

Under the COVID-19 Recovery (Fast-track Consenting) Act 2020

Port Marlborough New Zealand Limited

Applicant

and

KiwiRail Holdings Limited

Applicant

and

Marlborough District Council

Applicant

**Memorandum of counsel responding to request for
information in relation to LP-14 Waitohi Picton Ferry
Precinct Redevelopment under COVID-19 Recovery (Fast-
track Consenting) Act 2020**

17 March 2021

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INTRODUCTION

1. On 3 March 2021, the Waitohi Picton Ferry Precinct Redevelopment Expert Consenting Panel (**Panel**) directed the Environmental Protection Authority (**EPA**) to request further information under clause 25 of Schedule 6 of the COVID-19 Recovery (Fast Track Consenting) Act 2020 (**CRA**), relating to the Waitohi Picton Ferry Precinct Redevelopment consent application (the **Project**).
2. The Project is a joint initiative between Port Marlborough New Zealand Limited (**PMNZ**) and KiwiRail Holdings Limited (**KiwiRail**) alongside the Marlborough District Council (**MDC**) and these parties (together, the **Applicants**) respond to the Panel's request for further information in the following memorandum.

BACKGROUND

3. The focus of this further information request relates to temporary work areas during demolition and construction.
4. The Panel has raised concerns that the marine sediment contamination report (Appendix O, Volume 3) does not deal with establishment, management and operation of these sites. In particular, the Panel has concerns with the use of the two spoil storage areas identified on Sheet C 1031 in Appendix C of Volume 3 of the applications given the adjacent waterways and wetland. The Applicants' note that these sites are now labelled as 'The Farm' and 'Cleanfill Site' on the Labelled Spoil Sites Plan submitted as Appendix 1 to the Applicants' response to the Panel's first further information request (**RFI #1**).
5. The Applicants' response to the Panel's request for further information is detailed below.

CLEANFILL/TEMPORARY SITES

Q1: Where is there any information on why the two sites south at Shakespeare Bay, might be thought suitable?

6. The Applicants have stated at paragraph [95] of RFI #1, in response to Specific Question 6, that dredge spoil may be temporarily stored and dried at The Farm or the Cleanfill Site if the main Port site (as a first option) or log yard (as a second option) are not available due to space constraints.
7. Any use of The Farm and the Cleanfill Site for the temporary storage of dredge spoil would be for dewatering/drying of the spoil only. Condition PB2.6(n), included in the updated conditions provided to the Panel today, confirms that mixing or blending of dredge spoil will not occur at these sites.
8. The site referred to as the Cleanfill Site has been used by PMNZ for the storage of dredge spoil. A certificate of compliance and a resource consent was obtained for this activity and a management regime imposed to ensure that discharges of sediment or other contaminants to the tributary watercourse that connects to the estuary were avoided.
9. With an appropriately robust management regime applied to the temporary storage of dredge spoil for drying purposes, it is considered that adverse effects on the neighbouring wetland can be managed and the sites are appropriate for this use.
10. An appropriately robust management regime is implemented via the Dredge Spoil Management Condition PB2.6, which requires a specific methodology be imposed via the Dredging Management Plan. The Dredging Management Plan is required by Condition PB3.4. Specific methods to be included in the Dredging Management Plan include:
 - (a) The containment of dredge spoil in geotextile bags or an alternative method agreed with MDC that is designed to contain all sediment, to prevent dust;
 - (b) Requiring impermeable lining to ensure all liquid can be collected;
 - (c) The testing of liquid collected during dewatering of dredge spoil to determine the appropriate disposable methods; and

(d) The installation of silt fences around the down-slope side of the stormwater catchment ponds/bunds where the dredge spoil is stored.

11. In addition, Condition PB2.7 imposes specific conditions to protect the ecological values of the Shakespeare Bay Significant Marine Site and Wetland.
12. With adherence to this management process, the Applicants consider that the use of The Farm or the Cleanfill Site for the temporary storage of dredge spoil for dewatering/drying only is appropriate.

Q2: Where is there any statement of values of the wetland by Shakespeare Bay?

