

**BEFORE THE WHANGĀREI DISTRICT COUNCIL AND NORTHLAND REGIONAL
COUNCIL**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of a resource consent application by Northport
Limited under section 88 of the Resource
Management 1991 for a port expansion project
at Marsden Point

APPLICATION NO. APP.005055.38.01

LU 2200107

REBUTTAL EVIDENCE OF PHILIP HUNTER MITCHELL

(PLANNING)

3 October 2023

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1. INTRODUCTION

Qualifications and experience

- 1.1 My name is Philip Hunter Mitchell.
- 1.2 I prepared a statement of expert planning evidence dated 24 August 2023 ("**primary evidence**") on behalf of Northport Limited ("**Northport**") in respect of the proposed development of the Northport facility at Whangārei.
- 1.3 My qualifications and experience as a planning expert are set out at paragraphs 1.3 – 1.10 of my primary evidence.
- 1.4 I repeat the confirmation given at paragraph 1.10 of my primary evidence that I have read the Code of Conduct for Expert Witnesses and agree to comply with it.

2. SCOPE OF REBUTTAL EVIDENCE

- 2.1 Since the primary evidence of the various parties was circulated, expert witness conferencing has occurred across several topic areas. In that regard, I participated in conferencing related to planning matters (held on 26, 27 and 28 September 2023, marine ecology and planning (held on 19 and 25 September 2023), avifauna and planning (held on 20 September 2023) and coastal processes and planning (held on 22 September 2023).
- 2.2 In preparing this rebuttal evidence I have considered the following documents:
 - (a) The Joint Witness Statement ("**JWS**") in relation to Planning dated 28 September 2023 ("**Planning JWS**");
 - (b) The JWS in relation to Marine Ecology and Planning ("**Marine ecology JWS**") dated 19 September 2023;
 - (c) The JWS in relation to Avifauna and Planning dated 20 September ("**Avifauna JWS**"); and
 - (d) The JWS in relation to Coastal Processes and Planning dated 22 September 2023 ("**Coastal processes JWS**").
- 2.3 Where appropriate, my evidence follows the headings used in the Planning JWS and I discuss the evidence of individual witnesses where it is relevant to those headings.

- 2.4 I confirm that except where I discuss matters from the Planning JWS below (which expands upon the position attributed to me in the Planning JWS), my assessment remains as stated in the various JWSs listed in paragraph 2.2 above.
- 2.5 In this rebuttal statement, I refer to the Proposed Regional Plan for Northland (incorporating the Coastal Plan) as the “**PRPN**”, the Regional Policy Statement for Northland (May 2016) as the “**RPS**”, the Whangarei District Plan as the “**WDP**” and the New Zealand Coastal Policy Statement as the “**NZCPS**”.
- 2.6 I have reviewed the rebuttal evidence of Mr Hood, which I agree with and adopt.

3. PLANNING JOINT WITNESS STATEMENT

District Plan Activity Status

- 3.1 In paragraph 166 of her evidence, Ms Kirk (for the Director-General of Conservation) states that:

“[her] major concern is in relation to the application of Rule NOSZ-23 which identifies industrial activities in the Natural Open Space Zone as a non-complying activity”.

- 3.2 In her paragraph 170, Ms Kirk then states that:

“neither the s42A Report nor Mr Hood considers Rule NOSZ-R35 in their assessments. In my opinion this is a key omission as commercial activities in the NOSZ is a non-complying activity”.

- 3.3 Activity status was discussed further at witness conferencing, as recorded in the Planning JWS, where Ms Kirk confirmed that she considers that WDP “Rule NOSZ-R35 General Commercial” is applicable and that the WDP consent requires consideration as a non-complying activity overall.

- 3.4 Ms Sharp (for the Whangarei District Council) confirmed in the Planning JWS that she:

“considers that the proposed Port Activities do meet the definition of Industrial Activity (Rule NOSZ-R23) and on that basis, recourse back to Rule NOSZ-R1 (activities not otherwise listed) is not required”;

and that

“the Port Activities component of the proposal meets the WDP definition of Industrial Activity, as an activity that distributes and stores materials and goods, which warrants a Non-Complying Activity status under Rule NOSZ-R23”.

