

**BEFORE AN EXPERT CONSENTING PANEL
NGĀ ŪRANGA KI PITO-ONE SHARED PATH PROJECT**

UNDER the COVID-19 Recovery (Fast-track Consenting) Act 2020
IN THE MATTER OF an application for resource consents and notices of
requirement by Waka Kotahi NZ Transport Agency for
activities associated with a listed project, Ngā Ūranga ki
Pito-One Shared Path Project

**WAKA KOTAHI NZ TRANSPORT AGENCY
RESPONSE TO COMMENTS**

18 December 2020

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INTRODUCTION

1. This document addresses comments made in respect of the application for resource consents and notices of requirement for designations relating to the Ngā Ūranga ki Pito-One Shared Path Project (**Project**).¹
2. Waka Kotahi NZ Transport Agency (**Waka Kotahi**) welcomes the comments provided to the Panel in respect of the Project and is grateful to all persons and entities who have taken the time to comment.
3. Waka Kotahi acknowledges in particular the many comments highlighting the importance of the Project and its significant cultural, resilience, health, and other benefits; it is heartening to see such strong support, including from Taranaki Whānui, Ngāti Toa Rangatira, cycling and walking groups, environmental advocates, and central and local government, for a Project that will be transformational for many people living in and visiting the Wellington region.
4. Waka Kotahi is pleased to be able to respond positively to the comments and looks forward to continuing to work collaboratively with mana whenua and others in the Wellington region as the Project progresses, guided by the Te Ara Tupua Kaitiaki Principles of respect for Ranginui; the mouri of Te Ara Tupua; Wai Tai, Wai Māori; Ahua; Tātai Whakapapa; Whānau; Mana Whenua; and Papatūānuku.
5. The Waka Kotahi response to all comments is set out below, adopting the following structure:
 - (a) a general response to comments regarding the Project's effects on ecological values, including consistency with the New Zealand Coastal Policy Statement 2010 (**NZCPS**) and the package of measures proposed to offset and compensate for adverse effects;
 - (b) a general response to comments regarding the form and function of the shared path and associated facilities; and
 - (c) a specific response to each set of comments received,² following the order of entities in clause 17 of Schedule 6 to the COVID-19 Recovery Act (as relevant), namely:

¹ The response is provided in accordance with clause 19 of Schedule 6 to the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**COVID-19 Recovery Act**).

² Responses were also received from the Minister for Māori Crown Relations: Te Arawhiti (Hon Kelvin Davis), the Employers' and Manufacturers' Association (Northern) Incorporated (which "[supports] the fast-tracking"), and the New Zealand Infrastructure Commission (Te Waihanga), but those entities made no substantive comment.

- (i) Greater Wellington Regional Council (**GWRC**), Hutt City Council (**HCC**), and Wellington City Council (**WCC**) and Wellington Waterfront Limited;
- (ii) Taranaki Whānui ki Te Upoko o Te Ika (**Taranaki Whānui**) / Port Nicholson Block Settlement Trust (**PNBST**) and Te Rūnanga o Toa Rangatira Incorporated;
- (iii) owners and occupiers of land on which the Project is to be undertaken and adjacent land, namely KiwiRail Holdings Limited (**KiwiRail**), Wellington Rowing Association, Wellington Water Ski Club, Powerco Limited, and Wellington Water Limited;³
- (iv) Ministers of the Crown, namely the Minister for Land Information and the Minister for Treaty of Waitangi Negotiations;
- (v) the Director-General of Conservation (**DOC**);
- (vi) the organisations listed in subclause (6)(k) to (u), namely:
 - (1) Generation Zero Incorporated (**Generation Zero**);
 - (2) Heritage New Zealand Pouhere Taonga (**HNZPT**);
 - (3) the New Zealand Fish and Game Council (**Fish and Game**); and
 - (4) Royal Forest & Bird Protection Society of New Zealand Incorporated (**Forest & Bird**); and
- (vii) other persons from whom the Panel invited comment, being:
 - (1) Cycle Wellington;
 - (2) Te Aranui o Poneke / Great Harbour Way Trust;
 - (3) Hutt Cycle Network, Doctors for Active Safe Transport, Greater Harbour Way Trust, and Port Nicholson Poneke Cycling Club;
 - (4) Living Streets Aotearoa; and
 - (5) Te Ātiawa ki Te Upoko o Te Ika ā Māui Pōtiki Trust (**Te Ātiawa Trust**).

6. Annexed to this document and forming part of the response by Waka Kotahi to comments are:

³ The comments provided by Wellington City Council / Wellington Waterfront Limited are also in their capacity as landowner, at locations where the 'living seawall' installations are proposed.

- (a) **Appendix A**, an addendum to the expert ecological assessment prepared in respect of the Project, Technical Report 9 (**TR9**) which accompanies the Assessment of Effects on the Environment (**AEE**);⁴ the addendum has been prepared by Drs Leigh Bull and Jacqui Bell of Boffa Miskell Limited, expert ecologists advising Waka Kotahi in respect of the Project;
- (b) **Appendix B**:
 - (i) a report by Lesley Hopkins, who is an expert planner advising Waka Kotahi and the author of the draft set of conditions proposed to attach to the resource consents and designations; and
 - (ii) an updated set of the proposed conditions prepared by Ms Hopkins, showing the most recent changes from the previous version in tracking; and
- (c) **Appendix C**, a map showing heritage structures raised by HNZPT.

COMMENTS REGARDING ECOLOGICAL ISSUES

Introduction

- 7. In developing the Project, Waka Kotahi has focused particularly on minimising its adverse effects on ecological values, guided by the NZCPS. Refinements to the design made as a result have come at a large capital cost to Waka Kotahi – they have added around \$40 million to an already substantial overall Project cost – and this will provide a significant challenge to implementing the Project (among other Waka Kotahi funding priorities).
- 8. Waka Kotahi has been guided throughout the design process, and in proposing measures to offset or compensate for the adverse effects of the Project, by the advice of its expert ecological advisors and its mana whenua partners. Waka Kotahi has also engaged extensively and constructively with representatives of Councils, DOC, Forest & Bird, and other entities about the ecological assessments undertaken and the proposed offset and compensation measures.
- 9. Waka Kotahi is therefore concerned at comments suggesting that granting consent and confirming the notices of requirement for the Project may be

⁴ The ecological assessment to which Appendix A is an addendum is Technical Report 9, found in Volume 4, Part B of the suite of application documents.

inconsistent with the NZCPS, and / or that the proposed package of offset and compensation measures is insufficient.

10. Waka Kotahi strongly disagrees with those comments, for the reasons set out below. The ecological experts advising Waka Kotahi also disagree with a number of the comments made to the Panel, as explained in **Appendix A**.
11. Otherwise, there is widespread acceptance among commenters that enabling the Project aligns with national policy statements and Treaty settlements, properly upholds the principles of Te Tiriti o Waitangi, furthers the purpose of the COVID-19 Recovery Act, and promotes sustainable management.

Enabling the Project is not inconsistent with the NZCPS

Introduction

12. Analysis of the legal framework for the Panel's decision, dated 12 October 2020, formed Volume 5 of the application materials lodged by Waka Kotahi. That document analyses the grounds on which a panel may decline a consent application for a listed project, including if, with or without conditions of consent, enabling the listed project would be inconsistent with the NZCPS.⁵
13. That analysis is not repeated here, but the following key points merit restatement:
 - (a) Parliament's deliberate choice of the term "*inconsistent with*",⁶ in clause 34 of Schedule 6 to the new Act, indicates that the Panel may only decline approval for a listed project if granting it would not align to a relatively high degree with the NZCPS.

Generation Zero expresses the view that this wording indicates that "*a material degree of inconsistency is required for the Panel to be able to decline the Project*";⁷ Waka Kotahi respectfully agrees that any inconsistency must at the very least be material before a panel has the power to decline a listed project. As noted in **Appendix A**, Dr Bell and Dr Bull consider that the Project will deliver good ecological outcomes as sought by the NZCPS.

⁵ Part C of the analysis; paragraphs 42 to 100.

⁶ The wording chosen can be clearly contrasted with a requirement to "*give effect to*"; section 62(3) of the Resource Management Act 1991 (**RMA**), which states that a "*regional policy statement must **not be inconsistent with** any water conservation order and **must give effect to** a national policy statement, a New Zealand coastal policy statement, or a national planning standard*" (emphasis added).

⁷ At paragraph 21 of its comments.

- (b) Requiring listed projects to meet a higher standard, such as 'giving effect to' or 'promoting' all objectives and policies of the NZCPS (for example), is neither required nor mandated by the Act or its goal of helping New Zealand recover from the economic and social impacts of COVID-19.
 - (c) One commenter, Forest & Bird, suggests that a higher standard applies, effectively arguing that a listed project is inconsistent with the NZCPS if it does not strictly comply with every directive policy.⁸ That comment is not consistent with the deliberate choice by Parliament of the language used in clause 34; with respect, the more natural interpretation is that a greater degree of tolerance is afforded to listed projects, because enabling them is important to promoting economic recovery. Forest & Bird's comment is also contradicted by its view that the Project should not have been listed in the new Act but rather subject to the "*more rigorous process*" under the RMA.⁹
 - (d) Even if a ground for decline were met, the Panel retains a discretion to approve a proposal; "*a panel **may** decline (...) but only on the following grounds*" (emphasis added). This point is not in dispute; Forest & Bird¹⁰ and Generation Zero¹¹ agree with this proposition, and no commenter disagrees.
 - (e) The Panel must grant consents and confirm the designations for the Project if to do so would not be inconsistent with the NZCPS, taking into account the conditions proposed by Waka Kotahi and any modifications or additional conditions that the Panel may lawfully impose.
14. The legal analysis of 12 October 2020 explains in greater detail why enabling the Project is not inconsistent with the NZCPS.
15. That is clearly the case when considering the NZCPS 'in the round'; the preamble to the NZCPS highlights the many intersecting values in the coastal environment to be considered by decision-makers, including:
- (a) the need to give people access to the coast, the need for infrastructure to locate there, the susceptibility of existing infrastructure to natural hazards (including sea-level rise), and the particular importance of the

⁸ At paragraphs 39 to 43.

⁹ At paragraph 11 of its comments; note that Forest & Bird's interpretation of Policy 11 as requiring 'absolute avoidance' is not correct under the RMA either, as explained below.

¹⁰ At paragraphs 30 and 42 of its comments.

¹¹ At paragraphs 32 and 33 of its comments.

coast to mana whenua and the exercise of kaitiakitanga – all matters that are linked to fundamental benefits of the Project; and

- (b) the need to preserve natural character and ecological values, which has led to a careful and innovative Project design, the development of ūranga and offshore habitats, and various other measures.
16. The wording of the COVID-19 Recovery Act indicates that an 'overall' rather than forensic 'provision-by-provision' evaluation of the NZCPS is the appropriate approach; the words in clause 34 of Schedule 6 ("*inconsistent with a national policy statement*") stand in contrast to section 104(1)(b) of the RMA ("*have regard to (...) **any relevant provisions of a New Zealand coastal policy statement***" (emphasis added)).
17. It is also important that, on a forensic analysis of the various objectives and policies of the NZCPS, enabling the Project is **not** inconsistent with any of those provisions, as explained in the legal analysis document.¹² It is not correct, as asserted by Forest & Bird,¹³ that the case for Waka Kotahi relies on "*overall alignment with provisions of the NZCPS*" or "*balancing outcomes rather than paying attention to the directive wording of provisions*".
18. A number of the assertions that the Project may be inconsistent with the NZCPS appear to be founded on one or both of the following propositions:
- (a) a view that Policy 11(a), which directs that adverse effects on certain taxa and ecosystems are avoided, requires the absolute avoidance of all areas providing potential habitat for those taxa, and of the specified ecosystems in their entirety, irrespective of whether those effects are minor or transitory, and irrespective of the overall ecological outcome.¹⁴
 - (b) a presumption that the NZCPS requires all adverse effects relevant to Policy 11(b) to be offset or compensated for to a 'no net loss' standard.
19. With respect, neither of those propositions is correct, on a fair interpretation of Policy 11 and the other provisions of the NZCPS.
20. Below we set out the Waka Kotahi response to comments asserting that the Project is inconsistent with Policy 11, adopting the following structure:
- (a) The directive in Policy 11(a) to "*avoid*" adverse effects on certain types of ecosystems or taxa does not and cannot have the absolute meaning contended for by Forest & Bird.

¹² At paragraphs 69 to 100.

¹³ At paragraph 28 of its comments.

¹⁴ See for example paragraph 41 of the comments by Forest & Bird.