13. The Shakespeare Bay Estuary is identified as a significant wetland (W991) in the proposed Marlborough Environment Plan (**pMEP**). PMNZ has been working with MDC to confirm the boundaries of this site, and has commissioned a report by Millen (dated 2013) to assist in mapping this area based on hydrology and vegetation (the **Millen Report**).¹ A copy of the Millen Report is attached to this memorandum as Appendix 1.
14. An assessment of the values of the wetland area at Shakespeare Bay has been undertaken by MDC to inform its Regional Policy Statement, Regional Coastal Plan, Regional Plan and District Plan review process,² and this report, prepared by Philip Simpson, is attached to this memorandum as Appendix 2 (the **Simpson Report**). It is noted that the Simpson Report is now reasonably old, and a subsequent report by Cawthron has been prepared (as discussed at paragraph [23] below), as well as the Millen Report. The site is referred to as Site

¹ The hydrology and vegetation of the wetland within Shakespeare Bay and the extent of area with significant ecological values needing protection, prepared by Millen Associates Ltd, dated 31 July 2013.

² Marlborough District Ecological Significance Assessment Report, prepared by Philip Simpson, dated 19 July 2007.

577: Shakespeare Bay Estuary in the Simpson Report, and is depicted in Figure 1 below:

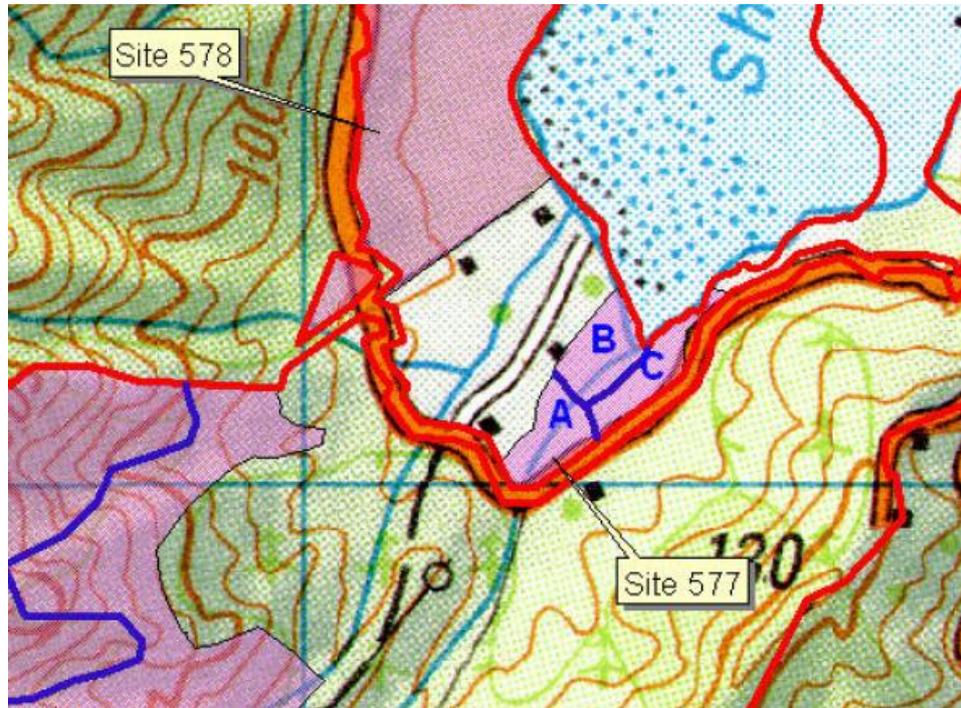


Figure 1: Excerpt from the Marlborough District Ecological Significance Assessment Report (Philip Simpson, 2007).

15. The Simpson Report describes the estuary as being approximately three hectares in area, and while small, it supports several distinct vegetation types, which are divided into three distinct areas.
16. Area A is swampy, and is a fenced former paddock dominated by tall fescue, along with some areas of native swamp regeneration and a few young flax, cabbage trees and kahikatea.
17. Area B is described as the estuarine portion, and is dominated by oioi and sea rush, with a border of shore ribbonwood. Salt surf species occur near the creek. The spit between the estuary and the beach is dry, with *Muehlenbeckia complexa*, nobbly clubrush, a single kanuka and some manuka, with regenerating shore ribbonwood along the inner border.
18. Area C is defined as the area along the south west border of the site between the road and the estuary. This area has regenerating bush

composed of kohuhu, akeake, kanuka and five-finger, and this extends eastwards to the mouth of the creek where bedrock protects a small remnant of disturbed but largely original coastal bush including kamahi, *Dianella* (blue-berry), *Coprosma lucida* and *Asplenium terrestre*. Formerly this would have included black beech.