3.5 I disagree, for various reasons, with Ms Kirk and Ms Sharp that the proposal is a non-complying activity under Rule NOSZ-R23 (or any other rule in the Natural Open Space Zone), as I will now explain.

3.6 The application for resource consents for the expansion of Northport states that:¹

“Northport Ltd applies for the resource consents from the Northland Regional Council and Whangarei District Council necessary to authorise the expansion of the existing Northport berth length and associated operations area towards the east”.

3.7 A footnote to the application text clarifies that the application includes:

“any other incidental consents required to enable the proposal”.

3.8 I consider that the application is to enable an expansion of port activities at Marsden Point and which meets the definition of regionally significant infrastructure in the RPS, PRPN and WDP, and the definition of “port activities”² in the WDP.

3.9 I further consider that the application should be considered as an integrated whole (i.e., regionally significant port infrastructure) and not as a series of discrete component activities. In my opinion, the “activities” associated with the application are simply those matters that trigger the need for a resource consent for the proposal. In addition, while some individual components of the activities that will take place may arguably fit within the WDP definitions for “industrial”, “commercial”, “recreational” or “community” activities, the activity as a whole does not align with any of those definitions. In my opinion, the “port activities” definition in the WDP recognises this by stating that port related activities **include but are not limited to** (my emphasis) a range of thirteen identified activities (a to m in the list). Any one of those specified activities (or none of them) could occur in the area currently identified as Natural Open Space and would still be clearly identifiable as a port activity.

3.10 While some of the activities that may ultimately occur within the overall development may be regarded as an activity that “*distributes or stores goods and materials, including any ancillary activities*”³ (and hence potentially be an “industrial activity” as stated by Ms Sharp in the Planning JWS), that is not the purpose of the application, nor is it the specific purpose of the activities proposed in the Natural Open Space Zone. As I have already stated, the application is for regionally significant infrastructure to enable port activities to

¹ Application for resource consents for the expansion of Northport, October 2022.

² Noting that the WDP definition refers to activities occurring in the Port Zone.

³ Part of the WDP industrial activity definition.

occur, within which a range of individual activities may occur, including those within the Natural Open Space Zone.

- 3.11 The Regionally Significant Infrastructure definition in the RPS (and which applies in both the PRPN and WDP) states that it:

“extends to the site related components that enable the asset to function”.

- 3.12 In my opinion, any component of the proposal that might theoretically fall within the “industrial activity” definition when viewed in isolation, is, in reality, a component of the overall port activity that is defined as regionally significant infrastructure.
- 3.13 Similarly, any component of the proposal does not fit well with the “general industry” definition in the WDP in that it is not an activity producing goods or services.
- 3.14 Likewise, the proposal does not involve manufacture, repair, storage or maintenance, associated with the production or processing of boats, accessory goods or seafood, marine scientific and research, so is not a “marine activity” as defined in the WDP.
- 3.15 I conclude that any activity that would occur within the Natural Open Space Zone does not fall within the “Industrial Activities” definition in the WDP, so, in my opinion, Rule NOSZ-R23 (industrial activities) does not apply to the proposal.
- 3.16 The proposal does not involve activities that sell services rather than goods, such as a bank, real estate agent, travel agent or a dry cleaner. There may be “services” that form a component of the port development activities, but, as I describe above, any activity within the proposed development that falls within the “commercial service activity” definition is a related component to the overall port activity that is proposed. The port infrastructure is a link in the transport chain, rather than a specific “commercial service” that could be provided by other means. Accordingly, the proposal does not fit within the “commercial activities” grouping defined in the WDP and does not sit well alongside other activities defined for this grouping such as retail activity, grocery stores, motor vehicle sales, entertainment facilities or funeral homes.
- 3.17 I conclude that any activity that would occur within the Natural Open Space Zone does not fall within the “Commercial Activities” definition in the WDP, so in my opinion, rules NOSZ-R13 and NOSZ-R35 (commercial activities) would not apply to the proposal.
- 3.18 I have also considered the other Natural Open Space Zone rules NOSZ-R10 to NOSZ-R34 and in my opinion, none of these apply to the proposal. As a result, the non-complying activity rules in the Natural Open Space Zone do not apply to the proposal.