- (b) The Project meets the Policy 11(a) directive to avoid adverse effects in respect of shingle beaches and variable oystercatchers (the two Policy 11(a) elements in respect of which commenters have queried the assessment in the AEE).¹⁵
 - (c) The Project meets the Policy 11(b) directive to "*avoid significant adverse effects*" on marine ecology values.
 - (d) The Project meets the Policy 11(b) directive to "*avoid, remedy, or mitigate other adverse effects*" on marine ecological values; again, if any comments are underpinned by an understanding that the NZCPS requires offsetting or compensating of effects to a 'no net loss' standard (or any particular standard), that interpretation is not correct.
21. In any event, the package of offset and compensation measures proposed by Waka Kotahi is appropriate for addressing the adverse ecological effects of the Project, both as it was originally proposed, and as it is now proposed, including some further enhancements to allow for a more direct comparison between adverse effects and positive measures. This is also explained further below.

Policy 11(a) does not require absolute avoidance

Minor and transitory effects

22. Waka Kotahi respectfully disagrees with those comments asserting that the Project does not avoid adverse effects as directed by Policy 11(a).
23. The directive to "*avoid*" certain effects does not establish an absolute prohibition on activities having those effects. Rather, a proposal must be evaluated against all of the words of the relevant policy, including the words explaining the policy's intent. Engaging with the policy in its entirety shows that adverse effects are acceptable provided that the policy is achieved overall – that is, where the values sought to be protected or preserved are indeed being protected.
24. The Supreme Court in *King Salmon*¹⁶ considered this issue in the context of Policies 13 and 15 of the NZCPS, which relate to natural character and landscape values. While the Court held "*avoid*" to mean "*not allow*", it

¹⁵ Forest & Bird raises a query about Policy 11(a)(iv) (species at the limit of their natural range, or naturally rare); as discussed below, that appears to be in error as no such species are present.

¹⁶ *Environmental Defence Society v New Zealand King Salmon Ltd* [2014] NZSC 38.

observed that **minor or transitory** effects are acceptable within the context of an "avoid" policy:¹⁷

"(...) It is improbable that it would be necessary to prohibit an activity that has a minor or transitory adverse effect in order to preserve the natural character of the coastal environment, even where that natural character is outstanding. Moreover, some uses or developments may enhance the natural character of an area."

25. The purpose of Policy 11 is to "*protect indigenous biological diversity in the coastal environment*", and the directive to avoid adverse effects on threatened or at-risk taxa (for example) must be read in light of that purpose.
26. Following the Supreme Court's reasoning, it is now orthodox practice for a regional coastal plan to give effect to Policy 11(a) in a way that enables minor and transitory adverse effects to occur (and for consent to be granted for activities with such effects). For example, in the Auckland Unitary Plan, Policy D9.3(9)(a)(ii) (confirmed by the High Court¹⁸) implements NZCPS Policy 11(a)(i) and (ii) and requires the avoidance of non-transitory and more than minor effects (the corollary of the Supreme Court's guidance on the point).¹⁹

Contextual analysis is required

27. Assessing a proposal's alignment with Policy 11 is not a simple matter of gauging whether or not an area of habitat of an at-risk species falls within a project's footprint (for example). Rather, a broader analysis of the surrounding context is required.
28. The High Court in *Royal Forest & Bird Protection Society of New Zealand v Auckland Council* endorsed the contextual approach adopted by the Court of Appeal in *Man O' War*, as follows:²⁰

"The Court of Appeal also noted, with respect orthodoxically, that the requirement to "avoid" adverse effects is contextual, so that whether any new activity or development would amount to an adverse effect must be assessed in both in the factual and broader policy context."

¹⁷ At [145].

¹⁸ *Royal Forest and Bird Protection Society of New Zealand Inc v Auckland Council* [2017] NZHC 980.

¹⁹ Auckland Unitary Plan, Significant Ecological Areas Overlay, Policy D9.3(9)(a)(ii). The Proposed Natural Resources Plan (**pRNP**) adopts "avoid" in its implementation of Policy 11(a), in its Policy 39A; without the additional clarity provided in the Auckland Unitary Plan. As a matter of interpretation, the Supreme Court's interpretation of what are appropriate residual adverse effects within the ambit of the NZCPS avoidance policies applies to Policy 39A of the pRNP. As such, minor and transitory adverse effects must be acceptable under Policy 39A as well.

²⁰ *Royal Forest and Bird Protection Society of New Zealand Incorporated v Auckland Council* [2017] NZHC 980 at [34]; citing *Man O' War Station Limited v Auckland Council* [2017] NZCA 24 at [65].

29. The correct approach therefore requires context-specific information to be assessed. For the Project, that includes the following:
- (a) **Policy 11(a)(i)** directs that adverse effects on threatened or at-risk taxa are avoided; only variable oystercatchers are at issue. Expert ecologists have considered various types of potential effect on that species including direct / permanent loss of habitat, disturbance and effective habitat loss (in respect of which the importance and vulnerability of that habitat to sea-level rise is also relevant), cumulative effects, mortalities, effects on food supply and foraging ability, lighting effects, and effects of pollution and litter. The spatial and temporal extent of any effects is also relevant context, as are the potential number of birds affected and their overall local / regional and national populations, and the measures proposed to avoid effects (such as screens, offshore refuge islands, and newly created roosts and other habitat).²¹
 - (b) **Policy 11(a)(iii)** directs that adverse effects on threatened indigenous ecosystems are avoided (in this case, shingle beach habitats). Relevant context includes the ecological function and value provided by those shingle beaches and the extent of any effect on those, whether the ecosystems are founded on natural or artificial features, their vulnerability to predicted sea-level rise, and measures proposed to prolong the life of the ecosystems and to provide replacement habitat for the key taxa that inhabit them.
30. Consideration of all of these contextual matters is required to determine whether the Policy 11 direction is met. While some of this relevant context is acknowledged by DOC and other commenters, only the expert ecologists advising Waka Kotahi have undertaken a full evaluation of these contextual matters. In addition, only those experts have qualified themselves in this process and attested to their adherence to the Environment Court's code of conduct for expert witnesses.
31. The key conclusions of those expert ecologists should therefore be preferred by the Panel, and are summarised below.

²¹ Forest & Bird also expresses concern as to whether it has been demonstrated that adverse effects on threatened or at-risk taxa (the relevant avifauna species) have been avoided, in terms of Policy 11(a)(iv). That provision relates to "*habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare*". TR9 and the Ecology Addendum in Appendix A make it clear that there are no such relevant species in the Project area; Forest and Bird makes no suggestion as to what species might be relevant in terms of Policy 11(a)(iv).

The Project meets Policy 11(a)

Variable oystercatcher (Policy 11(a)(i))

32. As explained in TR9, variable oystercatcher is a coastal wading bird species classified as 'at-risk – recovering',²² and is known to reside in or visit the Project area. The birds are known to nest in the backshore at Karanga Point (near the KiwiRail switching station), and otherwise forage and roost in the area. Six birds (at most) were observed during surveys, of an estimated population in the Wellington region of 728 breeding birds. The largest known breeding population (11 pairs) is at Matiu-Somes Island, which is offshore from and faces the Project area.
33. The comments by DOC accept the analysis in TR9 that the Project appropriately avoids effects on oystercatcher in line with Policy 11(a).²³
34. GWRC's comments suggest that there may be residual adverse effects on oystercatchers of a more significant level, and assert that affecting the habitat of that species *"will always be more than minor"* unless additional habitat can be created:

"Some of the effects on oystercatchers will also be managed, but there are likely to be residual effects from the loss of feeding habitat that will not be managed. Oystercatchers are a challenging species for coastal developments as their territorial behaviour means that loss of habitat cannot be mitigated by improvements in the condition of remaining habitat. Even if they're not nesting in an area, the maintenance of territories is important for the species maintaining dominance hierarchies and displaying natural behaviour. Without options to replace lost habitat the effects on this Nationally At Risk: Recovering species will always be more than minor. These residual effects require offsetting or compensation, but as with the loss of CMA, there are few good options."

35. As these comments seem to accept, it would be practically impossible to carry out any construction activities along this (highly modified) stretch of coastline – or indeed anywhere in the region where oystercatchers forage – without disturbing the birds and their habitats to some degree.

²² 'Recovering' taxa have undergone a documented decline in the past but now have an ongoing or predicted increase of greater than 10% in the total population or area of occupancy (over the next 10 years or three generations).

²³ See for example paragraph 90 of DOC's comments.

36. However, it is not the case that any such activities "*will always be more than minor*", or that they will necessarily offend against Policy 11(a), because:
- (a) that cannot be the case, as a matter of logic – effects can always be negligible or insignificant in scale; and
 - (b) the expert assessment before the Panel (TR9 and **Appendix A**) demonstrates that the Project's effects are smaller-scale and acceptable.
37. In any case, a contextual analysis is required, including the degree of any residual disturbance and other effects and the measures proposed to avoid or minimise those, supporting an overall determination as to whether the taxon is adversely affected (other than in a minor or transitory way) and whether indigenous biodiversity is protected.
38. In this case, the presence of oystercatchers and other important species has prompted innovative solutions that respond directly to Policy 11; the Project protects biodiversity by avoiding adverse effects on oystercatchers in the following ways:
- (a) The Project will relocate the KiwiRail Switching Traction Station from Karanga Point (at a high cost), to avoid a particularly high-value area of backshore nesting and foraging habitat used by oystercatchers.
 - (b) Vertical seawalls have been incorporated into the Project at specific locations (rather than the sloping revetment), at a very high cost, to substantially avoid the shingle beach habitats (discussed further below) that provide foraging habitat for oystercatchers. The locations at, and extent to which, the Project's footprint has been reduced can be seen on the 'Coastal Occupation' drawing set in Volume 3; see sheet 7 (chainage 2330 to CH 2400), sheets 8 and 9 (CH 2840 to CH 3020), and sheets 10, 11, and 12 (CH 3370 to CH 3450, CH 3590 to CH 3720, CH 3830 to 3910, and CH 4090 to CH 4180).
 - (c) Those drawings also show the indicative location of groynes that are proposed to be placed on the shingle beaches to ensure the retention and accumulation of shingle that would otherwise be removed from the beaches by natural processes. The groynes will therefore help preserve

(and in time grow) the beaches, in the face of sea-level rise, thereby prolonging the availability of habitat for foraging oystercatchers.²⁴

- (d) That foraging habitat will also be 'nourished' through the Project; originally only relatively small-scale nourishment was proposed, to ensure no loss of shingle material being contributed to the beaches by the current revetment, which is weathering. More substantial nourishment is now proposed as part of the Project, as described in **Appendix A**, to build on the ways in which the Project protects the shingle beaches, and to strengthen the beaches' resilience to sea-level rise. DOC's comments (at paragraph 65) acknowledge that this nourishment can properly be considered as contributing to resolving any inconsistency with Policy 11(a).
- (e) Screening of the shingle beaches will mitigate any disturbance of the oystercatchers by human activity; there are currently no screens between the busy railway line and the beaches.
- (f) Educational signage and a requirement that dogs be kept on leads will also help avoid disturbance of oystercatchers once the Project is operational.
- (g) A key existing threat (to nesting oystercatchers in particular) is from predation by animal pests such as stoats and rats; the Project incorporates a programme to control these pests, including the oystercatcher nesting area at Karanga Point.
- (h) The Project is now proposed to incorporate tidal pools into the rock revetment, which will provide additional foraging habitat for oystercatchers – these measures are explained more fully below and in **Appendix A**.

39. TR9 assesses the overall effects of the Project on oystercatcher as 'low'.²⁵ Dr Bull explains in **Appendix A** that the main potential effect of the Project on

²⁴ DOC's comments query whether "the placement of groyne structures will impact these shingle beaches and the extent of any adverse effects on this ecosystem" and suggest that this issue "is not addressed in the application material". The Coastal Processes Assessment (Technical Report 7, page 17) discusses how the groynes will be small rock structures, and that a methodology for nourishing beaches will be developed, but "placement of nourishment is expected to be by hand to control location and placement rates and minimise [disturbance]". This matter is also addressed in **Appendix A**.

²⁵ In TR9, effects on oystercatchers were assessed, against all but one of the specific criteria considered, as being 'low' or 'very low'. The one exception was cumulative effects, which were assessed in a highly conservative way, considering the effects on habitat of this Project in conjunction with the effects of all historical development around the Harbour edge. This is a much broader enquiry than required by the law; the Court of Appeal in *Dye v Auckland Regional Council* (2001) 7 ELRNZ 209, [2002] 1 NZLR 337, [2001] NZRMA 513 favoured a different approach in respect of cumulative effects under the RMA, namely that: "The concept of cumulative effect arising over time is one of a gradual build up of consequences. The concept of combination with other effects is one of effect A combining with effects B and C to create an overall composite effect D. All of these are effects which are going to happen as a result of the activity which is under consideration." Under this approach, considering the effects of a proposal cumulatively with effects of past development is unnecessary.

oystercatchers is the loss of some foraging habitat, although no oystercatchers have been observed at the very narrow strips of shingle beach within the Project footprint, which provide limited foraging opportunities. Dr Bull also notes that extensive other shingle beach habitats have been mapped around the region and are available for use by oystercatchers, including at Honiana Te Puni Reserve and Pito-One Beach.

