

**BEFORE THE HEARING COMMISSIONERS
NAPIER**

IN THE MATTER of the Resource Management Act 1991 (the Act)

AND

IN THE MATTER of applications by Port of Napier Limited to undertake wharf expansion, associated capital and maintenance dredging, disposal of dredged material within the coastal marine area, and occupation of the coastal marine area for existing port activities and the proposed new wharf

STATEMENT OF EVIDENCE OF SYLVIA JEAN ALLAN

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INTRODUCTION

Qualifications and experience

1. My name is Sylvia Jean Allan. I have a Bachelor of Science (Honours) Degree in physical geography and geology from the University of Canterbury, and a post-graduate Diploma in Town Planning from Auckland University. I am a Fellow of the New Zealand Planning Institute (NZPI) and am a former President of that professional body. I have more than 45 years' experience as a planner, both in New Zealand and in the United Kingdom. I have been awarded both the first Nancy Northcroft Planning Practice Award by NZPI¹, and an NZPI Distinguished Service Award. I am experienced in most aspects of environmental planning.
2. I am currently an independent planning consultant with my own firm, Allan Planning and Research Ltd. Prior to that for approximately 12 years I was the National Planning Team Leader for MWH (now Stantec), managing a team of up to 50 planners nationwide. Amongst my current clients are central government, district and regional councils, major infrastructure providers, community groups and individuals. I work widely around New Zealand.
3. I have been extensively involved in coastal planning throughout my career, including the preparation of policy statements and regional coastal plans, and planning and consents for aquaculture². From 1987 to 2012, I provided planning assistance to CentrePort in Wellington (initially the Wellington Harbour Board) and for a short time to Wellington Regional Council in respects of its responsibilities under the Resource Management Act. I provided evidence to the board reviewing the 1994 NZ Coastal Policy Statement on behalf of the Ports of New Zealand. I am one of the principal authors of the Ministry for the Environment's 2017 "Coastal Hazards and Climate Change – Guidance for Local Government", which is currently being rolled out throughout the country. I am also assisting the Department of Conservation in terms of the proposed National Environmental Standard for Aquaculture Activities.
4. Since 1994 I have assisted the Port of Napier Ltd (Napier Port, or the Port) with various planning matters. This included involvement in successive regional policy statements and regional coastal plans. It also

¹ For preparation of Napier City Council's first growth strategy.

² Including the large off-shore area in Hawke Bay, now an AMA in the Regional Coastal Environment Plan.

involved inputs into the Napier City District Plan provisions, including those relating to port noise. I assisted with earlier dredging consents, including the 1998 dredge disposal consent currently held by the Port, and the consent for the two hectare reclamation constructed in 2000. I was also involved in the larger proposed reclamation which preceded the current proposal, which did not proceed. From this earlier work, I have a good understanding of the operation of the Port and its environmental context.

Involvement in project

5. In early 2015 I was approached by Napier Port to assist with the RMA aspects of a project they were beginning to develop, involving additional capacity to meet future needs. My brief was to work with the in-house project manager and to assist with identifying potential issues, to ensure the involvement of appropriate expertise, and to provide advice on environmental and planning aspects as the project proceeded. At that stage, the wharf concept had been identified but was still in design. The dredging project was also conceptual but undergoing investigation and optimisation.
6. I progressively reviewed the information and reports from which the project was developed. I was responsible for the preparation of the applications and the Description and Assessment of Effects on the Environment (the AEE) which forms the basis of the Proposed Wharf and Dredging Project³ (the Project). I have had some involvement in the consultation processes, but this has largely been undertaken by Port personnel.

Expert Witness Code of Conduct

7. I have been provided with a copy of the Code of Conduct for Expert Witnesses contained in the Environment Court's Practice Note dated 1 December 2014. I have read and agree to comply with that Code. This evidence is within my area of expertise, except where I state that I am relying upon the specified evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
8. In that context I confirm that I have read all the material in the application documentation, including the reports prepared by the various experts who have advised the Port in the course of developing

³ In association with Grant Russell, a qualified and experienced planner and project manager with Stantec who now provides much of the day-to-day planning advice to Napier Port.

the Project. I have relied on the information provided by those experts in forming my own views.