3.19 In the Planning JWS, Ms Sharp states that the Port Activities definition in the WDP:

“does not apply to activities undertaken within the Natural Open Space Zone (NOSZ) as it is limited to Port Zoned land”.

3.20 While technically correct in terms of the specific definition in the WDP, the reference in the definition to use of land “within the Port Zone” does not alter the nature of the proposed activities, which are those clearly associated with operation of a port. Ms Sharp’s approach also ignores the fact that the proposal is located in an area zoned for port related activities in the PRPN and immediately adjacent to the existing port zone and a heavy industrial zone in the WDP. Ms Sharp’s approach therefore begs the question of how port expansion at Marsden Point could ever be undertaken.

3.21 As Ms Sharp confirmed in the Planning JWS, the WDP defines “definition groupings”⁴ which gather specific land use activities into similar categories, and that the:

“WDP Zone Chapters, including the NOSZ, contain activity-based rules” which reference “the specified land use activities listed in the definition nesting tables”.

3.22 Ms Sharp goes on to say that:

“infrastructure is defined in the WDP but is not an activity listed in the nesting tables, either directly or indirectly as a result of being captured by the definitions of the specified land use activities listed in the nesting tables”.

3.23 This demonstrates, in my opinion, that the “nesting tables” were not intended to, nor do they, capture infrastructure-related activities. It would, therefore, be inappropriate to interpret one infrastructure type in accordance with the nesting tables when no others identified in the WDP are interpreted that same way.

3.24 The “definition groupings” and the Natural Open Space Zone provisions in the WDP do not refer to any infrastructure activities, such as telecommunications, electricity, water or wastewater reticulation or any transport structures. That serves to reinforce my opinion, that port activities more appropriately fall under the “infrastructure” definition (rather than being “industrial” or “commercial” activities), and which are not referred to at all in the Natural Open Space Zone rules. In my opinion, the WDP quite deliberately establishes a separate framework for consideration of infrastructure activities that is quite different from

⁴ **Rural Production Activities**, which includes Farming, Plantation Forestry, Intensive Livestock Farming and Farm Quarrying; **Industrial Activities**, which includes General Industry, Manufacturing, Repair and Maintenance Services, Artisan Industrial Activities, Marine Industry, Waste Management Facility, Landfill and Storage; **Residential Activities**, which includes Supported Residential Care, Retirement Village and Residential Unit; **Commercial Activities**, which includes Retail Activity, Drive-Through-Facilities, General Retail, Grocery Store, Trade Retail, Marine Retail, Hire Premise, Motor Vehicle Sales, Trade Suppliers, Commercial Services, Food and Beverage Activity, Entertainment Facilities, Visitor Accommodation, Service Stations, Funeral Home and General Commercial; and **Community Activities**, which includes Place of Assembly, Community Corrections Activity, Recreational Facilities, Emergency Services, Care Centre, Educational Facilities, Hospital, General Community.

other terms defined in the WDP such as “rural production”, “industrial”, “residential”, “commercial” and “community” activities.

- 3.25 Rule NOSZ-R1 in the Natural Open Space Zone provides for “*any activity not otherwise listed in this chapter*” as a permitted activity, where resource consent is not required under any rule of the District Plan and the activity is not prohibited under any rule of the District Plan.
- 3.26 The “activity” that would occur within the Natural Open Space Zone is not prohibited under any rule of the WDP, but the development as a whole requires land use consent. Accordingly, as Mr Hood also states, the activities proposed in the Natural Open Space Zone are innominate, and fall to be considered as a discretionary activity in terms of section 87B of the Resource Management Act 1991 (“**RMA**”).
- 3.27 Therefore, while I conclude that the Northport proposal is a discretionary activity with respect to the rules in the Natural Open Space Zone, I have also considered the planning implications if the Panel were to determine that the proposal was a non-complying activity in that zone. In short, as I discuss below, there are none, as the gateway test of section 104D(1)(b) is demonstrably satisfied, and there are no consequences of if, and to what extent, the various applications are “bundled”.