40. In line with the Supreme Court's observation, a decision-maker is not empowered to decline approval for an activity with a minor adverse effect in order to protect indigenous biodiversity in the coastal environment. On the contrary, the expert assessment is that the mitigation measures incorporated into the Project will produce an appropriate outcome for oystercatchers.
41. The conclusion in TR9 has been further strengthened by the Project now incorporating tidal pools and more nourishment (in response to various comments, including by GWRC suggesting that additional oystercatcher foraging habitat be added to the Project, and by DOC regarding nourishment).
42. The clear conclusion recorded in **Appendix A** is that the Project complies with Policy 11(a) in respect of oystercatchers.

Shingle beaches (Policy 11(a)(iii))

43. Shingle beaches have been classified as an endangered type of coastal habitat, and are therefore relevant to Policy 11(a)(iii). An estimated 0.33ha of shingle beach remains within the footprint of the Project, 0.06ha of which is 'terrestrial back-beach' above mean high water springs (**MHWS**); the comments for DOC note as important context that it is the 0.06ha area that is 'threatened' for the purpose of Policy 11(a)(iii) of the NZCPS.
44. The following commenters address the effects of the Project on shingle beaches:
 - (a) Forest & Bird considers the Project to be inconsistent with Policy 11(a)(iii) in this regard, and seeks that the design of the shared path be altered to incorporate a cantilevered structure in areas where the Project intersects with shingle beach areas (while acknowledging that this would "*compromise on the resilience that the current design confers*");²⁶

²⁶ Paragraphs 17 and 53. Generation Zero suggests, too, that further consideration be given to adjusting the design further to reduce habitat loss, but seeks that this does not compromise the function of the shared path or the Project's resilience benefits (paragraph 30.2).

(b) GWRC expresses concern regarding the effects on shingle beaches and "[suggests] that the application be amended to avoid the existing shingle beaches where possible, with only necessary maintenance and ecological enhancement of existing structures."

(c) DOC comments, at paragraph 27, that:

"Terrestrial shingle beaches are a threatened and naturally rare ecosystem. The terrestrial back beach component of shingle beaches (i.e. the part above MHWS) is threatened but the component below MHWS is not. Therefore, 600m² of threatened and naturally rare shingle beach will be affected by the project footprint. However it is noted that much of the route is on or adjacent to reclaimed land, and therefore terrestrial geomorphology is largely artificial."

At paragraph 65, in the context of whether the Project meets Policy 11(a)(iii), DOC comments as follows:

*"I acknowledge that the applicant anticipates long term benefits through beach nourishment and resilience from climate change and (notwithstanding the potential method and limits to nourishment) I support these measures. I also support the re-design which changed the revetment to the seawall structure and the relocation of the switching station, however in my opinion the permanent loss of 600m² of [a] threatened and naturally rare ecosystem does not constitute an avoidance of effects as required by Policy 11(a) of the NZCPS. **This inconsistency is somewhat reduced by the long-term positive benefits of beach replenishment and nourishment**" (emphasis added).*

45. Waka Kotahi maintains that, contrary to these comments, the Project does avoid the shingle beaches in the manner directed by Policy 11(a)(iii). Again, it is important to consider the full factual context in order to understand how the Project protects indigenous biodiversity notwithstanding encroachment onto a small area (0.06ha) of terrestrial shingle beach habitat.
46. Key context, as explained in the AEE, is the functional requirement for a new shared path to be built on the seaward side of the railway, because of the highly constrained nature of the transport corridor. This appears to be accepted by all commenters, including a number who also agree that reclamation for the Project is justified in terms of Policy 10 of the NZCPS

(notably, DOC²⁷). As KiwiRail's comments explain, Waka Kotahi and KiwiRail have agreed that the Project can encroach within KiwiRail's standard safety distance on the seaward side of the railway line, to minimise the Project's coastal footprint.

47. As noted above, the Policy 11(a)(iii) directive to avoid adverse effects on the shingle beaches has been a major driver in the Project's development; at considerable cost, Waka Kotahi has incorporated vertical seawalls into the Project at six locations, guided by expert ecologists, instead of a sloping revetment, to avoid large areas of shingle beach. This significant avoidance is clearly illustrated in the coastal occupation plans referenced above.
48. As explained in **Appendix A**, two areas of shingle beach that could not be avoided by use of seawalls, because of their narrow nature, provide little foraging opportunity for shorebirds, and no oystercatchers have been observed using those areas.
49. Moreover, as DOC notes, the shingle beaches sit within a highly modified and artificial setting.
50. Notably, the shingle beach areas will be inundated by climate-change induced sea-level rise. Over time, their ecological value as foraging habitat will be lost.
51. The Project therefore incorporates measures that seek to improve the beaches' resilience and prolong their life. These measures are as follows:
 - (a) Groynes will encourage the retention and accumulation of shingle that would otherwise be transported away from the beaches by natural processes. The groynes will therefore help preserve the beaches, and act as a bulwark against sea-level rise.
 - (b) The Project will also 'nourish' the shingle beaches; during the construction period; as much material will be placed as possible during that period without compromising the ecological function of the beaches, as explained in **Appendix A**.²⁸
52. The outcome of these measures is that enabling the Project will help preserve the life of the shingle beaches; this is vital context that needs to be

²⁷ At paragraph 71.

²⁸ The consent sought for earthworks disturbance during construction covers nourishment during that period; further nourishment would require a separate consent that Waka Kotahi has not sought; consent is required as a controlled activity, under Rule 45 in the PNRP.

factored into whether the Project meets the direction in Policy 11(a)(iii), as DOC's comments acknowledge.

53. Enabling the Project therefore complies with Policy 11(a)(iii) because:
- (a) in a physical sense, substantial avoidance of the shingle beaches has been achieved, by minimising the works footprint and incorporating measures to 'strengthen' the beach habitats;
 - (b) in an ecological sense, noting again that the shingle beaches are important as habitat for foraging birds, the Project avoids adverse effects on oystercatchers (and other species), as discussed above; and
 - (c) minor adverse effects are permissible under Policy 11, and the outcome of the careful consideration by Waka Kotahi and its advisors of these issues has led to an outcome whereby the Project protects indigenous biodiversity in the area, as directed by Policy 11.
54. Waka Kotahi also disagrees with the comments seeking further design changes to the Project, for the following reasons:
- (a) as explained above, the Project as it stands meets Policy 11(a)(iii);
 - (b) the use of cantilevered structures was assessed by the design team and environmental specialists, and their use was ruled out because:
 - (i) as Forest & Bird acknowledges, they would not be resilient to the effects of sea-level rise, thus shortening the Project's life-span;
 - (ii) there are substantial construction challenges in respect of methodology and implementation, including requiring rail line closures, excessive noise and vibration effects, health and safety issues, and unavoidable construction equipment on the shingle beaches which will cause damage; and
 - (iii) of the significant cost and programme consequences;
 - (c) the incorporation of further 'cut-ins' and vertical seawall structures was likewise considered and discounted because it would not achieve further avoidance of the shingle beach areas, given the narrow nature of the two relevant beaches (at CH 3480 to CH3600 and CH3750 to CH3840) and their proximity to the railway corridor. These structures would also come at a substantial additional cost, for no real ecological benefit.

The Project avoids significant effects, in terms of Policy 11(b)

55. The Project also avoids significant adverse effects on marine habitats, as directed by Policy 11(b).²⁹
56. The key issue raised in comments is the correct scale for assessing effects.
57. DOC's comments do not disagree with the conclusion that Policy 11(b) is met, but rather seek more information about the Project's effects at the Harbour scale,³⁰ which has now been provided by Drs Bull and Bell in **Appendix A**.
58. GWRC and Forest & Bird's comments that the Project is inconsistent with Policy 11(b) rely on the expert assessment that the level of "*permanent habitat loss at the scale of the Project footprint*" is 'very high' on 4.8ha of marine habitat comprising a "*mosaic of gravel / sand / cobble and rocky reef / hard shore / macroalgal*".³¹
59. A 'very high' level of effect at a 'project footprint' scale is unsurprising, given that revetment works in the coastal environment will necessarily create a high level of disturbance within the footprint of those works (by definition).
60. Merely identifying that there will be a permanent loss of habitat within the footprint of the proposed works, however, does not answer the important question posed by Policy 11(b) regarding the **significance** of that loss. As acknowledged by DOC, to understand significance, that level of effect must be considered in the appropriate context.
61. In this case, the professional opinion of the expert ecologists assessing the Project is that the loss of habitat within the Project footprint must be considered in its own right, **and** in the wider context of other similar habitat within Te Whanganui-a-Tara, being inter-tidal and subtidal habitat at depths of 5m or less below MHWS. The scale of the habitat lost under the Project footprint represents 0.45% of that broader area, which the ecologists

²⁹ This is explained in the AEE (at pages 297 to 299), with further context added by Dr Bell and Dr Bull in **Appendix A**. Policy 11(b) relevantly reads: "*To protect indigenous biological diversity in the coastal environment: (...) avoid significant adverse effects (...) of activities on: (...) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including (...) intertidal zones, rocky reef systems (...)*". Commenters do not take issue with the TR9 / AEE assessment in relation to other elements relevant to Policy 11(b), namely: backshore nesting habitat, which is found on the beach adjacent to the Switching Station at Karanga Point (used by variable oystercatcher, black-backed gull (not threatened) and little penguins) and crevices in loose riprap providing potential nesting habitat for little penguins; and the Korokoro Stream catchment, which contains several areas suitable for inanga spawning habitat at the Korokoro Stream mouth.

³⁰ DOC sought information on the "*actual and comparable proportion of the harbour affected by the proposal*") to determine the magnitude of effect, and commented that "*the panel should seek this information to be satisfied that the effects on rocky reef systems are not 'significant' as required by NZCPS Policy 11(b)*"; at paragraph 68.

³¹ The 'very high' level of effect was derived from the application of the Environmental Institute of Australia and New Zealand (**EIANZ**) guidelines for undertaking ecological impact assessments (Roper-Lindsay et al, 2018) whereby ecological values are assigned and the magnitude of effects identified in order to determine the overall level of effect of the proposal.

consider to be a low magnitude of effect. This underpins the conclusion in the AEE that Policy 11(b) is met.

62. Undertaking such an assessment at varying scales is an entirely orthodox approach (as DOC accepts), and is indeed a necessary aspect of evaluating the significance of an effect as directed by Policy 11(b).
63. Further, there are a number of other elements of conservatism in the assessment in TR9. In particular, the Project area is accepted to contain a mosaic of subtidal habitats (including artificial revetment rip-rap of relatively low ecological value – making up 16% of the affected area) and sandy habitat). The expert approach has been to ascribe the values of the most important of those habitats to the whole mosaic. Also noteworthy is that new structures below MHWS (such as the revetment and the bases of the offshore habitats) are expected to recolonise rapidly with marine organisms after works are complete.
64. Again, measures are now proposed to create additional marine habitat (discussed below), which are also part of the relevant contextual analysis required. These include the incorporation of tidal pools and blocks into the revetment, and seeded mussel bed habitat over a large area in the Harbour.
65. Overall, the Project protects indigenous biodiversity in the coastal environment by avoiding significant adverse effects on marine ecology, as directed by Policy 11(b).

The Project meets the Policy 11(b) direction to "avoid, remedy, or mitigate other adverse effects" on marine ecological values

66. Implicit in a number of comments is a suggestion that the Project would achieve greater alignment with the NZCPS if the proposed package of measures to address adverse ecological effects was more generous. Some commenters (including DOC,³² Generation Zero,³³ and Forest & Bird³⁴) refer to offsetting adverse effects to a 'no net loss' or 'net gain' standard, as if that were a requirement of the NZCPS.
67. There is **no** requirement in Policy 11(b) to address adverse effects to a 'no net loss' or 'net gain' standard. The NZCPS does not refer to those standards, nor even to the concepts of offsetting and compensation. Rather, the requirement in Policy 11(b) is to *"avoid, remedy, or mitigate"* adverse

³² At paragraph 92.

³³ At paragraph 30.

³⁴ At paragraph 56.

effects on the habitats and values listed in that provision; "*mitigate*" is well understood to mean 'make less severe' or 'lessen the gravity of'.³⁵

68. DOC's comments tentatively suggest (at paragraph 92) that Objective 1 of the NZCPS supports an interpretation that the NZCPS requires all adverse ecological effects in the coastal environment to be offset to (at least) a 'no net loss' standard. Objective 1 includes:

"To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by: (...) maintaining or enhancing natural biological and physical processes in the coastal environment (...); protecting representative or significant natural ecosystems and sites of biological importance and maintaining the diversity of New Zealand's indigenous coastal flora and fauna (...)"