9. In preparing my evidence I have also read all the evidence lodged on behalf of the Port. I have read the submissions and attended the two pre-hearing meetings. I have also read the Section 42A report and attachments.

Purpose and scope of evidence

10. This evidence provides a planning explanation and analysis of the proposal. My evidence:
- (a) Outlines the basis for the applications.
 - (b) Explains and discusses the applications and their context.
 - (c) Comments on the alternatives considered for the various components of the overall project.
 - (d) Provides a brief discussion of the actual and potential effects on the environment of the activities proposed.
 - (e) Addresses decision criteria in the relevant plan and the RMA.
 - (f) Provides a policy analysis of the proposal, in terms of the relevant statutory documents, the NZ Coastal Policy Statement and Part 2 of the RMA.
 - (g) Briefly comments on some of the matters raised in submissions.
 - (h) Comments on a small number of matters in the officer's Section 42A report, including conditions.

Summary of Conclusions

11. My evidence concludes that:
- Napier Port is facing an urgent need to expand its facilities and services – particularly for additional berthage and to provide for the new large vessels likely to visit the country in the near future.
 - Without such expansion, the Port will not be able to meet ongoing regional growth needs.
 - The development of the Project involved a comprehensive review of options for additional berthage within the Port area. The location and design of the channel has involved

considerable modelling and design optimisation taking into account both environmental and operational safety, and efficiency considerations. The dredge disposal area was also determined following consideration of potential environmental impacts and a range of possible alternatives (including alternative sites).

- The adverse effects on the environment associated with the various components of the Project are generally less than minor taking into account the mitigation proposed. A range of conditions was proposed to embed the mitigation into the Project. Most of the minor adverse effects are temporary only. Specific provisions are needed (and were proposed) to address the one potential effect which was more than minor⁴. An adaptive management approach was developed to address any risk to Pania Reef.
- The Project as proposed is well-aligned with national and regional policy. I have concerns that some of the conditions proposed in the Section 42A report do not align with policy directives relating to Pania Reef, particularly the need to avoid any adverse effects on the reef.
- There is a moderate to significant economic benefit at regional level, and a number of other benefits associated with the Project.
- While the officer's Section 42A report is generally favourable and closely aligned with the applications, it contains unfounded assumptions about the adverse effects the Project will have on the Westshore area. As a consequence of these assumptions, it has recommended additional conditions of consent which are untenable on a number of grounds. In addition to the legal and practical problems with these conditions, those particular recommendations may result in adverse effects which have not been assessed, and which are contrary to national and regional policy.

THE BASIS FOR THE APPLICATIONS

12. Napier Port has grown progressively since its early beginnings on the present site in the 1880s. Prior to that, port and harbour activities had occupied the Ahuriri inlet but the needs of the growing community and economy forced a shift to construction of an artificial harbour on the

⁴ Effects on Little Blue Penguins.

open coast. The interdependence of the Port and its hinterland can be seen in the economic assessment provided as part of the application documentation⁵. While the region's produce provides the basis of the export volumes, a wide range of imports also pass through the Port, serving community needs. The cruise trade also brings considerable business and economic vitality to the region. Overall the Port contributes significantly to the regional economy.

13. Given its relatively small land area (52 hectares of largely reclaimed land) and relatively limited berthage, Napier Port appears to operate very efficiently. In recent years, off-site container storage, and redevelopment and reuse of older parts of the Port, have enabled the Port to keep pace with the demands placed upon it by the expanding regional economy. However, the requirements of new larger vessels, as described in the application documentation and the evidence of Mr de Vos, mean that Napier Port, like most other New Zealand ports, is facing the need for a step change.
14. Rather than considering and addressing the needs in a piecemeal fashion, Napier Port embarked on a major investigation of the requirements and the opportunities within the existing Port area. It has developed an integrated package of improvements to be undertaken over the next two to three decades for which it is now seeking RMA consents. The information in Section 4 of the AEE document summarises an extensive study undertaken by the Port⁶, looking at its existing assets and operations as well as international trends and regional demand projections.
15. This information underpins the applications. As can be seen, there is a pressing need for additional berth capacity to meet peak requirements from about 2020. Such capacity will also enable some refurbishment of existing aging assets. The proposed new Wharf 6 and the associated dolphins have been designed to meet present and future demands for berthage. The wharf development also necessitates an extended swinging basin. The wharf is designed and will be constructed in and alongside a berth pocket to the maximum depth of 14.5m below chart datum⁷. This is the anticipated extent of future dredging needed to provide sufficient depth for the drafts of the future vessels likely to visit the Port.