Section 104D Gateway Tests

- 3.28 Section 104D(1) of the RMA requires that a resource consent may only be granted for a non-complying activity if:
- a. The adverse effects of the activity on the environment will be minor; or
 - b. The activity will not be contrary to the objectives and policies of any relevant operative or proposed plan.
- 3.29 Other witnesses for the applicant discuss the effects of the Northport activity on the environment and I adopt their evidence for the purposes of section 104(1)(a). I do not consider section 104(1)(a) any further because, in my opinion, there is no doubt that the alternative gateway of section 104(1)(b) is satisfied, as I now explain.
- 3.30 The starting point for me is that Northport has worked closely with its expert advisors to ensure that the proposal satisfies all the “directive” objectives and policies in the planning documents, a case in point being the proposed bird roost, which as Dr Bull explains, will avoid adverse effects on variable oystercatchers and New Zealand dotterel, consistent with Policy 11 of the NZCPS.

3.31 Because this avoidance requirement has been achieved, there is no policy tension with Policy 11 (or Policies 13, 15 or 16) of the NZCPS and other directive plan provisions identified by Mr Hood and the section 42A report. However, even if there was, the recent decision of the Supreme Court relating to Port Otago)⁵ would be directly relevant. It states:

83. *Where there is a potential conflict between the avoidance policies and the ports policy [in the NZCPS] with regard to a particular project, the decision-maker would have to be satisfied that:*

- (i) the work is required (and not merely desirable) for the safe and efficient operation of the ports;*
- (ii) if the work is required, all options for dealing with these safety or efficiency needs have been evaluated and, where possible, the option chosen should not breach the avoidance policies;*
- (iii) where a breach of the avoidance policies is unable to be averted, any breach is only to the extent required to provide for the safe and efficient operation of the ports.*

3.32 As Mr Hood has explained, there is a strong policy emphasis through the RPS, PRPN and WDP supporting the use and development of regionally significant infrastructure, including port related infrastructure in the vicinity of Marsden Point where the existing port is located. It is clear to me, based on the technical evidence, that the activities for which consent is being sought are required to ensure the “safe and efficient operation” of the Northport site, as stipulated by the Supreme Court.

3.33 Against that background, and put simply, I do not consider it a credible planning argument that a port expansion proposal that: is centred on a specific port zone; has been carefully designed to satisfy directive environmental policy provisions; and which has otherwise avoided, remedied or mitigated other effects, could be assessed as being contrary to the objectives and policies of any of the applicable plans.

3.34 I further observe that section 104 of the RMA requires that decision-makers “have regard to” the relevant planning documents. As such, no single policy, or even groups of policies, should be seen as creating a “compliance requirement”. Furthermore, the relevant provisions need to be assessed in their entirety, and it is not appropriate for a planning analysis to “zero in” on isolated provisions in an attempt to highlight deficiencies in a proposal, as Ms Kirk appears to me to have done.

3.35 I conclude that even if the activities proposed within the Natural Open Space Zone were to be considered as non-complying, the gateway test in section 104D(1)(b) can readily be

⁵ Port Otago Limited v Environmental Defence Society Inc [2023] NZSC 112.

met, and therefore has no bearing on the evaluation of the proposal which is to be undertaken under section 104.

Bundling

- 3.36 The activities requiring land use consent under the WDP relate to port related activities on the expanded port area, noise associated with port related activities on the existing and expanded port, cranes up to 85m in height on the expanded port area, construction of a building within the Natural Open Space Zone, being the relocated public toilet at the eastern end of the expanded port, earthworks and indigenous (dune) vegetation clearance within the “Coastal Area” (to create the pocket park), and changes to some of the conditions of two existing WDC land use consents.
- 3.37 The PRPN activities to which the application relates include reclamation, capital and maintenance dredging, deposition associated with the proposed roosting area, stormwater discharge from cargo storage and handling areas, alteration of existing authorised wall structures and the use of the structures for port activities, establishment of a tug berthing facility, and establishment of a fishing pontoon.
- 3.38 The activities proposed in the Natural Open Space Zone are a very small component of the overall project. I consider that any port related development within the Marsden Point Port Zone in the Coastal Marine Area will require a connection to land at some point, so will typically require consent to traverse the land / water boundary. In my opinion, it would not be reasonable nor sensible that the activity status of one small component of the proposal on land were to dictate the activity status for the whole proposal, particularly in circumstances where the PRPN seeks to enable development within the Marsden Point Port Zone.
- 3.39 Furthermore, the Natural Open Space Zone area potentially affected by the Northport proposal comprises a small area located within a much wider area that is bordered to the north by the Marsden Point Port Zone (PRPN), to the east and south by the Marsden Point Heavy Industrial Zone (and Marsden Point Energy Precinct overlay) (WDP) and to the west by the Marsden Point Special Purpose Port Zone (WDP). In my opinion, the Natural Open Space Zone land in this location is already affected to a significant degree by the port related, and heavy industrial, activities in the adjacent environment.
- 3.40 Given the above, it would not be reasonable nor sensible if the activity status for one small component of the proposal on land were to dictate the activity status for all of the land based activities, especially when the WDP encourages marine based activities in the area