69. Objective 1 is framed at a high-level and is not a directive provision of the type considered in *King Salmon* and associated cases.
70. Waka Kotahi accepts that the adverse ecological effects of the Project should be addressed in a fulsome and robust manner, and that the lower-order planning instruments are relevant to the Panel's decision. It has therefore acted on the advice of expert ecologists in proposing a robust package of design and mitigation measures, and in updating those measures in response to comments, as explained below.

The proposed offset and compensation measures

Introduction

71. TR9 and the AEE explain how the Project avoids or mitigates adverse ecological effects, and the measures proposed to offset or compensate for residual effects.
72. For most categories of effect, namely on indigenous vegetation, herpetofauna, freshwater and coastal avifauna values, overall effects are 'low' or 'very low', assessed in accordance with the widely accepted EIANZ guidelines. Under those guidelines, such levels of effect are acceptable and

³⁵ As the High Court observed in *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council* [2013] NZHC 136 at [62]: "*The usual meaning of "mitigate" is to alleviate, or to abate, or to moderate the severity of something.*"

do not create an obligation to offset (to a 'no net loss' or net gain standard) or otherwise compensate for them.³⁶

73. GWRC comments that residual effects on oystercatcher habitat require offsetting, which appears to be based on a view that those effects are more significant than assessed by Dr Bull. Waka Kotahi maintains that effects on oystercatcher are avoided in accordance with Policy 11, as explained above. Nonetheless, further measures are being proposed to protect shingle beach habitat, and other habitat enhancement is to be provided, which responds to GWRC's concern.
74. Adverse effects requiring offsetting / compensation in accordance with the EIANZ guidelines are on marine habitats at the Project scale.
75. As explained in TR9, and as acknowledged by DOC, Forest & Bird, and GWRC, it is difficult to identify measures to offset such effects in the marine environment. There tend to be few (if any) de-reclamation opportunities and other options to create marine habitats can be limited.
76. It is also inherently more difficult to demonstrate that compensation measures effectively compensate for the losses incurred. As such, expert judgement is central to devising measures that will achieve an acceptable outcome overall, as is careful engagement with mana whenua, Councils, and stakeholders such as DOC and Forest & Bird.
77. The Project has relied upon both those components. The experts advising Waka Kotahi have the relevant expertise and experience, have carried out a thorough assessment and are very familiar with the Project area and the ecological values to be affected, and have worked closely with iwi partners and stakeholders to identify opportunities and devise the measures that respond to effects. TR9 and **Appendix A** record that the expert ecologists, and in particular Dr Bell (who is an expert in the marine habitats affected by the Project), consider that the proposed measures, as originally described in the application materials, are sufficient to address the adverse effects of the Project on marine ecology.
78. The comments have underscored, albeit late in the piece, aspirations that commenters hold for other measures, the feasibility of which Waka Kotahi and its advisors have promptly assessed.

³⁶ In this respect the EIANZ guidelines align with the Supreme Court's dictum in *King Salmon*, discussed above, which contemplates minor or transitory effects not detracting from the intended outcome of the NZCPS policies. They also align with pNRP Policy 32, which provides that "*where **significant** residual adverse effects remain, it is appropriate to consider the use of biodiversity offsets*" (emphasis added).

79. The key criticism by commenters about the original package relates to the lack of a **calculation** demonstrating the extent to which the proposed measures will offset or compensate for the Project's adverse effects. With that feedback in mind, Waka Kotahi now proposes a package of measures supported by such a calculation, comprising:
- (a) living seawalls, as originally proposed;
 - (b) Pito-One beach protection and enhancement, as originally proposed;
 - (c) tidal pools and coastal blocks, to be incorporated within the new revetment, which will increase the biodiversity of organisms in the Project area and increase the complexity of intertidal (pools) and subtidal (coastal blocks) habitat;
 - (d) creation of 6ha of new marine habitat by deploying mussel beds – thus creating a calculably larger area of habitat than that lost – seeded at appropriate sites within Te Whanganui-a-Tara, which will improve water quality, provide surfaces for marine species to grow, provide nursery habitat for fish, and sequester nutrients; and
 - (e) marine pest management, to keep the new coastal structures free of marine pests for the 35-year duration of the consent.
80. In addition, as discussed above, more nourishment of the shingle beaches is now proposed as a further measure that will avoid compromising their ecological function, in line with Policy 11(a)(iii).
81. Mussel bed restoration is an option noted in GWRC's comments. It has had mixed success elsewhere in New Zealand, and may depend on Waka Kotahi obtaining other authorisations. Given the uncertainty, Waka Kotahi proposes to begin with a small-scale trial and then expand it, with monitoring for a five-year period and defined 'measures of success', and a contingency measure in case consent for the mussel beds is not obtained or the 'measures of success' are not met.
82. The contingency measure is the treatment of stormwater runoff from SH2, which was originally proposed as part of the compensation package. This measure attracted some criticism, including Forest & Bird who consider it "*inappropriate*" to count as compensation. That criticism is not accepted, as explained below, but the updated proposal is for stormwater treatment to be undertaken (to the 75% TSS removal standard originally proposed) as a contingency for the mussel bed proposal.

83. As noted in **Appendix A**, this updated proposal thus focusses more squarely on habitat enhancement, enabling an 'area of loss' vs 'area of enhancement' calculation that is more akin to an offset proposal. The opinion of Dr Bell (and Dr Bull) remains that this is a robust and effective package of measures to address the adverse effects on marine habitats, and indeed to achieve the equivalent of a 'net gain' in habitat as a result of the Project.
84. Discussions between Waka Kotahi and its iwi partners have been positive about the mussel bed deployment measure, and the updated package of measures as a whole. The updated package is discussed in detail below.

Living seawalls and dune restoration and enhancement

85. Commenters largely accept the ecological (and wider educational and community) benefits of these measures, which were put forward following the engagement processes described in TR9. The concern appears to be that the benefits provided are insignificant in scale, compared to the areas of habitat affected by the Project.
86. It is clearly acknowledged in TR9 and the AEE that the living seawalls are only a partial offset. They have nonetheless been proposed with widespread support, in line with the mitigation hierarchy, as a measure akin to an offset (given they are 'like for like' measures), and because of the broader interest and study opportunities they will create.
87. Likewise, it has always been accepted that the proposed dune restoration at Pito-One Beach is a compensation measure that should be seen as part of the overall package.
88. **Appendix A** reiterates why these elements of the proposed offset and compensation package have ecological value; Waka Kotahi therefore proposes to implement the living seawalls and dune restoration and enhancement as part of the Project.

New marine habitat created by tidal pools and coastal blocks

89. A newly proposed measure is to create additional habitat for marine species by creating niche environments within the rock revetment (similar to the living seawalls, but placed more horizontally and creating a greater area of habitat). The details are set out in **Appendix A**.
90. Incorporating these structures into the revetment is within the scope of the resource consents sought for the Project; the pools and blocks are essentially inert concrete structures that perform the same structural and

other function of rock rip-rap already proposed to form the revetment, albeit with a more naturalised appearance and the ecological benefits described in **Appendix A**. The effects of these measures are the same as the originally proposed revetment structure and there is no increase in adverse effects as a result.³⁷

91. The tidal pools will also create additional foraging habitat for oystercatcher, as explained in **Appendix A**.

New marine habitat created by mussel beds

92. This exciting new initiative, noted in GWRC's comments, is described in **Appendix A**. In summary, the proposal is to create subtidal habitat via deployment of up to 60 tonnes of mussels across an area of 6 ha (125% of the area of marine habitat loss). As well as habitat creation, the mussel bed initiative is expected to provide water quality improvements through filtration by the mussels; mana whenua strongly support initiatives to improve water quality in Te Whanganui-a-Tara.

Marine pest control

93. Marine pest control is another measure requested by commenters, and now proposed; Waka Kotahi accepts the ecologists' recommendation to keep the new coastal structures free of marine pests, for the duration of the consent.

Stormwater treatment

94. While expressing general support for the Project incorporating stormwater treatment of runoff from SH2, commenters have raised a number of concerns about this aspect of the proposed offset and compensation package. The concerns raised relate to:

- (a) whether incorporating stormwater treatment into the Project is 'additional' to measures that would occur in any event, such that the ecological benefits of treatment can be attributed to the Project; and
- (b) the lack of a calculation showing the extent to which treatment compensates for the Project's adverse effects on marine ecology values.

95. The comments include the following:

"We also consider that both compensation activities proposed by the applicant are likely to occur anyway so lack sufficient additionality (...)

³⁷ *Atkins & Ors v Napier City Council* (2008) 15 ELRNZ 84, [2009] NZRMA 429.

we now consider it inappropriate to count this work as compensation for permanent environmental losses if it will be undertaken in the near future regardless" (Forest & Bird at paragraph 23).

"I agree with the AEE assessment that the proposal is consistent with these provisions of the NZCPS, in particular the proposed treatment of stormwater, while not necessarily additional to the requirements of the PNRP or of a significant scale in proportion to the loss, will still be of benefit to an area with reduced water quality" (DOC at paragraph 59).

"Expected conservation outcomes from the proposed compensation have not been measured. It is difficult to reconcile the significance of the values and scale of indigenous biodiversity losses with the benefits and scale of the proposed compensation" (DOC at paragraph 87).

"No calculation is provided to show how these measures might compensate for the losses incurred (...) Consideration should be given by the Panel to whether how this matter should be assessed and whether some form of calculation is necessary" (GWRC).

96. As an initial response, Waka Kotahi refutes suggestions that treating stormwater runoff from SH2 as part of the Project is not 'additional'.³⁸ Those comments are understood to allude to the fact that the proposed Natural Resources Plan for Wellington (**pNRP**) includes a framework requiring consents to be sought for discharges of stormwater from roads and other public infrastructure. However, commenters fail to acknowledge that:
- (a) the final shape of the proposed framework in the pNRP is uncertain, in that it is currently under various appeals to the Environment Court;
 - (b) the current version of the pNRP includes policy direction to minimise adverse effects of stormwater discharges, and progressively improve existing infrastructure, but contains no certain outcomes, timeframes, or standards of treatment (for example);³⁹
 - (c) by contrast, Waka Kotahi proposed to install promptly, as part of the Project, proprietary systems that will remove 75% of total suspended

³⁸ One of the biodiversity offsetting principles is additionality: "Additionality refers to the concept that biodiversity gains generated by offset actions must be additional to gains that could reasonably be expected to occur anyway (without the offset actions occurring). Any biodiversity gains that are not additional cannot be counted as contributing to a no-net-loss objective" (2018 LGNZ Guidance).

³⁹ pNRP Policy P73 - Minimising adverse effects of stormwater discharges: "The adverse effects of stormwater discharges shall be minimised to the smallest amount reasonably practicable, including by ... (d) progressively improving existing stormwater, wastewater, road and other public infrastructure, including during routine maintenance and upgrade." pNRP Rule R52 provides that stormwater discharge from a State highway is a restricted discretionary activity. The matters for discretion include management of adverse effects, and "Minimisation of the adverse effects of stormwater discharge through progressive improvement over time".

solids from stormwater along SH2 between Ngā Ūranga and Pito-One, one of the busiest stretches of road in the region;

- (d) Waka Kotahi does not yet have any plans to implement treatment to this or any standard on the balance of the state highway network, but will consider this further in light of the outcomes of the pNRP litigation;
 - (e) as such, the ecologists' view (as set out in TR9) is clear that the proposed stormwater treatment is a valuable, additional measure for compensating the Project's adverse effects on the environment; and
 - (f) inclusion of this measure in the proposed package was thoroughly canvassed with mana whenua and stakeholders, and gained strong support.
97. Further, it is not accepted that a numerical calculation is necessary to demonstrate that the Project's adverse effects are being appropriately addressed. TR9 explains in detail the challenges to devising offsetting and compensation measures in the coastal environment (which are widely acknowledged by commenters), and the need to rely on expert judgement to assess the sufficiency of a package of measures.
98. As such, the position for Waka Kotahi remains that the stormwater treatment scheme (combined with the living seawalls and dune restoration) would have been sufficient to address the residual effects on marine habitat loss, based on the clearly expressed expert opinion set out in TR9. Those ecologists worked through the mitigation hierarchy, considered a wide range of options for addressing those effects, and applied (as far as possible) the biodiversity offsetting principles to the overall package. Further, as DOC's comments acknowledge, it is not a requirement that compensation schemes demonstrate 'no net loss' or 'net gain'.
99. That said, Waka Kotahi has taken on board the clear preference expressed in comments for more 'like-for-like' measures and for information that more clearly enables a comparison to be made between the quantity of adverse effects on marine habitats and the quantity of positive measures to address them. As such, as explained above, the updated package has stormwater treatment as a contingency measure, dependent on the success of the mussel bed habitat creation.
100. For these same reasons, Waka Kotahi does not propose to increase stormwater treatment measures as suggested by commenters, such as to increase the scope of treatment to other parts of SH2 (as suggested by

GWRC), or to treat diffuse and/or point-source discharges from a wide variety of land uses within the Hutt River catchment. In respect of the latter proposal, Drs Bell and Bull emphasise in **Appendix A** the significant practical issues with implementing such measures, given that Waka Kotahi (or DOC) does not have control or rights over many sources of discharge into the River.