⁵ Hawke's Bay Economic Impacts of Port of Napier Operations, 2016, Volume 3, Appendix O.

⁶ Some of it commercially sensitive.

⁷ This is a reference set at a measured point within the Port (see Notes on relevant plans, Volume 2 of application documentation).

16. While considering the need for additional berthage, the Port also developed the dredging component of the overall project. This necessitated consideration of the location and design of the channel⁸, as well as the design of the new larger swinging basin.
17. The new dredged channel has been designed to achieve an eventual depth of 14.5m below Napier Port chart datum. This will provide for the largest foreseeable vessels to visit the Port and involves a total dredged volume of approximately 3.2Mm³ volume of material. It is however intended that the swinging basin, part of the channel, and part of the inner port area (shown as Area B on the relevant plans) will be deepened to a level of 12.5m at the time that the wharf construction is commenced. This Stage 1 dredging (including the deeper area below the new wharf and the berth pocket) comprises slightly less than one third of the total volume and the campaign will take place over almost a year.
18. The successive four stages – involving campaigns 2 to 5 – are each described as increasing the depth of the new channel by 0.5m. These will be undertaken as needed, which will depend upon the forward programming of larger vessels. Each of these campaigns will involve two to three months of dredging work, although it is possible that two campaigns could be run together. Flexibility of timing in undertaking those latter stages has been sought.
19. The plans showing Stage 1 and Stages 2 to 5 are included in Volume 2 of the application documentation. These show that the depth of the seabed progressively increases with distance from the Port, meaning that the outer area of the extended channel requires less than 1m depth of capital dredging. The maximum depth of dredging is close to the existing reclamation and towards the southern edge of the swinging basin and comprises 11 to 12m of cut.
20. The timing of the successive dredging campaigns is not known and it is assumed that (as in the past) material will continue to be trapped by the channel. This material is not within the concept of capital dredging and is part of the maintenance dredging normally undertaken by the Port. It will not be able to be handled separately from the capital dredging when a capital dredging campaign is being undertaken. An allowance for this material was made in the offshore disposal area.
21. The identified disposal area for all the dredged material lies between 4 and 6km distance from the Port, in depths of 20 to 23m below chart

⁸ This was partly governed by the need to maintain at least a 700m separation distance from the Pania Reef Significant Conservation Area.

datum. This provides an area within which all the material can be disposed of within a “mound” with a height of approximately 1m.

22. I consider that the AEE in Section 3 reasonably characterises the dredging volumes, methods and disposal intentions. This maintains the flexibility for the Port to separately undertake maintenance dredging between capital dredging campaigns and dispose of it in either of the two possible disposal locations – the new location or the current location. If a capital dredging campaign is progressed it would not be reasonable to expect the Port to separately undertake maintenance dredging.

THE APPLICATIONS

23. The applications were structured to meet the needs of the Project, within the framework of the RMA (Sections 12, 14 and 15) and the relevant regional coastal plan – the Hawke’s Bay Regional Coastal Environment Plan (HBRCEP), operative in November 2014. The applications were discussed with officers of HBRC prior to lodgement.

24. In summary:

- **Application 1** seeks consent for the construction, use, operation and maintenance of the proposed new wharf and associated works and construction activities in the coastal marine area, including diversion of coastal water and minor reclamation. The duration of consent for the construction activities is 15 years, while the use, operation and maintenance components are sought to be consented for the maximum 35 years that the RMA provides. The lapse period for the consent sought is 10 years. This is in line with most major infrastructure consents in my experience.
- **Application 2** seeks a capital dredging consent to cover the Stage 1 dredging which comprises a significant part of the Project, forming a new swinging basin area within which the vessels manoeuvre, and increasing the operational depth of the inner port and parts of the existing channel to 12.5m below chart datum. It also includes capital dredging of the area below the wharf and the creation of the adjacent berth pocket to the final depth of 14.5m below chart datum. Because of the close association with Application 1, these activities were sought to be separately consented. The lapse period sought is 10 years, and the duration is 35 years.
- **Application 3** seeks consent for the remaining four stages of dredging although in accordance with the Project description,

the exact timing is uncertain and it is possible that two stages could be undertaken together. The lapse period for commencement sought is 10 years, and the duration is 35 years. Further, it was sought that there should be no lapse period between stages.