19. The Simpson Report found that there is nothing unusual about the flora at this site, which is typical of the Sounds estuarine system. However, sea-grass, while typical of shallow bays in parts of the Sounds, is not common.
20. The Simpson Report notes that gorse removal by PMNZ staff has had a good impact on the area, encouraging manuka regeneration.
21. In classifying the site's ecological significance, the Simpson Report concludes that:
 - (a) In terms of whether the site represents a good example of one of the characteristic types of native vegetation in the district – the site is small but typical of Sounds inner bay ecosystems;
 - (b) In terms of rarity – there are many small estuaries in the Sounds but they are often disturbed by weeds;
 - (c) In terms of diversity and pattern – the area is delightfully diverse because there are several small habitats side-by-side. The diversity is increasing as the former farmland is replaced by swamp vegetation;
 - (d) In terms of distinctiveness/special ecological characteristics – the off-shore sea-grass is a distinctive feature, however there is nothing unique at this site;
 - (e) In terms of size and shape – the area has a compact shape, limited on two sides by Queen Charlotte Drive, however, it is very small in size;
 - (f) In term of connectivity – the site is surrounded by road and disturbed land on three sides, but open to the sea;

- (g) In terms of sustainability (whether the site can maintain its ecological integrity and processes) – the site is reasonably protected in that the road restricts development, and the creek and sea-water regimes protect the underlying hydrology.
22. Overall, the estuary is rated as having an overall significance of medium-low.
23. The Applicants also acknowledge the presence of the Ecologically Significant Marine Site within the coastal marine area at Shakespeare Bay. This site is identified as site 4:10 in the pMEP. As part of the pMEP development process, MDC commissioned a state of the environment monitoring report on this site by Cawthron (the **Cawthron Report**).³ The Cawthron Report is attached to this memorandum as Appendix 3. The Cawthron Report also addressed the adjoining wetland/estuary area, as depicted in Figure 2 below. Therefore, there is some crossover with the Cawthron Report, and the Simpson Report discussed above. As noted at paragraph [13] above, PMNZ has been working with MDC to further refine the boundaries of this site to ensure that all high value areas are adequately protected by the pMEP.
24. The Cawthron Report concluded that the Shakespeare Bay estuary is ecologically significant within the Marlborough region. The survey found the estuary to be in relatively good health, with high values habitats including seagrass and rushland comprising a high proportion of the estuary. This Cawthron Report assisted with establishing the boundaries of the identified site in the pMEP and establishing rules to protect it.
25. Conditions to manage the use of the “Farm” spoil storage and laydown storage sites and the “Cleanfill” spoil storage site to ensure that activities at these do not adversely affect both the significant wetland site W991 and the ecologically significant marine site 4:10 are described in this response.

³ Shakespeare Bay Estuary Monitoring 2016, Report No. 2833, prepared by Cawthron.