Other offset / compensation matters raised by commenters

101. Some other measures proposed by commenters have not been adopted, largely due to the issues identified in TR9.
102. In respect of de-reclamation, Forest & Bird comments that the investigation of offsetting options including de-reclamation has not been thorough. Waka Kotahi does not accept that criticism; a fulsome investigation was carried out in consultation with Forest & Bird and a range of other key stakeholders (as explained in **Appendix A**).
103. For completeness, two (related) further comments made by Forest & Bird about the proposed measures are addressed as follows:
 - (a) Forest & Bird comment that Waka Kotahi does not have sufficient interests in the land to ensure delivery of some measures. This comment is addressed through conditions that require landowner approval to be obtained in respect of the living seawalls and beach nourishment. For the other measures (mussel bed establishment, tidal pools and blocks and marine pest control, and the 'reserve' stormwater treatment element) this concern does not apply.
 - (b) Forest & Bird also comment that offsets and compensation should be provided in perpetuity, with a registered title instrument necessary in respect of land under other ownership. Whether offsets and compensation should be provided on an 'in perpetuity' basis is a matter for expert consideration. The proposed measures are all intended to provide long-term benefits, and Drs Bell and Bull are comfortable with the proposed delivery mechanisms in respect of the package.

Title instruments to secure measures are often proposed for terrestrial planting, where there are landowners who might sell to a new owner (and where there is a title for the land). For this Project, however, there is no realistic prospect of the areas in question being sold or developed for other purposes; in practice there are also significant difficulties with registering an interest over the coastal marine area.

Overall expert opinion on the appropriateness of the proposed package

104. **Appendix A** includes the clear conclusion that the measures proposed are appropriate to address the Project's adverse ecological effects.

COMMENTS REGARDING THE FORM AND FUNCTION OF THE SHARED PATH

105. A number of the comments make recommendations relating to the form and function of the shared path.⁴⁰ Waka Kotahi welcomes this feedback, which reflects the high level of interest in the Project and a desire (shared by Waka Kotahi) to maximise its transport and recreational benefits.
106. A general theme of these comments is the need to ensure the shared path operates safely, and that interactions between cyclists and pedestrians are appropriately managed, given the high level of anticipated use by both.
107. Providing for safe and efficient use by cyclists and pedestrians is a matter that has been prioritised by Waka Kotahi. In Technical Report 2 (Shared Path Demand Assessment and Design Review), Simon Kennett sets out his expert analysis of the proposed path design, with a particular focus on path width and provision for the anticipated range of users.
108. By reference to the Austroads standard,⁴¹ Mr Kennett's conclusion is that the proposed 'clear width' of 4.5m is appropriate to cater to the estimated level of use during peak hours in 2035, without providing for physical separation between cyclists and pedestrians.⁴² This analysis takes into account the anticipated users and speed differentials, wind conditions, and the need for additional clearance to the proposed fence along the KiwiRail corridor. Mr Kennett sets out nominal space allocations, broken down as follows:
- (a) 1500mm pedestrian space;
 - (b) 500mm 'shy space' to fast users;
 - (c) 1000mm for the southbound cyclist envelope;
 - (d) 500mm 'shy space' to oncoming riders;
 - (e) 1000mm for the northbound cyclist envelope; and
 - (f) 500mm clearance to the KiwiRail fence;
- for a total of 5m path surface width.

⁴⁰ Including Wellington City Council, Living Streets Aotearoa, Generation Zero, and Great Harbour Way Te Ara o Poneke Trust.

⁴¹ *Austroads Guide to Road Design Part 6A – Paths for Walking and Cycling*.

⁴² Technical Report 2, Shared Path Performance and Demand, at 7.1.12.

109. Living Streets Aotearoa and Generation Zero comment that 1800mm (rather than 1500mm) is the appropriate minimum standard for pedestrian space allocation, referring to the *New Zealand Pedestrian Planning and Design Guide*.
110. To avoid doubt, a specific 1500mm wide 'pedestrian pathway' is not part of the Project design. The nominal space allocations are instead indicative of the expected pattern of use during the weekday peaks. Groups of pedestrians are expected to use more than 1500mm, and even more than 1800mm, at times such as during weekends and on public holidays.
111. Mr Kennett also confirms that the New Zealand Pedestrian Planning and Design Guide has been referred to, and notes that for shared paths it suggests path widths up to 4.5m wide.⁴³ This is consistent with Austroads; Mr Kennett confirms that reference to Austroads (including Part 6A for shared paths) is appropriately good practice.
112. Neither commenter specifically seeks a wider shared path:⁴⁴ Generation Zero focuses on ensuring the design is otherwise "*as safe and segregated as possible*", while Living Streets Aotearoa seeks that cyclists and pedestrians be physically separated. WCC does not specifically refer to separation or space allocation, but asks that speed control of cyclists be considered.
113. The Waka Kotahi position remains that Mr Kennett's analysis is appropriate, and that the proposed design will provide for safe use by cyclists and pedestrians at the anticipated speeds (including of fast commuter cyclists). Separation will be encouraged through path markings, which will direct pedestrians to use the seaward side of the path and cyclists to use the rail corridor side. Given this analysis, Waka Kotahi does not support speed limits for cyclists being specified as a condition matter.
114. Living Streets Aotearoa considers that the likely pedestrian use of the shared path has been underestimated. Mr Kennett's analysis of likely use has been thorough, but is an estimate based on available information. If more users are generated than estimated, that would be welcomed by Waka Kotahi.
115. The precise nature of path markings to encourage separation between users is a matter for detailed design. Waka Kotahi and Mr Kennett acknowledge that the operation of the shared path, including signage and markings, needs to be responsive to actual use numbers. This possibly extends to providing

⁴³ Tables 14.3 and 14.4: <https://www.nzta.govt.nz/assets/resources/pedestrian-planning-guide/docs/chapter-14.pdf>

⁴⁴ Generation Zero flags the constraints associated with doing so.

for some level of physical separation between users; the shared path will be 'future proofed' in that respect.⁴⁵ In response to the Living Streets Aotearoa comments, Mr Kennett adds:

"By avoiding any form of hard separation between slow and fast users, the path's space can be used in a large variety of ways throughout the day. For example, a family group might walk three-abreast and be overtaken by a runner at the same time as a single cyclist rides past. Or a pair of cyclists might ride side-by-side, while passing a walker and a scooter rider (and that scooter rider could move over into the cycling space a minute later while passing a large group of runners). By avoiding hard separation devices such as kerbs or posts, the space can be used flexibly without the risk of injury due to pedestrians tripping, scooter wheels slipping or bicycle pedal strike against a barrier."

116. Mr Kennett adds that if and when walking numbers peak at levels higher than expected, walkers will be able to take up a higher proportion of the available space, and wheeled users will respond by slowing down.
117. Beyond user space, speed and separation considerations, the comments raise a number of detailed design matters relating to user safety and amenity, including:
 - (a) placement of vegetation to provide shade and mitigate the impact of wind, hard surfaces reflecting noise, and fumes from traffic;
 - (b) maintenance of vegetation to avoid obstruction of sightlines;
 - (c) provision of facilities including seating and shelter, toilets and drinking fountains, bike racks and bike repair and charging stations;
 - (d) an appropriate walking surface for walkers;
 - (e) ensuring the two bridges are accessible and safe for users;
 - (f) lighting being provided for general safety, to meet CPTED principles, and to avoid 'dazzling' users;
 - (g) signage and wayfinding, including in respect of walking times and distances, and links to other walking and cycling facilities; and
 - (h) rubbish collection to ensure there is no impact on path users.

⁴⁵ Any physical separation measures would likely be via low profile tactiles that do not present a safety hazard to pedestrians or wheeled users.

118. A number of these matters have been considered by Waka Kotahi and are addressed by Mr Kennett in Technical Report 2 and / or in the Cultural and Environmental Design Framework (**CEDF**).⁴⁶ In particular, Mr Kennett:

- (a) considers that while the width of the Korokoro Stream bridge will not accord with Austroads, the short length of the bridge and its unlikely 'stopping point' function means the proposed width is adequate;⁴⁷
- (b) has assessed the design of the shared path bridge (crossing the rail corridor at the southern end of the Project) and considers it to be adequate; Mr Kennett adds in response to the comments that:
 - (i) the potential for conflict at the bridges may be mitigated with behaviour markings;
 - (ii) the sight-lines at the bottom of the shared path bridge ramps (and at the Korokoro bridge) are very good; and
 - (iii) frequency and design of the landings on bridge ramps will take into account the wide range of users;⁴⁸
- (c) supports the proposed smooth asphalt or similar path surface; he recommends that during detailed design, the relevant surfacing standards should be considered;⁴⁹
- (d) generally supports the currently proposed lighting provision, but recommends that the new 2020 standard *PP3 under AS/NZS 1158.3.1:2020 Lighting for roads and public spaces, Part 3.1: Pedestrian Area (Category P) lighting* be considered in detailed design;⁵⁰ and
- (e) recommends that regular path sweeping and vegetation control be carried out to keep the path to a high standard.⁵¹

119. In terms of facilities along the route, the intention is to include seating and bike racks at the ūranga, similar to that shown in the CEDF.

120. Provision of toilets and drinking water facilities along the shared path is impractical, including because of cultural considerations, space constraints, the distance to appropriate connections, and the need to deal with

⁴⁶ Cultural and Environmental Design Framework, at 3.4.6.

⁴⁷ No widening of the bridge is proposed, in order to avoid works in the Korokoro Stream bed.

⁴⁸ Mr Kennett notes that Auckland Transport has worked with a range of user groups to develop ramp design guidance that provides a good outcome for all users. Refer to table 10 at:

https://at.govt.nz/media/1982222/engineering-design-code-cycling-infrastructure_compressed.pdf

⁴⁹ Technical Report 2, Shared Path Performance and Demand, at 7.4.

⁵⁰ Technical Report 2, Shared Path Performance and Demand, at 7.5.

⁵¹ Cultural and Environmental Design Framework, at 3.4.7.

wastewater. There are toilet facilities at the eastern end of Honiana Te Puni Reserve; there may be scope for upgrade or replacement of those facilities; this is a matter for consideration during detailed design, and with HCC and Taranaki Whānui as part of redevelopment of the Reserve.

121. All of these detailed design matters will be worked through in accordance with the condition framework. In particular:
 - (a) The Project Liaison Group will provide a forum for comment on detailed design matters; the councils and one or more walking and cycling groups (among others) will be invited to join the Project Liaison Group, share their views and raise opportunities in terms of detailed design matters, including in relation to user safety and amenity.
 - (b) Following the detailed design process, Outline Plans will be prepared and provided to WCC and HCC for confirmation.
 - (c) The Cultural and Environmental Design Master Plan (**CEDMP**) will be prepared to address detailed design matters, following on from the CEDF and addressing design matters relevant to user safety and amenity, and will be prepared in consultation with the Mana Whenua Steering Group, KiwiRail, HCC, and WCC, and must specifically address:
 - (i) details in respect of shared path furniture; and
 - (ii) consideration of CPTED and safety in design principles; audits will be carried out in respect of these matters.
122. Overall, the Waka Kotahi position is that the form and function of the shared path – including user safety and amenity – are properly captured in the indicative Project design. The detailed design processes embedded through conditions will ensure further appropriate development of those matters, with input from key stakeholders.

COMMENTS BY RELEVANT LOCAL AUTHORITIES

Introduction

123. The three local authorities – GWRC, HCC, and WCC – all express clear support for the Project. That reflects the regional significance of the Project and the transport and resilience benefits it will bring, and the strong engagement over a number of years between Waka Kotahi and its local authority partners in developing the Project. The comments received from each council are addressed specifically below.

Greater Wellington Regional Council

124. GWRC's comments express clear support for the Project and the safe and resilient walking and cycling path it will create. The comments highlight that the Project is regionally important, as identified in the Wellington Regional Land Transport Plan, and that it will:
- (a) fill a critical missing link in the regional cycling and walking network;
 - (b) enable opportunities for significant transport 'mode shift';
 - (c) contribute to reducing carbon emissions from transport;
 - (d) bring significant resilience benefits for the Ngā Ūranga ki Pito-One transport corridor (including the rail line and SH2); and
 - (e) also bring significantly enhanced resilience for other key infrastructure co-located in the corridor, including the water network (emphasising the importance of this corridor to the water network for the entire region and its economy).
125. GWRC also highlights that there is no practicable option for the Project other than locating it to the seaward side of the rail line, as well as the *"considerable effort that [Waka Kotahi] has put into consultation, development and design of the [Project] over a long period of time"*.
126. GWRC's outstanding concerns are about effects on oystercatchers and the shingle beaches, and the proposed measures to offset and compensate for marine habitat loss effects, as addressed above. GWRC's other specific comments are addressed below.
127. Overall, GWRC has taken a careful and measured approach to ecology matters and the NZCPS; Waka Kotahi is grateful for the time GWRC has taken to consider the Project (through its development and in providing these comments). The adjustments made to the proposed ecology response, including the proposed offset and compensation measures, reflects a desire on the part of Waka Kotahi, as well as Drs Bell and Bull, to respond proactively to the views expressed by GWRC. The mussel bed, tidal pool and marine invasive species control elements now included in the proposed package are all raised as possibilities in GWRC's comments.