- **Application 4** seeks consent for maintenance dredging within the areas of the capital dredging consents sought. Such dredging may either comprise separate campaigns or may be a component of the capital dredging campaigns⁹. As with the capital dredging applications, the lapse period sought is 10 years, the duration 35 years and it is sought that there be no lapse period between stages.
- **Application 5** seeks consent for the deposition of dredged material in the identified disposal area. This includes both material from capital dredging and the maintenance dredging component. Duration, lapse, and stages of deposition are proposed to match the dredging consents sought in Applications 2, 3 and 4¹⁰.
- **Application 6** relates to occupation of the coastal marine area and seeks a larger area of occupation to regularise the ability for management and maintenance of the area between the Town Reef and the Breakwater, but also an extension to encompass the new wharf and berth pocket, and part of the new swinging basin where safety and manoeuvring of large vessels approaching and leaving the Port will be paramount. The term sought is 35 years. As explained, this consent, if granted, would replace the existing 384A occupation permit which currently covers much of the Port's operational area, but which does not include all of the area required for wharf construction or future berthing or manoeuvring of vessels. The eight years that the Section 384A permit has left to run is insufficient for the major investment involved¹¹.

25. The application documentation (in Section 6.2.4 of the AEE) sets out and explains the consents currently held by the Port. It is explained that, if

⁹ The HBRCEP identifies maintenance and capital dredging as separate activities in the rules, hence the separate application.

¹⁰ Application 2 being a one-off dredging stage does not involve the requested "no lapse between stages" component associated with later stages of dredging.

¹¹ I also understand that the Minister of Conservation has advised that the special arrangements that were made nationwide for Port occupation through the Section 384A amendment to the RMA are not intended to be repeated.

the consents sought are obtained, a number of the short-term and restricted area dredging consents would be surrendered. The existing consent for deposition of dredged material would be reconsidered, and may be retained for deposition in the identified areas, of suitable material in future.

26. An analysis of HBRCEP rules indicated that most of the activities for which consents are sought are fully discretionary, and, bundled, would be that status. While some components could be considered as permitted or controlled, these are limited by geographic area and do not “cover the field”.
27. There were no consents necessary for the Project in terms of the operative Napier City District Plan. The applications were discussed with officers of Napier City Council prior to lodgement. Should, however, consents be required due to the final earth-work volumes, or in case of any contaminated land, they would be sought closer to the time of construction.
28. In my opinion, the suite of consents sought, subject to relevant and reasonable conditions, will provide appropriately for the Project that the Port seeks to undertake. The extended lapse period, the 35 year duration of consents and the “no lapse” provision between stages, are all normal practice for a project of this type and scale. The discretionary status of the activities allows full consideration of all the implications of the Project in making decisions and attaching conditions.

CONSIDERATION OF ALTERNATIVES

29. Although only one possible environmental implication of the overall Project has been identified as potentially significant (effects on Little Blue Penguins)¹², alternatives have been considered for all aspects. Such consideration is sensible business practice in terms of asset renewal and development, but also helps provide a level of robustness in considering and evaluating the Project’s environmental implications.
30. Alternatives to the proposed new Wharf 6 were investigated exhaustively by the Port, including “do nothing”, upgrading of the key existing container wharf (Wharf 5), extending Wharf 1, and review of an earlier alternative involving reclamation and a new wharf. The evaluation took into account the need to continue operations at necessary levels during the construction stage, and long-term

¹² And therefore require alternatives to be addressed. The degree of adverse effect will depend on the ability to manage and mitigate the actual effects.

operational efficiency (including the use of Port land as well as berthage).