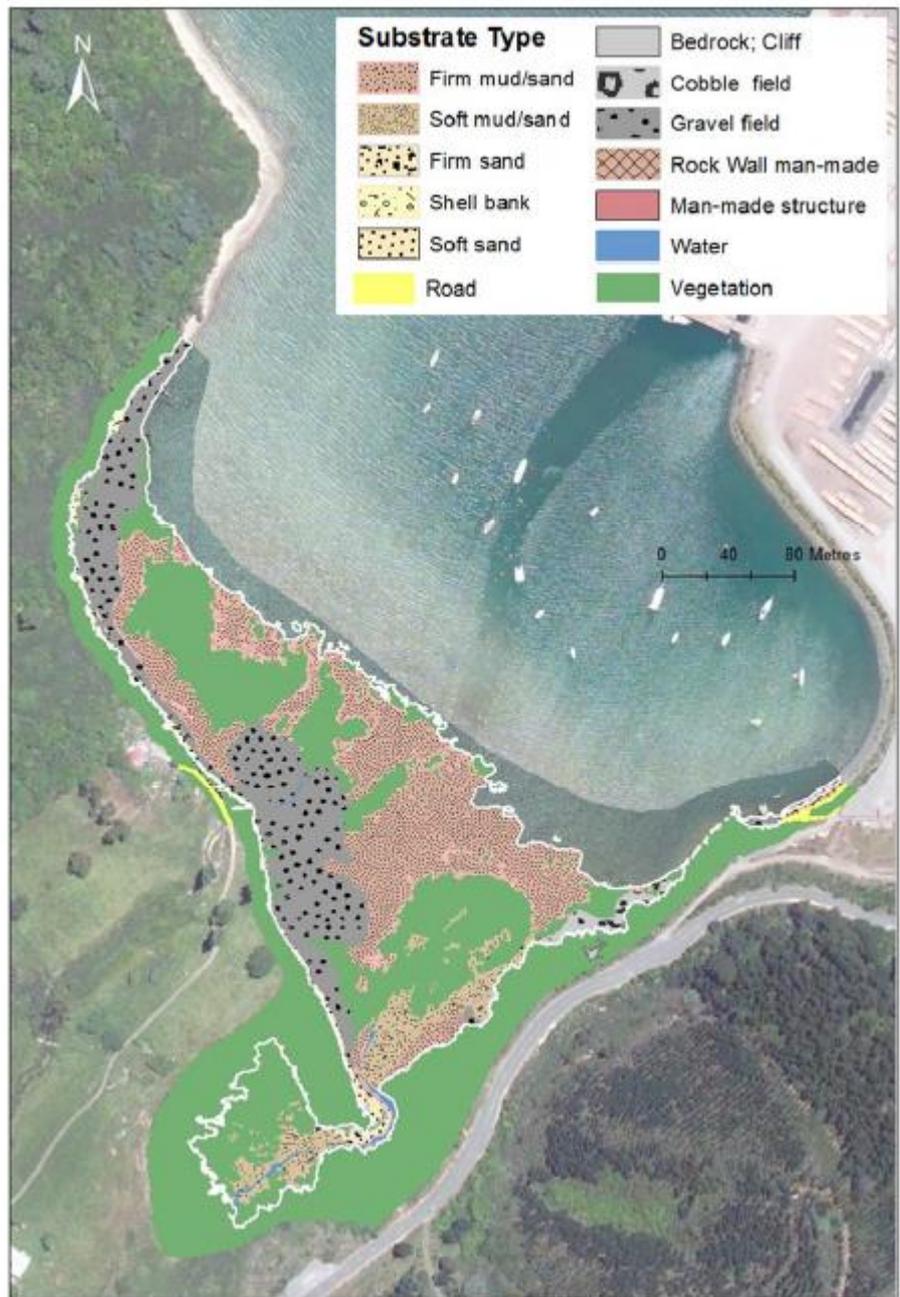


Figure 2: Excerpt from the Shakespeare Bay Estuary Monitoring Report (Cawthron, 2016).

Q3: There seems to be a jumble of historical uncontrolled filling at the other (higher) site. Can you please advise of the detailed history of activities, whether or not consented, at the site?

26. This site is referred to as the Cleanfill Site. Prior to being used as a cleanfill site, PMNZ have used the site for rock storage and storage of other materials, such as recovered wharf timbers for re-use. PMNZ have obtained a certificate of compliance for the use of this site for cleanfill deposition, provided no discharge of water or contaminants to land or water associated with the disposal of the dredging sediment, beyond those classified as permitted activities, occurs.
27. PMNZ also have resource consent to deposit dredge spoil at this site (U160360) and a discharge permit (U160643) to discharge saline liquid and sediment from dredge spoil to water and to land where it may enter water on Lot 2 DP 346226.⁴ This consent has several conditions to ensure liquid is contained and that any mobilised sediment is retained. This consent has been given effect to.
28. PMNZ are confident that its use of the Cleanfill Site for the activities carried out there are either permitted activities or have the required resource consents.

Q4: Where is there any statement about how the ecological values of those places can be protected?

29. Potential effects on the ecological values of the estuary at Shakespeare Bay may derive from construction activities, and include the potential disturbance of the banded rail, possible contaminants being discharged into the estuary or tributaries that feed into the estuary, and dust.
30. The Ecology Company's assessment of effects on seabirds (found at Appendix I, Volume 3 of the applications) recommends best practice erosion and sediment control management to protect the saltmarsh wetland from sedimentation. This will be provided for via the Erosion,

⁴ The Cleanfill site was located within Lot 2 DP 346226. Lot 2 DP 346226 was subdivided in 2019 at which time Lot 3 DP 523615 was created. The Cleanfill site is within Lot 3 DP 523615.