Other ecology matters

128. GWRC notes its view that effects on vegetation will be *"no more than minor"*, and that effects on relevant bird species (beyond oystercatcher) will be managed.

129. Lizards and marine mammals are addressed briefly by GWRC:
- (a) identifying that the lizard species recorded in the Project area are not threatened, and are likely to benefit from the proposed landscaping, while noting *"the potential numbers of animals that could need to be housed or relocated during the construction phase"*; and
 - (b) contending that the proposed Noise Management Plan should consider mitigation for marine mammals.
130. Dr Bull and Dr Bell have considered these comments, and responded in **Appendix A** as follows:
- (a) the housing and relocation of lizards will be addressed in detail in the Ecology Management Plan (as per proposed condition EM.3), which will be subject to certification by GWRC; and
 - (b) a condition regarding noise effects on marine fauna is unnecessary given the expected negligible level of effects.

Coastal processes, natural hazards and resilience

131. GWRC's comments express overall comfort in terms of the Project's effects on coastal processes, and emphasise the benefits the Project will provide in terms of resilience and responding to sea level rise and climate change.
132. The comments refer briefly to Pito-One Beach, stating that the proposed structures *"must not cause a change in sediment transport dynamics that could result in the transport of sand"* off the beach. The Coastal Processes Assessment (Technical Report 7) considered the potential effects of the Project on Pito-One Beach.⁵² Its author, Dr Michael Allis, concluded that the Project will have *"negligible ongoing effects on coastal physical processes at the Korokoro Lagoon and Pito-One Beach foreshore"*. Having considered GWRC's comments, Dr Allis has provided the following additional context:

"1. In evidence to [GWRC], O'Callaghan (1996)⁵³ and a later 2010 study by Opus International Consultants⁵⁴ concluded that the mixed gravel-sand beach along the Pito-One foreshore is a very dynamic landform, responding to an array of changes in drivers, including bedload and suspended-sediment flows from the Hutt River.

⁵² Refer to section 6.2.2.

⁵³ O'Callaghan, R.B. (1996) Evidence presented to support application for resource consents by the Rivers Department, Wellington Regional Council - Flood Protection Group regarding the disposal of reject material from the Hutt River mouth sand extraction facility.

⁵⁴ OPUS (2010) Hutt River mouth – Coastal sediment transport processes and beach dynamics. Report prepared for Greater Wellington Regional Council, September 2010.

2. As noted in the [Coastal Processes Assessment] (Allis, 2020) and O'Callaghan (1996), the seafloor of the Harbour (including the nearshore) is a low kinetic energy environment with very low tidal currents and during wind events, wind-generated currents are highest towards the surface than near the sea floor. Bottom currents flow parallel to the sea floor contours, including off Pito-One Beach.

3. Southerly generated swell and wind-wave action is the predominant sediment transport process on Pito-One Beach profiles (Opus, 2010), with the general tendency for longshore drift to the west during southerlies (due to the north-west alignment of the Pito-One foreshore).

4. Pito-One Beach sediments mostly comprise sediment exported from the Hutt River. Sand is more predominant (rather than gravel) at the western end of Pito-One Beach, as the sediment transport processes moving river-derived gravels lessen, and more offshore sand is available to the system (Opus, 2010).

5. There will continue to be subtidal sediment transport along the toe of the new revetment, but at a reduced rate (further offshore, no weathering inputs), but the dynamics driving sediment transport (wave-driven drift, weak alongshore currents) will be largely unchanged as the general alignment of the extended shoreline will be essentially the same alignment as the present shoreline planform. Therefore, the changes in the dynamics associated with Pito-One Beach sediment processes would be negligible.

6. Pito-One Beach is 'buffered' from the Project by the Korokoro Beach reserve area, and bounded by the seawall at the western end."

133. GWRC also expresses support for the beach nourishment concept proposed by Waka Kotahi, discussed above.

Other condition and management plan matters

134. The remainder of GWRC's comments address other condition and management plan matters. The Waka Kotahi response to each is as follows:

- (a) GWRC seeks that the conditions specifically require:
 - (i) that Regional Transport / Metlink be consulted in respect of potential railway line closures (in addition to KiwiRail); and
 - (ii) that lights installed for the Project not be capable of being confused for navigation lights.

The first matter will happen as a matter of course, and no condition is required. Consultation with the Harbourmaster in respect of lighting will occur under Condition CA.14 as proposed.

- (b) GWRC notes the importance of ensuring the review and certification process for management plans is robust, while expressing general comfort with the management plan framework proposed. Waka Kotahi agrees; the conditions provide for certification of management plans in the usual way, and Waka Kotahi looks forward to working through those processes with the local authorities (and others who will be consulted as management plans are prepared).
- (c) GWRC seeks additional detail in the conditions as to monitoring and incident reporting requirements. Ms Hopkins provides a full response to these comments in **Appendix B** and recommends amendments to the proposed conditions.

Hutt City Council

- 135. HCC expresses strong support for the Project, referring to its transport and resilience benefits, alignment with HCC strategies and linkages between the Project and HCC active transport projects. HCC emphasises the benefits of the partnership approach Waka Kotahi has taken with mana whenua.
- 136. The clear endorsement of the works proposed in Honiana Te Puni Reserve is noteworthy, including because HCC is the administering body of the Reserve. The comments state that those works will "*add significant benefit to our city*", and note that HCC, Waka Kotahi and Taranaki Whānui are working in partnership on works in the Reserve.
- 137. HCC makes minor comments / suggestions in respect of the conditions. The comments:
 - (a) recommend greater clarity in terms of aligning lapse periods and the individual consents (conditions GC.5 and GC.6). Ms Hopkins responds in **Appendix B** that an index of designation and resource consents is provided in the proposed conditions, with consent references, consent description, expiry date and the relevant conditions. As such, no amendment to the conditions is needed.
 - (b) recommend additional detail is provided in respect of the potential use of the Tāwharau Pods (proposed to be installed in Honiana Te Puni Reserve), to allow for flexibility. Ms Hopkins agrees, and the conditions included in **Appendix B** add to the description of the activity in the

Index of Designations and Resource Consents to specifically include retail activities.

- (c) support the updated proposed condition LV.3, providing for audits in respect of CPTED and 'Safety in Design' matters. That update has been captured in the conditions provided in **Appendix B**.

Wellington City Council and Wellington Waterfront Limited

- 138. WCC's comments also emphasise the positive effects of the Project; the comments then go on to address the matters that WCC would usually consider through the notice of requirement process.
- 139. In respect of construction noise management, WCC identifies a typographical error in condition table CNV.1 Construction Criteria. That has been corrected in the updated version of the proposed conditions, as set out in **Appendix B**.
- 140. A number of suggestions are made in terms of conditions to manage the operation of the shared path.⁵⁵ The overall response of Waka Kotahi to comments on the form and function of the shared path, including those made by WCC, is set out above. WCC's comments relate to matters that will be addressed in detailed design,⁵⁶ and / or will be subject to standard Waka Kotahi operational procedures. No specific condition changes in response to these comments are considered necessary.
- 141. WCC seeks conditions that would require Waka Kotahi to carry out a pre-construction assessment and record of existing WCC administered road assets at the southern end of the Project footprint, and to 'make good' any damage to those assets that is directly attributable to heavy vehicles associated with Project construction. Waka Kotahi does not consider those proposed conditions would be appropriate, noting in particular that:
 - (a) the intended use of the WCC road network during construction is not particularly unusual or intensive, but instead falls within the normal and fair use of the road network. The circumstances do not justify condition requirements of the kind sought by WCC; and
 - (b) the SH2 / Hutt Road / Jarden Mile intersection is one of the busiest locations in the Wellington roading network, including in terms of heavy vehicles. In practical terms it is difficult to see how any specific damage

⁵⁵ WCC suggests that speed limits on cyclists should be considered for safety reasons; that the path be well lit for CPTED and general safety reasons; that rubbish collection frequency, method and auditing requirements be specified; and that vegetation be maintained to avoid interfering with cyclist and pedestrian sightlines.

⁵⁶ Noting again that WCC will have formal roles in the detailed design processes, in terms of consultation and also certification.

could be directly attributable to Project construction vehicles, and therefore how a 'make good' condition could properly be enforced.

142. WCC also seeks a condition requiring an agreement between Waka Kotahi, KiwiRail and WCC in respect of the future ownership, maintenance and renewal of the Project. A condition addressing these matters would not be appropriate. The standard position is that Waka Kotahi as consent holder and requiring authority will be responsible for compliance with the consent and designation conditions. Discussions relating to ownership and maintenance are ongoing between Waka Kotahi and others, and sit outside the COVID-19 Recovery Act process (as noted by Ms Hopkins in **Appendix B**).
143. The proposed approach taken to archaeological matters is supported by WCC. The landscape and urban design effects are considered to be positive, and the analysis against the objectives and policies of the Wellington City District Plan is supported.
144. WCC comments on the proposed living seawalls as an adjoining landowner, and appends comments received from Wellington Waterfront Limited that have a particular focus on the proposed installation at Whairepo Lagoon. The comments support the living seawalls, including the educational opportunities they will provide, while making specific comments in terms of the practicalities of their installation and maintenance.
145. Implementation of the living seawall in Whairepo Lagoon is intended to be undertaken with waterfront users in mind. There may be a very small exclusion zone required during the relatively short installation period, for example the footpath immediately above the structure where the living seawalls are being installed. To the extent necessary, the installation will be able to work around major events taking place in and around the Lagoon.
146. Implementation of one row of tiles (approximately 8.4m² in area) will not be a prolonged process; the current estimate is that the installation will take approximately one month. That estimate incorporates a contingency for working around high tide.
147. Specific conditions are recommended relating to WCC's landowner requirements. Ms Hopkins responds in **Appendix B** that:
 - (a) Condition EM.16 acknowledges that the installation of the living seawalls is subject to the grant of landowner and/or asset owner approval; that approval is in the hands of WCC and could address all the matters raised in their comments; and

- (b) Condition CA.17 requires structures to be maintained in good and sound condition and that any necessary repairs and reinstatements be made, subject to obtaining any necessary resource consents or other approvals, if required.
148. As such, no amendments to the conditions are necessary to address the matters raised by WCC. More broadly, Waka Kotahi looks forward to working through the details of the living seawalls with WCC.

COMMENTS BY RELEVANT IWI AUTHORITIES AND TREATY SETTLEMENT ENTITIES

Taranaki Whānui ki Te Upoko o Te Ika / Port Nicholson Block Settlement Trust

149. PNBST provided comment to the Panel on behalf of Taranaki Whānui, confirming its support for the Project and the collaborative approach taken by Waka Kotahi in its approach to the Project.
150. Waka Kotahi respectfully acknowledges the mana of Taranaki Whānui, and the immense significance of Honiana Te Puni Reserve as land returned through Treaty settlement and held in trust by PNBST.
151. PNBST comments that:

"In giving effect to the partnership, the Transport Agency and PNBST, have:

- *Established the Te Ara Tupua Steering Group (Steering Group) which acts as the overarching treaty-based mechanism to direct and guide Te Ara Tupua*
- *Provided direction and guidance to key elements such as kaitiakitanga matters, sites of significance and other cultural matters, through the Steering Group and wider Taranaki Whānui project team members*
- *Engaged Taranaki Whānui technical specialists and cultural experts to lead key elements of the Te Ara Tupua project, including cultural design, tikanga, narrative, resource management act considerations, communications and engagement, Steering Group co-ordination and other key components*
- *Actively led engagement workshops with Taranaki Whānui iwi members*

- *Embedded cultural design elements throughout the design of Te Ara Tupua*
- *Created opportunities to give appropriate and meaningful recognition to sites of cultural significance*
- *Enabled opportunities to share Taranaki Whānui stories and narratives with the broader community."*

152. The comments by PNBST reflect the success of the mechanisms employed during development of the Project to ensure appropriate cultural input into effects and design matters.
153. Waka Kotahi is extremely appreciative that Taranaki Whānui representatives have devoted significant time to assisting it achieve robust and meaningful cultural outcomes.
154. Waka Kotahi is delighted that PNBST consider that:

"This project is a model for how strong future facing partnerships between iwi and Crown can meaningfully operate to deliver positive outcomes that reflect the mutual aspirations of mana whenua and of the wider community. Our direct involvement through the Steering Group in the Te Ara Tupua project we are satisfied that our mana whenua interests and responsibilities have been provided for as we have been active in giving direction, guidance and making decisions where appropriate."