31. Alternatives for the channel and swinging basin were developed and evaluated in the context of the preferred new wharf option. A range of angles for the wharf were investigated along with the swinging basin design, and iterative design development enabled the wharf to hug the existing reclamation edge¹³. The location and angle of the channel was strongly influenced by the prohibited activity rule in the HBRCEP (Rule 143) requiring a separation distance of at least 700m from the edge of the defined Pania Reef Significant Conservation Area. As a result, and supported by modelling by Advisian, the proposed channel lies between the two approach paths currently used by the Port (the Josco and Deep Water Channels).
32. The dredge methodology¹⁴ disposal locations were also identified as a result of considering alternatives. The two existing disposal areas used by the Port and also identified on the HBRCEP lie in water depths of approximately 2m to 12m and are limited in extent (Dredge Disposal Area 1 is 1.2km by approximately 400m, and Dredge Disposal Area 2 is 1.8km by 650m average). While it was assumed that some material would be lost into the wider environment between campaigns, this area was considered to be insufficient and plans were drawn up to cover a more extensive area, including all the area between these two areas.
33. When information from modelling indicated clearly that the fine component of the dredged material would be transported south and east (instead of the previously-assumed west and north¹⁵), the environmental and efficiency risks led to a re-evaluation of options for disposal further off-shore. A range of options had been identified and reviewed in 2005 in relation to the reclamation and wharf project mentioned earlier in this evidence. The preferred location from the earlier investigations was investigated in greater detail on the basis of the more extensive information available for modelling.
34. The extent of the footprint required was also investigated, seeking to ensure the dredge disposal mound was able to be limited to approximately 1m above the current seabed (at 20 to 23m depth below chart datum). The area for which consent is sought is 1.85km x 1.85km.

¹³ Avoiding the need for any reclamation (other than the sliver at the base and lower slopes of the revetment).

¹⁴ Using backhoe and trailing suction hopper dredges.

¹⁵ This had been the assumption on which the 1998 dredge disposal consent had been based on.

35. Finally, the possibility of land-based deposition or use of the dredged material was considered. Expert advice was that such uses were not practicable due to the likely liquefaction potential based on the nature of the material itself.
36. The use of the dredged material for beach replenishment or coastal protection has also been considered. As explained in the evidence of Ben Williams and Martin Single, the material is not considered suitable due to its size and incompatibility within the coastal process context at Westshore. It is not possible to separate out material of larger sand size from the silt and mud fractions in the capital dredging. The Port has however agreed to make the material available should a method of coastal protection that can use it without adverse environmental implications be identified.

ACTUAL AND POTENTIAL ADVERSE EFFECTS ON THE ENVIRONMENT

37. Numerous investigations were undertaken in the development of the Project and the preparation of the AEE. These are described in the specialist reports included as appendices in the application documentation.
38. In assessing effects, the starting point is the environment as it exists, subject to consents that involve a permanent change and to effects associated with permitted activities. In the case of the coastal marine area, no consents are permanent. However, the existing port development is largely permitted and the current channel can be regarded as a permanent change to the pre-existing environment.
39. Virtually all of the permitted activities within the HBRCEP relate to transitory and/or minor activities within the coastal marine area¹⁶.
40. While the HBRCEP includes a single permitted type of dredging activity, under Rule 139, this provides only for maintenance dredging within the inner port area¹⁷. Rule 140 (controlled activity) provides for maintenance dredging elsewhere in the Port Management Area. Disposal of maintenance dredge material from the Port Management Area into Disposal Areas 1 and 2 is a controlled activity¹⁸. I also understand controlled activities cannot be considered to be part of the existing environment. Further, I do not consider that a consent-holder

¹⁶ Such as navigation aids, passage of vessels, clearance of outfalls and deposition of that material.

¹⁷ This is the enclosed port entrance, swinging basin and berth area. Being maintenance dredging it does not apply below the current depth.

¹⁸ There are no permitted disposal activities.

can be compelled to use a consent that it holds, if it has identified environmental concerns associated with the exercise of the consent.

