised the regional benefits of a container terminal. The Market Economics Economic Assessment²⁴ and the Issues and Options Assessment²⁵ demonstrate that the existing constructed and consented (Berth 4) port area is sufficient to cater for foreseeable regional break bulk and container demand. These benefits are concluded as forming part of the existing environment.
62. The benefits this proposal seeks to provide are the compounding benefits that an Auckland North focussed trade hub will deliver. While the ME report used a regional input output model for its assessment, and these models typical use local government regional boundaries, it is unclear from that whether the regional benefits concluded to occur will accrue only in the Northland region, or will be spread across the Auckland North geographic area.
63. If the latter, then the Panel need to consider this when reporting on the project benefits and the significance of regional benefits to Northland (under the jurisdictional extent of the Regional Plan).

4. CONDITIONS

64. As set out within the Planning – Conditions Joint Witness Statement (JWS) dated 9 November 2023, there is generally wide-ranging consensus on majority of the conditions between the Council Officers and the Applicant’s planning experts. Residual areas of disagreement on both NRC and WDC conditions are relatively narrow.
65. A brief explanation on Council’s position on these residual areas of disagreement are set out below. Council recommended conditions are attached as **Appendix B** (WDC) and **Appendix C** (NRC). ‘NP-X’ refers to the Applicant’s (Northport) proposed set of conditions (attached to the Planning – Conditions JWS as Attachment 2).²⁶

4.1 Northland Regional Council Conditions

66. With regard to the NRC consent conditions, substantive areas of disagreement between Mr Masfield and the Applicant, that are not discussed above, include:
 - a. Cost Escalation – With the heavy reliance on monetary compensation for effects and uncertainty around timing, all monetary values need to be escalated to account for inflation and to ensure effects can actually be mitigated.
 - b. Channel design input – A restructure is proposed to protect the structure of the Design conditions originally proposed. The main concern is that reclamation is referenced in both the reclamation and structures conditions.

²⁴ Application for resource consents for the expansion of Northport – Appendix 22: <https://www.nrc.govt.nz/media/neklwcc1/application-document-lodged-06-10-2022-appendix-22-economic-assessment.pdf>

²⁵ Application for resource consents for the expansion of Northport – Appendix 2: <https://www.nrc.govt.nz/media/ptzl1a2u/application-document-lodged-06-10-2022-appendix-2-issues-and-options-report.pdf>

²⁶ Planning – Conditions JWS dated 9 November 2023: <https://www.nrc.govt.nz/media/tafpuzso/joint-witness-statement-planning-9-november-2023.pdf>

- c. Duneland vegetation – Mr Masefield considers that this condition is required for mitigation and is not Augier.
- d. Marine Mammals – Ms McConnell confirms she is supportive of the proposed conditions and that these adequately address the concerns she has raised.
- e. Dredging / Turbidity - Targeted amends to improve condition enforceability, to strengthen the linkage to the purpose of the conditions – ensuring the dredge plume performs as it has been modelled.
- f. Marine ecology assurance monitoring – Additional benthic monitoring sites to be included, and better defining of subtidal seagrass monitoring, as proposed by Mr Lohrer.
- g. Sandbank coastal monitoring – Additional monitoring frequency included by Mr Treloar to address concerns of Ms Webb on the adequacy of the proposed monitoring to ensure the purpose of the sandbank is being achieved.
- h. Shellfish Repopulation Plan – As recommended by Mr Lohrer.
- i. Operational Avifauna Management Plan – As proposed by Ms Webb to ensure the high tide roost is functioning for its intended purpose. This including bird use monitoring as suggested by Ms Kirk in her supplied condition amendments dated 14 November 2023.
- j. Operational Stormwater – Inclusion of a groundwater management and monitoring conditions, sludge management conditions and associated amends to address risks of the unlined system as proposed by Mr McLaren.

4.2 Whangārei District Council Conditions

67. With regard to the WDC consent conditions, residual (substantive) areas of disagreement between Ms Sharp and the Applicant’s experts include:
- a. Transport – As recommended by Mr Inman (**Appendix A7**), cruise ship traffic management controls are recommended during construction periods and, in general alignment with those recommended by Waka Kotahi, conditions are recommended to mitigate (by way of changing traffic behaviours during peak periods) safety and operational traffic effects generated as a result of container terminal traffic.
 - b. Pocket Park – The construction standard of the Pocket Park access, as advised by Mr Inman, is recommended to form conditions of consent to give both the Applicant and Council certainty of outcome. In lieu of evidence being submitted to demonstrate how the construction of the reclamation is required to precede that of the Pocket Park, conditions are recommended to require that the Pocket Park is constructed prior to activities being undertaken on the reclamation.
 - c. Operational Port Noise – In response to submitter concerns, real-time noise monitoring and website amends are recommended as per Mr Runcie’s advice to assist in both managing the social impacts of noise and to aid monitoring efforts.
 - d. Activity controls on the reclamation (Port Activities) – Conditions are recommended to link the justification for the spatial extent of the reclamation (via the Regional coastal policy

framework) and the scope of the Applicant's assessments²⁷ with the use of Berth 5 (WDC land use consent), acknowledging the potential gap between the Applicant's evidence²⁸ and the activities provided for under the definition of *Port Activities*.