and in the context where the PRPN seeks to enable development within the adjacent Marsden Point Port Zone.

- 3.41 On that basis, and if the Panel were to conclude that the activities proposed in the Natural Open Space Zone were non-complying (which I again record that I do not consider to be appropriate on my reading of the WDP), I consider that there is no logical planning justification for bundling the activity status that applies to this small land based component with all the land based activities that fall within the District Council jurisdiction.
- 3.42 Nevertheless, for the reasons set out above, there are no practical implications of various activities being bundled as non-complying and section 104(1)(b) is satisfied irrespective of the extent to which bundling was undertaken.

Tangata Whenua

- 3.43 As confirmed in the Planning JWS, I consider that the Northport proposal is consistent with the PRPN and WDP objectives and policies which set out the engagement expectations between consent applicants and mana whenua. In that regard, I adopt the evidence and rebuttal evidence of Mr Isaacs, which set out the extent of engagement between Northport and mana whenua and the steps taken to engage with mana whenua regarding consent conditions. I also adopt Mr Hood's primary and rebuttal evidence regarding proposed conditions and conclude that the proposed consent conditions appropriately respond to the mana whenua outcomes contemplated by the PRPN and WDP.
- 3.44 I note that in paragraph 6.6(b) of her primary evidence, Ms Dalton states that the area includes existing sites or areas "*of Significance to tāngata whenua*", as identified in the PRPN. To clarify, and as Mr Hood also notes, while sites and areas of significance to tāngata whenua are mapped in the PRPN, these are located outside the project footprint to the east (Te Poupouwhenua) and west (Takahiwai and Mangawhati). As such, the proposed Northport activities do not occur within any "*Site and Area of Significance to Tāngata Whenua*" mapped in the PRPN and so plan provisions relating to those mapped sites of significance do not apply. I acknowledge that the proposal falls within the Poupouwhenua Cultural Area shown in Figure 4 of "Patuharakeke's Cultural Landscape and Sites of Significance Overlay" contained in Patuharakeke's Hapū Environmental Management Plan 2014.
- 3.45 In paragraphs 7.3 – 7.8, 7.14 – 7.18 and 7.21 of her evidence, Ms Dalton refers to matters in the NZCPS that she considers are relevant to the application. As recorded in the Planning JWS, I consider that the PRPN has given effect to the higher order NZCPS and

RPS and that referral back to the higher order NZCPS is not necessary, other than to the extent that doing so might provide contextual clarification.

- 3.46 Finally, and as noted in the Planning JWS and Mr Hood’s primary and rebuttal evidence, if further engagement with mana whenua occurs before the conclusion of the hearing, it may be possible to further enhance the proposed conditions.

National Policy Statement for Indigenous Biodiversity 2023

- 3.47 As confirmed in the Planning JWS, I consider that the RPS, PRPN and WDP provisions are consistent with the provisions of the National Policy Statement for Indigenous Biodiversity 2023 (“**NPSIB**”) (which relates only to indigenous biodiversity in the terrestrial environment, apart from specified highly mobile fauna that may use areas outside the terrestrial environment).
- 3.48 As confirmed in the Planning JWS, the NPSIB does not introduce any new matters for the Northport proposal.