Sediment Control and Stormwater Management Plan (**ESCSMP**) and, in relation to dredge spoil management, the Dredging Management Plan. These management plans are at Conditions PA2.9 and PB3.4 of the updated conditions provided to the Panel today. Condition PB2.6(m) (formerly condition 1.11(e) of Package 2A) further sets out the standards that must be complied with to ensure construction works do not adversely affect the estuary, as previously addressed at paragraph [185] of RFI #1.

31. In addition, the Applicants confirmed at paragraphs [184] – [188] of RFI #1, in response to Specific Question 31, that:
- (a) No works are proposed directly in the wetland.
 - (b) Possible short-term adverse effects on banded rail from the transportation of dredge spoil near the wetland will be mitigated due to these activities occurring during daytime hours, whereas the banded rail are most active between dawn and dusk. The activity at The Farm site will also be located some distance from the birds and would only occur occasionally.
 - (c) To mitigate any residual risk of run off from The Farm site and the Cleanfill Site, the Applicants consider that the laydown area at The Farm should be secured with a silt fence of a suitable design to manage the potential risk of run off from this laydown area. A condition to require this mitigation is included in the updated conditions at Condition PB2.6(h) and the ESCSMP.
 - (d) The Construction Management Plan (**CMP**) and the updated conditions set out the requirements for the management of dredge spoil at Condition PB2.6(h) to ensure that the dewatering of dredge spoil prevents discharges. The requirements for monitoring contained liquid from the dredge spoil to determine where it can be discharged is also required via Condition PB2.6(i). These conditions will apply to all sites where dredge spoil is to be temporarily stored for drying.

Q5: What conditions should be imposed where contaminated material is stored/dried/mixed with clean material?

32. At paragraphs [116] – [120] of RFI #1, in response to Specific Question 14, WSP advised that contaminated material could be blended to create either cleanfill or mudcrete:
- (a) Creating cleanfill involves contaminated sediment being blended with cleanfill materials to produce materials that can be classified as cleanfill.
 - (b) Creating mudcrete involves contaminated sediment being mixed with other materials (cement) to produce stabilised mudcrete.
33. WSP stated that, in terms of creating cleanfill, the consent holder will provide the methodology for production of cleanfill using contaminated sediment. The blended material will need to be retested in batches to confirm the compliance with cleanfill criteria. This criterion is contained in the Ministry for the Environment, Guide to the Management of Cleanfills, 2002 – ‘The Cleanfill Guidelines’. The guidelines specifically discuss acceptable cleanfill material in Section 4.2 and dredging material in Section 4.4, and the criteria that it would be expected to meet.
34. All discharges arising from the dredge spoil drying process will be managed to ensure no discharges occur, until the liquid has been tested to determine how it can be discharged or disposed of appropriately. Conditions PB2.6(f)-(m) set out the requirements that must be adhered to for the process of containing, testing and eventually disposing of dredge spoil discharges.
35. The consent holder will also be required to provide the methodology for production and undertake the relevant testing (leachability) of the cement-stabilised material (‘mudcrete’) to determine if the contaminants are locked-up in the matrix of the mudcrete. However, it is noted that the blending/mixing of dredge spoil to create mudcrete will not take place at the Cleanfill site or the Farm, in accordance with Condition PB2.6(n).

36. In terms of conditions, the consent holder's cleanfill and/or mudcrete methodologies need to be certified by the relevant consenting authority and comply with testing according to The Cleanfill Guidelines. This will be managed by the CMP and a condition has been included at Condition PB2.6(a)-(d) of the updated conditions provided to the Panel today, outlining the minimum requirements that will need to be included in the cleanfill and/or mudcrete methodologies in the Dredging Management Plan (**DMP**).

Q6: Should not such activities be confined to the log farm area with suitable conditions imposed?

37. The Applicants have outlined in response to Question 1 above why it is appropriate to use The Farm and Cleanfill Site for temporary storage and dewatering/drying of dredge spoil where the Port site and log yard are unavailable.
38. The Applicants agree that suitable conditions should be imposed to manage dredge spoil and have included the following conditions in the updated conditions provided to the Panel today:
- (a) Dredge Spoil Management conditions at Condition PB2.6;
 - (b) Shakespeare Bay Marine Site and Wetland conditions at PB2.7;
 - (c) Coastal Marine Area Protection Management Plan conditions at PB3.3; and
 - (d) Dredging Management Plan conditions at PB3.4.