155. Waka Kotahi looks forward to the continuation of the meaningful dialogue, expertise and guidance received through the Mana Whenua Steering Group which is formally continued through the proposed conditions. The strong relationship developed between the parties has to date, and will into the future, ensure the Project achieves the Te Ara Tupua Kaitiaki principles that sit behind its development (included at the beginning of this document).

Te Rūnanga o Toa Rangatira Incorporated

156. Waka Kotahi acknowledges the mana of Ngāti Toa Rangatira and the comments provided on their behalf by Te Rūnanga o Toa Rangatira Incorporated.
157. Ngāti Toa Rangatira are a valued Project partner to Waka Kotahi and have confirmed their support for the Project, highlighting in particular:
- (a) the *"clear and transparent"* manner in which Waka Kotahi has engaged on the development of draft conditions;

- (b) that "[M]ana whenua have had the ability to ensure that cultural aspirations and reserve land owner requirements have been appropriately provided for as the project progresses through the design and consenting phase to construction"; and
- (c) that the Project "provides a significant opportunity for the visibility and presence of Mana Whenua to be celebrated along this stretch of Te Whanganui a Tara (Wellington harbour), which is currently inaccessible and the cultural heritage sites hidden. The new shared path will create safe and formal access to this coastal environment and in turn provide our people with the ability to re-establish a relationship with this coastline, to better connect and identify with the historical sites along it, and to better exercise kaitiakitanga along this part of the harbour. Similarly, Te Ara Tupua creates the opportunity for mana whenua employment and to build experience in developing resilient pathways."

158. Waka Kotahi is grateful for the collaborative manner in which Ngāti Toa Rangatira have engaged with it throughout the development of the Project. The benefits of this are multifaceted, as reflected in their comments and in the AEE.

COMMENTS BY OWNERS AND OCCUPIERS OF LAND ON WHICH THE PROJECT WILL BE UNDERTAKEN AND ADJACENT LAND

KiwiRail Holdings Limited

- 159. KiwiRail is a key partner of Waka Kotahi in relation to the Project, and Waka Kotahi is grateful for KiwiRail's ongoing support, as reflected in its comments to the Panel.
- 160. KiwiRail's comments note a major benefit of the Project, namely to provide resilient coastal protection structures that will help safeguard KiwiRail's infrastructure (as well as the new shared path and SH2) from sea-level rise and storms. This will improve the resilience of a transport corridor that is crucial for the functioning of the Wellington region.
- 161. KiwiRail's comments also highlight the narrow and highly constrained nature of the corridor between the coastal escarpment and Te Whanganui-a-Tara, and stress that there should be no further encroachment into the rail corridor. In other words, there is no room to expand or shift the Project footprint on the landward side.
- 162. KiwiRail also acknowledges the way in which the two entities are working together in implementing the Project.

Wellington Rowing Association and Wellington Water Ski Club

163. The Wellington Rowing Association and Wellington Water Ski Club (**Clubs**) have confirmed their full support for the Project and the applications. The Clubs do not seek any conditions beyond those proposed by Waka Kotahi.
164. The Clubs have generously put significant time and effort into comprehensive discussions with Waka Kotahi in respect of the impact of the Project on them, and their ongoing operation within Honiana Te Puni Reserve. As the Panel will be aware, the result has been the incorporation into the Project of an Integrated Clubs Building to be provided before the commencement of construction. This, in addition to proposed conditions which address regattas during construction, appropriately respond to the effects of the Project on the Clubs.
165. The AEE discusses the Reserves Act 1977 approval required to progress the proposed works in Honiana Te Puni Reserve. That approval has now been granted by HCC as administering body of the Reserve, which means that the consents relating to Honiana Te Puni Reserve will, if granted, be capable of being implemented under the Reserves Act. Final design details in respect of the works in the Reserve will be worked through pursuant to the proposed consent conditions, and in close conjunction with HCC and Taranaki Whānui.

Powerco Limited

166. Powerco seeks to ensure the Project works do not affect the ongoing operation, maintenance or access to its gas network. To that end, Powerco requests that its assets be located and demarcated prior to construction, and that any works within 3m of those assets (or that require asset relocation) be discussed with Powerco.
167. The AEE refers to the underground gas distribution line running near the shared path along the Ngā Ūranga to Pito-one corridor, as well as the line at Honiana Te Puni Reserve that crosses the Project footprint twice.
168. Powerco's comments add that there is a District Regulatory Station and vent located adjacent to the shared path route, on Hutt Road to the immediate north of the Hutt Road / The Esplanade roundabout. That building is not proposed to be directly affected by Project construction, and its operation will remain largely unchanged. The building is accessed from the existing path; that is proposed to continue from the new shared path. This may require line markings or signage, which will be discussed with Powerco. The vent may require some adjustment or protection to be installed (Waka Kotahi

understands that currently there is none); those measures would also be discussed with Powerco.

169. More broadly, there are well-established procedures for the relocation and/or protection of network utilities arising from construction activities, and any potential effects on gas pipelines will be avoided as far as practicable including through communication with Powerco. This is reflected in the proposed consent conditions: pursuant to proposed condition CC.2(f), the CEMP will include *"methods to address the safety, integrity, protection and (where necessary) the relocation of existing network utilities"*. In response to Powerco's comments, the updated proposed conditions expand condition CC.2(f) as set out in **Appendix B**.
170. This amended condition incorporates the key elements of the suggested condition wording supplied by Powerco in its comments.

Wellington Water Limited

171. Wellington Water Limited's comments note the importance of the Ngā Ūranga to Pito-One transport corridor for water infrastructure serving Wellington City, and the importance of protecting those assets from damage or disturbance during construction.
172. The AEE records that there is a Wellington Water Limited bulk water main located close to the Project, and that another water supply pipe crosses under the shared path at Korokoro Stream. It is not anticipated that these assets will be directly affected by Project construction or operation. As is standard practice for its projects, Waka Kotahi will work with Wellington Water Limited to ensure that water infrastructure is not adversely affected by construction activities, and to manage any issues that arise. Again, this is appropriately reflected in proposed condition CC.2(f).
173. The comments also state that the Project design does not appear to provide treatment for contaminants present in runoff from SH2 or the rail corridor, and that this is a *"missed opportunity to manage these existing contaminants"*. As discussed above, the application as lodged did propose treatment of stormwater runoff from SH2 between Ngā Ūranga and Pito-One as compensation for the marine habitat loss effects of the Project; the updated approach to offset and compensation measures is addressed above.

COMMENTS BY MINISTERS OF THE CROWN

Minister for Land Information

174. Waka Kotahi acknowledges the comments provided by the Minister for Land Information (Hon. Damien O'Connor), who supports the Panel approving the Project because it will:

- (a) urgently promote employment; and
- (b) promote sustainable management of natural and physical resources.

175. In support of the Project's consistency with the purpose of the COVID-19 Recovery Act, the Minister for Land Information highlights the number of direct and indirect jobs that the Project will generate and that: *"The project therefore will have a substantive economic benefit for the Wellington region where COVID-19 has disrupted the construction industry."*

176. Waka Kotahi is grateful for these comments.

Minister for Treaty of Waitangi Negotiations

177. The Minister for Treaty of Waitangi Negotiations (Hon. Andrew Little) has commented that the Project *"could impact applicants who have applied for recognition of customary rights under the Marine and Coastal (Takutai Moana) Act 2011" (MACA)*, and that *"In the event these applicants have been invited to comment, I suggest the Panel consider ways to ensure their input through the resource consent process and conditions to the resource consent."*

178. As noted in the AEE,⁵⁷ Waka Kotahi has contacted all applicants who have made claims under MACA in respect of Te Whanganui-a-Tara, to inform them of the Project and seek their feedback.⁵⁸ No direct responses have been received but, as the Panel will have noted, Te Rūnanga o Toa Rangatira Incorporated and Taranaki Whānui⁵⁹ have provided letters in support of the Cultural Impact Assessment lodged with the AEE, and in support of the Project itself (included as Appendix A to the AEE), as well as comments directly to the Panel.

⁵⁷ At 8.6.

⁵⁸ Te Atiawa ki te Upoko o te Ika a Maui Potiki Trust; Ngati Toa Rangatira / Te Runanga o Toa Rangatira; Muaupoko Tribal Authority on behalf of Muaupoko; Cletus Maanu Paul on behalf of all Maori; and Rihari Dargaville on behalf of the New Zealand Maori Council Members.

⁵⁹ Te Atiawa ki te Upoko o te Ika a Maui Potiki Trust (one of the MACA claimants) is the representative body for Taranaki Whānui regarding fisheries matters.

179. The Panel also sought comment from the MACA claimants under clause 17(5) of Schedule 6 to the COVID-19 Recovery Act.⁶⁰ Te Ātiawa Trust has provided a specific comment which is addressed below. As the Panel is aware, Taranaki Whānui / PNBST and Te Rūnanga o Toa Rangatira Incorporated / Ngāti Toa Rangatira are represented as MACA claimants (noting the Te Ātiawa Trust is a representative entity of Taranaki Whānui). The supportive comments of both iwi are addressed above.
180. These processes have ensured that the relevant MACA claimants have been given the opportunity to provide input into the consenting process.

COMMENTS BY THE DIRECTOR-GENERAL OF CONSERVATION

Introduction

181. DOC's comments acknowledge the active engagement carried out by Waka Kotahi in respect of the Project and its effects on ecology values, as well as the contribution the Project will make to active mode shift and therefore a reduction in New Zealand's greenhouse gas emissions.
182. DOC's comments give detailed consideration to ecology matters, and the NZCPS. The comments made in respect of shingle beaches, marine habitats, and the proposed offset and compensate measures are addressed above.
183. Beyond those comments, DOC makes specific additional comments in respect of the assessment of marine habitat effects, discusses avifauna, vegetation, herpetofauna and freshwater, provides additional commentary on the NZCPS, and makes a relatively small number of specific condition recommendations. Those comments are summarised below, with Waka Kotahi's responses provided.
184. Waka Kotahi is grateful for DOC's considered approach to its comments, as well as for the effort it has put into the development of the Project, including its input in respect of the assessment of effects and potential measures to address effects (avoidance, mitigation, offsetting and compensation).

Additional comments on marine habitat

185. DOC makes additional comment in respect of the assessment of effects on marine ecology values; DOC agrees with the overall assessment of the value of marine values affected by the Project.

⁶⁰ As set out in Minute 1. Comments were not sought from Mr Paul or Mr Dargaville, on the basis their claims had been struck out by the High Court (as recorded in Minute 2).

186. Relatively detailed comments are made in respect of the assessment of marine habitat values as set out in TR9, with specific comment on the value of the artificial substrate, rocky intertidal shore and subtidal shore, soft intertidal and subtidal shore, and shingle beaches. These comments are addressed by Dr Bell and Dr Bull in **Appendix A**.
187. The key response relates to rocky shore infauna and DOC's reference to the threatened *Smeagol climoi*. Dr Bell and Dr Bull agree with DOC's view that it is unlikely that species is present, but consider a pre-construction survey, with provision for translocation by hand (removing and redistributing shingles to a similar habitat that will not be disturbed), is warranted. Ms Hopkins has updated the proposed conditions to provide for this new requirement (refer also to the description in **Appendix B**).

Avifauna, vegetation, herpetofauna and freshwater

188. DOC considers that effects on avifauna, vegetation, herpetofauna and freshwater habitats and species will be appropriately managed.⁶¹ These categories of effect, and DOC's more detailed comments on each category, are addressed in turn below.⁶²
189. Beyond expressing support for the relevant conditions proposed in respect of avifauna, DOC makes the following comments, as follows:
- (a) DOC supports the proposed requirement that dogs be on a lead on the shared path, but states that it would be preferable if the relevant legal mechanism was confirmed, as opposed to the conditions requiring Waka Kotahi to use its best endeavours to establish such a mechanism. In response, Waka Kotahi notes that the relevant bylaw-making power is with WCC and HCC. Discussions with those councils indicate support for a 'dogs on a lead' requirement, but it is not within the power of Waka Kotahi to guarantee that bylaws will be made. For this reason, the current proposed condition wording (EM.7) is appropriate (and **Appendix A** confirms that Drs Bull and Bell are comfortable with that framing).⁶³
 - (b) DOC seeks that the areas to be searched for penguins using a detector dog be expanded (to the entire Project footprint). Drs Bell and Bull

⁶¹ At paragraph 90.

⁶² DOC makes no specific comments in respect of vegetation.

⁶³ Ms Hopkins has added an advice note to the condition to clarify that a possible mechanism to achieve the dogs on a lead requirement is through bylaws made by WCC and HCC.

support DOC's recommendations (in respect of EM.6B); the condition has been updated accordingly.