Bird Roost/Sandbank

- 3.49 As stated in the Planning JWS, the bird roost/sandbank has been proposed in order to avoid adverse effects on variable oystercatcher and New Zealand dotterel, as explained by Dr Bull. In relation to the potential effects of sand dispersal from the bird roost/sandbank, Ms Kirk and Dr Beauchamp have suggested that there could be adverse effects on adjacent habitat for the lesser knot as a result of sand dispersal from continued “top ups” of the bird roost.
- 3.50 That supposition is not consistent with the analysis of Mr Reinen-Hamill (who considers such effects not to be material, and that the bird roost will, in some ways enhance, natural defences against coastal hazards⁶), and Dr Bull’s evidence, where she concludes that there are abundant food sources in the area, and the proposed consent conditions recommended by Dr Kelly (requiring the ongoing maintenance of the bird roost for the duration of the consent, as set out in Mr Hood’s rebuttal evidence) are such that the bird roost at the proposed location will result in the long-term benefits to shorebirds.⁷
- 3.51 Based on the evidence of the experts engaged by Northport, I am satisfied that the proposed bird roost/sandbank is appropriate and that the proposed conditions relating to it are appropriate.

⁶ R Reinen-Hamill primary evidence – paragraph 60.

⁷ L Bull primary evidence – paragraph 106.

3.52 That said, even if the Panel was to conclude that, contrary to the evidence of Mr Reinen-Hamill and Dr Bull, the bird roost should not proceed (meaning that, as Dr Bull explains, the effects on variable oystercatchers and the New Zealand dotterel would be “moderate” – i.e. more than minor in the context of Policy 11 of the NZCPS), the proposal represents the “safe and efficient” operation of Northport, such that the Panel can weigh the policy provisions that enable port development (including Policy 9 of the NZCPS) with the policies that direct avoidance of certain adverse effects (e.g. Policy 11 of the NZCPS), consistent with the Supreme Court’s *Port Otago* decision referred to above.

Recreation

3.53 Following the recreation witness conference, the recreation experts prepared a supplementary memorandum in which they identify and cost a range of off-site mitigation measures. As recorded in the Planning JWS, it is unclear whether these are illustrative examples or are intended to fully offset all the residual recreational effects.

3.54 In that regard, I agree with Mr Hood that there are no provisions in the WDP directing that all adverse effects on recreation are to achieve a “no net loss” outcome.

Regionally Significant Infrastructure

3.55 Section 3.6.6 of the Planning JWS records the positions of Ms Kirk, Mr Masefield, Mr Hood and myself with respect to the regionally significant infrastructure provisions in the PRPN. I confirm that I continue to hold the position summarised in the Planning JWS. I discuss that position further below, particularly in response to Ms Kirk’s evidence.

3.56 In her paragraph 113, Ms Kirk states:

“the addition of the further components to the existing port proposed by the applicant (including the new fifth berth and other elements needed to transition to a high-density container terminal) are to be properly regarded as the “establishment” of a Regionally significant infrastructure and Regionally significant infrastructure “activity” respectively”.

3.57 I disagree that the proposal constitutes “establishment” of regionally significant infrastructure in that it is clearly upgrading and development of existing regionally significant infrastructure. I also note that such upgrading/development has been carefully designed to take account of future infrastructure requirements, and is located within an area that has been specifically identified in the PRPN (the Marsden Point Port Zone) for such activities.

3.58 As I discuss in my primary evidence, Policy D.5.8 of the PRPN identifies that the purpose of this zone is to “*enable the development and operation of existing and authorised*

maritime-related” activities, which is precisely what the Northport proposal seeks to do. The PRPN provides for maritime-related activities over a wider area than the existing authorised activities within the zone. In my opinion, it clearly anticipates that further port-related development could be expected over a wider area than the existing port footprint.

3.59 In paragraphs 118 and 119 of her primary evidence, Ms Kirk states that:

“Policy D.2.7 directs that Regionally significant infrastructure be enabled, it also includes provisos which I consider form a “bottom line” which Regionally significant infrastructure is intended to meet”;

and that:

“Policy D.2.7 is a strong overarching policy which pulls together the different policies in the PRP-AV, and directs how the policies are to be reconciled”.