Q7: Supply details of the super sediment fence proposed for two boundaries of Waitohi Reserve, and state why other boundaries do not need same.

39. Super silt fencing is proposed to be used at the Waitohi Reserve around the laydown area, around the eastern and northern boundaries of the laydown area, as set out in Condition PA1.10(b). The super silt fencing comprises a combination of two layers of SiltFence, one layer is installed 800mm below ground level with a second layer sewn to the

first layer at 450mm below ground level. Both layers are then supported by a welded wire mesh to give extra strength to the fence.

40. In the Assessment of Environmental Effects for Package 2A (**Package 2A AEE**), the Applicants note that a super silt sediment fence will be constructed along the northern and eastern boundaries of the laydown areas of the Waitohi Reserve to intercept any silt and sediment, to prevent sediment entering the Waitohi Awa.⁵
41. The super silt fencing is only proposed on two boundaries of Waitohi Reserve because the other two boundaries are already raised as a stop-bank, so additional sediment control is not required.
42. The Draft Construction Methodology Report⁶ includes the use of super silt fences as an erosion and sediment control device that will be used in locations prior to discharge to natural water bodies. These are to be constructed in accordance with Revised Super Silt Fence Design in Technical Publication No. 90 (Auckland Regional Council, 1999).⁷ The super silt fence will be designed to control the silt load in the flow from the Waitohi Reserve, which acts as a retention basin, back into the Waitohi Awa across the boundaries where the flow occurs.
43. The manufacturer's installation details for super silt fencing are provided in Appendix 4 of this memorandum.
44. Silt fencing is also proposed to be installed between The Farm laydown area and the estuary at Shakespeare Bay, per Condition PB2.6(h).

⁵ Assessment of Environmental Effects for Package 2A Port Marlborough New Zealand Limited, Section 4.2.11.2.

⁶ Draft Construction Methodology Report (Appendix N, Volume 3).

⁷ Draft Construction Methodology Report, Section 11.3 (Appendix N, Volume 3).

Q8: Public access around the outside of the northern and eastern boundaries of the Reserve would be desirable during construction works; will pedestrians be able to pass under the proposed northern temporary access bridge? How can that be achieved?

45. The Applicants agree that access to part of the Waitohi Reserve would be desirable during the construction works period, and will endeavour to ensure that, whenever possible, safe access to parts of the reserve that are not occupied by the laydown area (or other activities) will be provided.
46. While the land and pathway located on top of the bund on the eastern edge of the Waitohi Reserve will not be occupied by the laydown area, access to the pathway from Dublin Street will be obstructed until the Dublin Street overbridge works are complete. The Dublin Street overbridge is scheduled to be constructed in the first stage of the construction process.
47. Once the Dublin Street overbridge is completed, a new under path beneath the overbridge will enable a pedestrian connection from Dublin Street to the eastern edge of the reserve so the existing pathway along the Awa can be enjoyed by the public for the remainder of the construction period.
48. Pedestrian access under the temporary construction bridge that is proposed to be installed across the Kent Street tributary will not be feasible. The temporary bridge structure comprises a pre-made steel structure that is laid in place by a crane. It is laid at ground level to avoid the need for groundworks or river works establishing access to and from each side of the bridge. Because it is laid directly on the ground, there is no opportunity for pedestrian access to be created under the bridge.
49. Having a pedestrian pathway in front of the bridge is not considered desirable from a health and safety perspective. This area of the reserve is likely to be frequented by heavy and light construction vehicles, as well as for pedestrian usage associated with the

construction works, throughout the construction period so enabling uncontrolled public access to this area would not be permissible.

50. The project includes proposed works at the Waitohi Reserve to enhance the amenity and recreational values of this reserve for the community to enjoy once the laydown area is no longer required. The landscaping proposed at the reserves includes:

- (a) Developing a compact aggregate paved pathway from the southern side of Dublin Street, underneath the Dublin Street overbridge and along the Waitohi Reserve boundary shared with the Awa; and
- (b) Establishing raingarden areas and planting alongside the pathway at the top of the riverbank, as well as between the pumping station and the reserve.

Q9: Paragraph 4.2.11.2 of the application (p32) says the 2-way access shared with Europcar will be at the northern end. Confirm that should read southern as shown on plan C-1032.