- (c) DOC supports the proposed installation of rubbish bins, but recommends at least four rubbish bins should be installed across the length of the shared path, as opposed to one at each end. Waka Kotahi agrees that the effective collection of rubbish is important in terms of the benefits it will provide for ecology, as well as user safety and amenity. The proposed conditions provide for the details in respect of rubbish bins to be addressed in the detailed design process (through the CEDMP; Conditions LV.2 and LV.3); Ms Hopkins and Waka Kotahi consider that to be the appropriate approach, as opposed to specifying a number of rubbish bins (refer to **Appendix B**). Waka Kotahi will seek the views of DOC and other key stakeholders at this point.
- (d) DOC supports the approach taken to herpetofauna effects, and the proposed measures to address those effects (salvage and translocation, as set out in Condition EM.3). DOC has recommended that salvaging be required across the entire Project site, as opposed to only in the identified areas of potential lizard habitat (shown in Attachment A to the proposed conditions). Dr Bell and Dr Bull reiterate in **Appendix A** that this is not necessary, as all potential habitat is identified and shown in Attachment A to the proposed conditions.

190. No specific additional measures are sought in respect of freshwater ecology; DOC's comments indicate support for the approach taken by Waka Kotahi, emphasising the potential value of the proposed fish passage provision for stream culvert extensions. DOC does consider that the value of the Korokoro Estuary and intertidal Pito-One foreshore has been understated. Dr Bell and Dr Bull provide a response in **Appendix A** but nothing turns on that issue, as the effects on the Estuary and Pito-One foreshore will be avoided.

191. DOC also confirms its view that the Project gives effect to the National Policy Statement for Freshwater Management 2020 (**NPS-FM**).⁶⁴

Commentary on the NZCPS

192. Beyond effects related to marine ecology and shingle beaches (addressed by DOC in relation to NZCPS Policy 11 and Objective 1), DOC considers that the Project gives effect to a range of provisions within the NZCPS (including in respect of Te Tiriti o Waitangi and kaitiakitanga, natural character, public

⁶⁴ No commenter contends that the Project is inconsistent with the NPS-FM.

open space and walking access, coastal hazards, use and development, land held under other acts, water quality, and heritage).

193. DOC considers that the effects on shingle beaches do not amount to avoidance in terms of NZCPS Policy 11(a), and queries the assessment of effects on marine ecology in terms of Policy 11(b). However, DOC makes no direct argument that the proposal is inconsistent with the NZCPS. For the reasons set out above, Waka Kotahi's position is that the Project is not inconsistent with the NZCPS 'in the round', as well as with all individual policies (including Policy 11(a) and 11(b)), including in light of the additional measures now proposed.

Specific comments on conditions

194. Table 2 of DOC's comments set out specific condition recommendations.⁶⁵ Those comments are addressed by Dr Bell and Dr Bull in **Appendix A** and by Ms Hopkins in **Appendix B**; Ms Hopkins has made a number of changes to the proposed conditions in response to DOC's recommendations.

COMMENTS BY ENTITIES LISTED IN SUBCLAUSE (6)(K) TO (U)

Generation Zero

195. Waka Kotahi welcomes the strong support for the Project expressed by Generation Zero. Waka Kotahi also acknowledges Generation Zero's view that the number of future users of the shared path may be greater than estimated by Waka Kotahi; as discussed, that would be a positive development, and the Project is future proofed to enable responses to higher levels of use.
196. Generation Zero's brief comments requesting further offsetting and compensation are addressed in the detailed responses on those matters elsewhere in this document.
197. Generation Zero has requested that two additional conditions are imposed. Firstly, it proposes that a condition is imposed requiring that emissions from construction are offset to make the construction of the Project carbon neutral. Waka Kotahi does not consider this is necessary or appropriate. Waka Kotahi is committed to working with the rest of government to address the contribution of land transport to climate change and play its part in the transition to a low-emissions economy. This is demonstrated in Arataki, Waka Kotahi 10-year strategic view for 2021-2031 and Toitu Te Taiao: its

⁶⁵ Though not all DOC's recommendations are captured in its Table 2; Drs Bell and Bull and / or Ms Hopkins responds to all DOC's condition recommendations, including those not captured in Table 2.

sustainability action plan. Waka Kotahi is actively working on how it can best contribute to the overall Government direction to address climate change, including giving effect to the Government Policy Statement on Land Transport. Waka Kotahi is in the process of implementing various measures that will help reduce construction related emissions including:

- (a) Recently introducing a requirement that all capital projects over \$100m achieve an Infrastructure Sustainability Council of Australia (ISCA) rating. Achieving an ISCA rating is a minimum requirement expected of the Alliance for the Project.
- (b) Developing a resource efficiency strategy that will ensure all capital projects and network maintenance contracts will optimise their resource use, increase recycled material use, reduce energy use and emissions, and minimise waste being sent to landfill.
- (c) Waka Kotahi has initiated policy work that is exploring how the use of climate change impact assessments on land transport infrastructure improvement projects might be enhanced and expanded in order to inform decision-making about actions that can enable greenhouse gas emissions from such projects to be reduced.

198. Waka Kotahi will also be complying with the Carbon Neutral Government Programme (CNGP), which requires the public sector to measure and report corporate emissions and to reduce and offset those corporate emissions.

199. Secondly, Generation Zero requests that conditions relating to accessible design to ensure practical (rather than physical) segregation between slow and fast users. Waka Kotahi acknowledges Generation Zero's comments regarding safety and accessibility and agrees that the configuration of the shared path will be important in order to achieve good outcomes in this regard. As explained above, such considerations are already appropriately provided for through the proposed conditions; amendments are now proposed to provide Generation Zero with a formal role in ongoing engagement regarding the Project.

Heritage New Zealand Pouhere Taonga

200. HNZPT refers to potential impacts on the ANZAC Memorial Flagpole and associated garden, and the stone wall remnant in front of the Woollen Mills site. Both built structures are scheduled in the Hutt City Council District Plan.

201. HNZPT recommends that a "*Temporary Heritage Protection Plan*" be prepared for any built heritage that may be affected during construction.

202. Waka Kotahi has prepared a map identifying the location of the Flagpole and garden and the stonewall remnant. That plan, annexed as **Appendix C**, illustrates that the Project will have no effects on either structure. No other heritage structures will be affected by the Project; as such no Protection Plan (or related condition) is required.
203. An overall archaeological authority will be sought by Waka Kotahi as a precaution in respect of the Project, as recommended by its heritage expert Mary O'Keeffe. Waka Kotahi has met this week with HNZPT to discuss its comments and the timing of that application, and to clarify the position in respect of the Flagpole and garden and stone wall remnant.

Fish and Game

204. Fish and Game notes its primary interest is in the three named and three unnamed streams intersected by the Project footprint, as referred to in the AEE and TR9. The comments express Fish and Game's expectation that:
- (a) sediment release into streams be avoided, or otherwise controlled and minimised; and
 - (b) fish passage be provided in culverts.
205. These expectations have been met by the application, noting that:
- (a) works in streams are limited to culvert extensions to provide for the shared path structures; beyond those works, no release of sediment into streams is proposed or anticipated (more broadly, best practice erosion and sediment control measures will be in place for the Project); and
 - (b) the four stream culvert extensions will be designed and installed to provide for fish passage, as per the proposed conditions.

Forest & Bird

206. Forest & Bird's comments state that it supports aspects of the Project, including the provision for active travel and resulting reduction in carbon emissions; and those elements that provide enhancement of indigenous biodiversity. Forest & Bird also recognises the proactive engagement by Waka Kotahi and its responsiveness during Project development (while expressing reservations about the Project being listed in the COVID-19 Recovery Act).
207. However, Forest & Bird considers that more should be done to reduce environmental effects. Its particular concern is Policy 11 and its comments on

effects relate primarily to shingle beaches and intertidal and subtidal habitat loss (including of rocky reefs). Those concerns are addressed above.

208. Brief reference is made to effects on lizards, with a query posed as to whether the assessed low level of adverse effects is consistent with Policy 11(a) and 11(b). Given the species affected (which are not threatened or rare) the low level of effect, and the mitigation proposed (salvage and relocation) it is difficult to see how the effects on lizards pose an issue in Policy 11 terms; nor are any offset measures specific to lizards necessary.
209. Forest & Bird has no apparent issue with the proposal in terms of effects on freshwater values (or consistency with the NPS-FM) or vegetation.
210. Overall, Forest & Bird's position is that approving the Project, as set out in the application, would result in adverse effects that are inconsistent with the directive provisions of the NZCPS; as such it does not support the Project as set out in the application.
211. Forest & Bird's position is that the Project must meet every directive 'avoid' element of every provision in the NZCPS in order not to be inconsistent with the NZCPS. No mention is made of the many NZCPS provisions that support the Project.
212. Forest & Bird's position in this respect derives from the advocacy position it describes in its comments, it states it is "*particularly interested to ensure that the environmental bottom lines established in national policy statements in order to give substance to the "protective" element of Part 2 of the RMA are given effect in regional and district plans and achieved through decisions on resource consents*".⁶⁶
213. The question of the approach to NZCPS inconsistency is addressed above; Waka Kotahi note that DOC (the agency responsible for the NZCPS) has not directly taken such a strict approach.
214. However, as also discussed above, Forest & Bird accepts that the consents may be granted and NoRs may be confirmed even if it is inconsistent with the NZCPS.
215. Forest & Bird makes a number of specific comments on the proposed conditions. These are addressed by Ms Hopkins in **Appendix B**.

⁶⁶ At paragraph 2.

COMMENTS FROM OTHER PERSONS

Cycle Wellington

216. Waka Kotahi welcomes the enthusiastic support for the Project expressed by Cycle Wellington. Waka Kotahi acknowledges Cycle Wellington's design recommendations and other input to date, and notes the detailed design process that will consider specifics in respect of furniture and other facilities.

Te Aranui o Poneke / Great Harbour Way Trust

217. Waka Kotahi likewise welcomes the strong support and endorsement of the Project by Te Aranui o Poneke/Great Harbour Way Trust, and acknowledges the input that the Trust has had through engagement to date. Appropriate wayfinding signage will be a consideration during detailed design, as outlined above.

Hutt Cycle Network, Doctors for Active Safe Transport, Greater Harbour Way Trust, and Port Nicholson Poneke Cycling Club

218. Hutt Cycle Network, Doctors for Active Safe Transport, Great Harbour Trust, and Port Nicholson Poneke Cycling Club also express strong support for the Project, stating that they " *consider the need for a safe cycling corridor from the Hutt Valley to Wellington to be both urgent and unquestionable*".

219. The groups note the environmental impacts associated with the Project, while referring to the already altered state of this environment, the measures adopted to address effects, and the contribution the Project will make to transport mode shift (and therefore to broader environmental gains).

220. As reflected in these comments, the Project has been developed to balance competing aims. In doing so, the Project, including the comprehensive proposed conditions, will achieve the delivery of an environmentally sound and socially responsible safe active transport mode between two regional centres.

Living Streets Aotearoa

221. Waka Kotahi welcomes the support of Living Streets Aotearoa. Living Streets Aotearoa has made a number of comments regarding detailed design matters, and makes specific condition recommendations relating to the CEDMP. Those matters are discussed above.

222. Living Streets Aotearoa has also asked a series of questions regarding matters such as the origin of fill, impacts on road and rail, and resilience effects. These matters are addressed in the AEE.

Te Ātiawa ki Te Upoko o Te Ika ā Māui Pōtiki Trust

223. The Te Ātiawa Trust is the post-settlement governance entity for Taranaki Whānui in respect of fisheries. The Trust was invited to comment in its capacity as a claimant under the Marine and Coastal Area (Takutai Moana) Act 2011 as discussed in Chapter 8.6 of the AEE (and in respect of engagement in the response to the Minister of Treaty of Waitangi Negotiations above).
224. Te Ātiawa Trust expresses support for the Project, but seeks further information above whether ecological effects to the shoreline had been considered and whether a marine fisheries habitat could be incorporated into the design near or on the shoreline.
225. The ecological effects of the Project have been considered and responded to in detail, as set out in the AEE, technical reports, and this response to comments. The Project will not have any significant fisheries effects, but measures proposed will provide fisheries habitat, as described above.

CONCLUSION

226. Waka Kotahi again expresses its gratitude for the comments received, and to the Panel for considering this response.
227. The enhancements now proposed to be incorporated into the Project and the conditions set further reinforce the conclusion that the Project strongly promotes sustainable management and the purpose of the COVID-19 Recovery Act, and will provide a high-quality asset that will be celebrated by mana whenua and communities within the Wellington region.

DATED this 18th day of December 2020

Appendix A – Addendum to Ecological Assessment, Technical Report 9

[Provided separately]

Appendix B – Planning / conditions report by Lesley Hopkins and updated proposed conditions

[Provided separately]

Appendix C – AECOM map identifying structures in response to HNZPT comments

[Provided separately]