3.60 I disagree that Policy D.2.7 forms a “bottom line” and that it is a “strong overarching policy”.

3.61 Policy D.2.7 is one of a series of policies enabling the establishment and operation of regionally significant infrastructure where there are minor adverse effects (Policy D.2.7), enabling the maintenance and upgrading of regionally significant infrastructure (Policy D.2.8) and assessing the appropriateness of regionally significant infrastructure proposals (Policy D.2.9), amongst a suite of other policies in Chapter D.2. In my opinion, there is no hierarchy implied or stated in the policies in Chapter D.2 and each must be considered to the extent that it is relevant to the proposal being considered.

3.62 In the absence of any other similar policy in the PRPN relating to infrastructure that is not regionally significant, interpreting Policy D.2.7 as a “bottom line” for regionally significant infrastructure would, as recorded in the Planning JWS, create the perverse outcome of requiring regionally significant infrastructure to meet a higher effects threshold than non-regionally significant infrastructure or other activities. I do not consider this to be the intent of that Policy.

3.63 Rather than establishing a “bottom line” as Ms Kirk states in her paragraph 118, I consider that Policy D.2.7 simply acknowledges that minor adverse effects of regionally significant infrastructure projects will be acceptable, while those effects that are more than minor will need to be considered on a case by case basis, including with reference to Policies D.2.7(3), D.2.8 and D.2.9.

3.64 In that regard, Policy D.2.7(3) states that adverse effects of regionally significant infrastructure that are more than minor are to be *“avoided, remedied, mitigated or offset to the extent they are no more than minor”*, rather than being “avoided” as Ms Kirk

proposes in her evidence. The Northport expert evidence is that adverse effects are avoided, remedied, mitigated or offset to the extent they are no more than minor. In any event, there is also no wording in Policy D.2.7 to suggest that it must be considered as a “strong overarching policy”.

3.65 In her paragraphs 123 to 127, Ms Kirk discusses the appropriateness of the Northport proposal in terms of Policy D.2.9. I disagree with her analysis, and as I have stated above, the “appropriateness” of the Northport proposal is readily established through consideration of Policy D.5.9 (which deals with the appropriateness of activities in the Marsden Point Port Zone). It would be anomalous if a regionally significant infrastructure proposal that was appropriate within the Marsden Point Port Zone could then be considered inappropriate through consideration of the more generic Policy D.2.9, especially when Policy D.2.9 only provides a list of criteria that are to be “had regard to and given appropriate weight”. I agree with Mr Hood in this regard.

4. CONCLUSION

4.1 Having reviewed the evidence of the other parties, the various JWSs and the rebuttal evidence of Northport’s witnesses, particularly Mr Hood, my conclusions are unchanged from those presented in my primary evidence.

4.2 They are that:

- I consider that the objectives and policies in the NZCPS, PRPN and WDP are “directive” to the extent that port facilities should be enabled in the Marsden Point Port Zone (PRPN) and the Port Zone (WDP). In my opinion, “enabling” objectives and policies in the context of this application should be seen as similarly directive as any “avoidance” objective or policy. Those enabling provisions should not be “trumped” by objectives or policies that place a higher threshold for activities in these zones. In my opinion, the proposal does not need to achieve the “*policy consistency*” the section 42A report implies is required.
- I consider that resource consents can be granted for the project and that the proposed conditions appropriately address the relevant policy directions while mitigating the effects of the project.
- In my opinion, the proposed conditions are extensive and comprehensive, and appropriately recognise the relevant policy requirements. The conditions establish appropriate limits and management controls for the Northport development.

4.3 I also conclude that for the reasons set out above:

- Those aspects of the proposal that are located within the Natural Open Space Zone should not be assessed as a non-complying activity. That said, any such debate is entirely academic, as it has no bearing on the overall evaluation of the proposal; and
- Even if, contrary to the evidence of Dr Bull and Mr Reinen-Hamill, the Panel was not satisfied that the proposed bird roost should proceed, the *Port Otago* case makes clear that inconsistency with Policy 11 of the NZCPS is not determinative of the overall proposal.

Dr Philip Mitchell

3 October 2023