- e. Cranes - As set out above, conditions are recommended to limit the number of cranes utilised along the berth frontage to those identified as necessary and assessed by the Applicant's experts – up to four working cranes, including two Ship-to-Shore Gantry Cranes ('STS Cranes').²⁹
- f. WDC Lapse Periods - WDC conditions have been split into two decision sets, with each having an independent lapse period; 'pre-reclamation' (referred to as other land use activities (construction) in the JWS) and 'post-reclamation' (port activities on the reclamation in the JWS). The two condition sets reflect the commencement date of land use consents granted for reclamations³⁰ and the need to undertake early enabling works (website set up, Engineering Plan Approval, construction works etc.). In alignment with the recommended NRC reclamation coastal permit lapse, a lapse period of 10 years is recommended for the 'pre-reclamation' condition set. A lapse period of five years is recommended for the 'post-reclamation' condition set.

4.3 Administrative Matters

68. Further to the substantive matters detailed above, a number of administrative changes are recommended relating to; the s128 review clause, the requirement to maintain a website for matters pertaining to the WDC consents, inclusion of Area A/B/C references within WDC conditions to assist in monitoring activities authorised by these consents, and cross-referencing 'performance standard' conditions within the over-arching management plan conditions.

5. CONCLUDING COMMENTS

Whangārei District Council – Ms Sharp

69. With the exception of cultural matters:
 - a. Ms Sharp's opinion is that the attached suite of WDC conditions are at a stage that they provide a pathway for the appropriate avoidance, mitigation, and remedial (off-set and compensation) measures for the identified actual and/or potential adverse environmental effects.

²⁷ Noting comments made in Mr Runcie's supplementary technical memo (**Appendix A4**) regarding the use of the reclamation for breakbulk activities.

²⁸ Specifically, the modelling scenarios set out within the Applicant's Issues and Options Report and Mr Khanna's Evidence in Chief that detail how the spatial requirements for the container yard have been determined. The findings of which have been accepted by Mr Keane, and subsequently by Mr Masefield, as justifying the extent of the reclamation.

²⁹ Refer para 16(b) of Mr Khanna's Evidence in Chief, dated 24 August.

³⁰ Sections 116 and 245 of the RMA.

- b. With regard to the WDC policy framework, while the proposal may not sit comfortably with all provisions, Ms Sharp does not consider that the proposal, on balance, is contrary to the objectives and policies of the WDP.
70. Regarding cultural matters, in Ms Sharp’s opinion it is not the Councils role to proffer what it may consider an appropriate mitigation package for a proposal that has the identified significance and complexity of identified cultural impacts.
71. However, in isolation and acknowledging that the WDC consents are limited to works and activities above MHWS and the use of the reclamation and esplanade reserve, Ms Sharp is of the opinion that conditions could likely be drafted (in collaboration with mana whenua) to form a mitigation package (including benefits) to address the issues identified.

Northland Regional Council – Mr Masefield

72. With the exception of cultural matters:
- a. Mr Masefield’s opinion is that the attached suite of NRC conditions are at a stage that they provide a pathway for the appropriate avoidance, mitigation, and remedial (off-set and compensation) measures for the identified actual and/or potential adverse environmental effects.
 - b. Regarding the NRC policy framework, while the proposal may not sit comfortably with all provisions, Mr Masefield does not consider that the proposal, on balance, is contrary to any objectives and policies of the Regional Plan, and higher order provisions.
73. Regarding cultural matters, Mr Masefield agrees with Ms Sharp in that it is not the Councils role to proffer what it may consider an appropriate mitigation package for a proposal that has the identified significance and complexity of identified cultural impacts. It would also be unhelpful to ongoing negotiations around this package, for the Council to indicate a firm overall recommendation, at this point.
74. Once the package is finalised, if it is adequate to address cultural impacts, then a pathway to granting of consent is clear, subject to carefully considered lapse and durations.
75. If it is inadequate, then the extent of its inadequacy will need to be evaluated and weighed against the rest of the policy framework, particularly the identified overall benefits and need for this Regionally Significant Infrastructure.

Report Prepared for NRC by:

Signed:  _____ **Date:** 16 November 2023

Blair Masefield, Consultant Planner

Report Prepared for WDC by:

Signed:  _____ **Date:** 16 November 2023

Stacey Sharp, Consultant Planner