51. The Applicants confirm that paragraph [4.2.11.2] of the Package 2A Assessment of Environmental Effects should say that the 2-way access shared with Europcar will be at the southern end of Waitohi Reserve as shown on plan C-1032 at Appendix Ca, Volume 3.

DREDGING

Q10: In view of likely high levels of public activity around the inner harbour area in summer, can the dredging stop between, say 1 December and 28 February?

52. The proposed dredging activity is confined to the Port Zone at Picton. While the summer period is busy, the dredging activity is required to be managed, at all times, around the ongoing operations of the Port, the Interisland Ferries, Bluebridge Ferries and other vessels that frequent the Port. There are likely to be increased recreational activities in Picton Harbour in the peak summer months, however, these vessels do not enter the Port operational area where the dredging will occur, and therefore are not expected to be affected by dredging activities.

53. It is also noted that, while overall the dredging will cover a large area within the Port Zone, only a small area will be dredged at any one time. Therefore, the disturbance caused by the dredging is minimal in the context of the Port area.
54. Dredging for the commercial jetties will be outside of the Port operational area, but still within the Port Zone. This dredging is relatively small and is expected to take up to one week to complete.
55. Finally, the Applicants are conscious that the construction works will extend for a reasonably long period of time. It is preferable to avoid delays and stoppages wherever possible, to ensure the timeframe is not extended.
56. For the above reasons, the Applicants do not consider it necessary or prudent to avoid dredging from 1 December to 28 February.

Q11: Supply current likely extent of dredging activities, in stages if relevant, during the whole demolition and construction project.

57. WSP plan C-1451 Rev I shows the extent of the dredging required to establish the berth for the new ferries and the commercial jetties. WSP plan C-1452 Rev H shows the extent of the dredging required to establish berthage for cruise ships. Both of these plans are contained in Appendix Ca for Application Package 2A, Part 1 and are attached as Appendix 5 to this memorandum for ease of reference.
58. Specific timeframes for the actual dredging activity are not available at this time. The Draft Construction Methodology Report (Appendix N of the application) outlines when dredging activities will occur, based on the three stages of construction. The following dredging is expected to occur in Stage 1:
- (a) A small amount of dredging for the tug berth (approximately 10m³) and the dredging for the commercial jetties, which is estimated to take up to one week to complete; and

- (b) Dredging to create the back-up berth. The timeframe to construct the back-up berth is approximately 15 to 20 months overall, so dredging would occur intermittently during this time.
59. Dredging to create the new primary berth and seawall is expected to take place during Stage 2 of the construction programme. This is expected to take approximately 3 to 5 months overall timeframe; however, works will be intermittent around installation of scour protection and completion of the nesting structure piling works.
60. No dredging is proposed in Stage 3 of the construction works programme.

DREDGED MATERIAL

Q12: Should not clean fill be used, rather than combined clean and dredged materials at the reclamation and coastal edge, for a sufficient distance (what would that be?), to avoid contaminants passing through the revetments into the harbour waters?

61. As noted at paragraph [116] of RFI #1, in response to Specific Question 14, contaminated dredge material can be blended with cleanfill materials to produce materials that can be classified as cleanfill. This material will be required to meet the standards described in the Ministry for the Environment, Guide to the Management of Cleanfills, 2002 – ‘The Cleanfill Guidelines’. If the blended material meets the standards contained in this document to be classified as cleanfill, then it will be suitable to be used at the reclamation and coastal edge like any other cleanfill.
62. As discussed above at paragraph [35] in response to Specific Question 5, if stabilised mudcrete is used then leachability tests would need to be undertaken to determine if the contaminants are locked-up in the matrix of the mudcrete. If the mudcrete passes the leachability test, then it can be used in the reclamation as any residue contaminate will be contained in the mudcrete. The leachability test to be applied to mudcrete is the United States Environmental Protection Agency (USEPA) 1992, Test Method 1311: Toxicity Characteristic Leaching

Procedure, and this standard is now required to be applied in Condition PB2.6(d).

63. For completeness, as noted at paragraph [118] of RFI #1, the Applicants advise that the Detailed Site Investigation and Marine Sediment Contamination Investigation Report prepared by WSP (Appendix O, Volume 3) states that materials occurring 2.5m below seabed are considered to be clean fill and may be used as cleanfill.

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A J L Beatson / H G Watson / S M Cooper

Counsel for Port Marlborough New Zealand Limited, KiwiRail Limited and Marlborough District Council

Dated 17 March 2021