41. The assessment of effects was undertaken in accordance with the 4th Schedule of the RMA, and taking into account the mitigation proposed. It relied on the advice of the various experts involved, as well as my own expertise. I note that the development of the Project had avoided many potential effects that might otherwise have occurred. In this category I would include the potential for sedimentation and ongoing turbidity effects in relation to Pania Reef and consequent cultural, natural character, recreational and ecological impacts had consents been sought for disposal of capital dredging material in the identified inshore disposal areas. This would also potentially result in a need for increased maintenance dredging activity over time, with some of the material moving south to be captured in the channel.
42. A summary of the effects assessed and the assessment outcomes was provided in the application documentation in Section 23, as Table 23-1. This indicates that there are few effects which are minor or greater.
43. As the assessment relied on mitigation components, and in some cases on monitoring and adaptive responses, a comprehensive set of conditions was proposed. This included conditions for an adaptive response to the effects of dredging and disposal of dredged material on Pania Reef and Town Reef along with a draft water quality management plan (Appendix R, Volume 3 of the application documentation) to demonstrate how the approach would work.
44. The one effect which is assessed as potentially significant relates to effects on individuals of the Little Blue Penguin population residing in the current rip-rap reclamation face. The management of this effect during the wharf construction stage is subject to a number of suggested conditions which seek to minimise the effect. Napier Port will also require a permit under Section 53 of the Wildlife Act 1953. The requirements of this process will sit alongside the conditions of consent for wharf construction.
45. Actual or potential adverse effects which were assessed as minor included:
 - Effects on birds (other than Little Blue Penguins) – assessed as minor or less.

- Effects associated with construction noise and traffic¹⁹.
- Landscape and visual effects of the proposed new wharf.
- Cultural impacts.

All these aspects, with the exception of the landscape and visual effects which are unavoidable and where no mitigation recommendations were made, are subject to proposed management plan conditions. I consider these to be appropriate methods of managing effects in the circumstances. I note that the landscape and visual impact will be permanent, whereas the adverse effects will be largely associated with the construction phase(s). Ongoing monitoring will be needed in relation to any adverse cultural impacts, and this was embodied in the proposed Marine Cultural Health Programme condition²⁰.

46. The Project was also identified as having a number of actual benefits. These include:

- Minor benefits in terms of enhanced lifelines capability for the region in the case of a disaster.
- Moderate to significant economic benefit to the region, both in the short and longer term.
- A moderate to significant benefit relating to the occupation permit sought, which enables the ongoing, unimpeded, safe and efficient operation of the Port's commercial activities²¹ into the future.
- A minor cultural benefit arising from enhanced understanding of and input into the management of the consents and their monitoring.

DECISION CRITERIA

47. As a full discretionary activity, RMA Section 104 and 104B apply. Section 104(1) sets out the following matters which must be had regard to in making a decision:

¹⁹ I note that in the Summary in the AEE, vibration was included, but Mr Fitzgerald's evidence confirms his initial advice that there will be no perceptible effects because of distance between the construction site and the nearest sensitive receptor.

²⁰ It is my understanding that the Port is actively developing a permanent working relationship with Mana Whenua, which will include but transcend this Project and cover involvement in the ongoing environmental management of the Port's business.

²¹ Including those proposed as parts of the Project. The provisions of the S384A permits were tied to the commercial undertakings of ports.

- Actual and potential effects of allowing the activity.
 - Any measures proposed or agreed by the applicant to compensate or offset adverse effects.
 - Any relevant provision of a New Zealand coastal policy statement, a regional policy statement and a plan²².
 - Any other matters the consent authority considers relevant and reasonably necessary.
48. All decisions are subject to Part 2.
49. Section 104(3) raises the matters of trade competition, written approvals, regulations and some provisions under the Marine and Coastal Area (Takutai Moana) Act 2011. I am not aware of any of those matters being relevant to the applications. There were some necessary procedural steps undertaken in relation to the Marine and Coastal Area Act, which will be outlined in legal submissions for the Port. These were undertaken and it is my understanding that no comments from claimants were received.
50. Section 104(3)(c) also refers to Sections 107 which applies in this case. Section 105 also applies. These provisions bring additional considerations relating to Section 15 matters comprising:
- A set of “environmental bottom line” conditions.
 - A set of considerations as to the circumstances when it may be acceptable for these conditions not to be met.
 - The nature of the discharge and the sensitivity to the receiving environment.
 - Reasons for the proposed choice.
 - Alternative discharge methods.
51. If consent is granted Section 104B provides that conditions may be imposed under Section 108.
52. My evidence has earlier addressed actual and potential effects, both adverse and beneficial. In terms of environmental offsets or compensations, the only relevant element is the proposal to ensure no net loss of Little Blue Penguins over a 10 year timeframe. This may include off-site establishment or enhancement of populations and will

²² Only relevant items in Section 104(1)(b) included in this list.

be undertaken in consultation with the Department of Conservation and Mana Whenua Iwi and under the supervision of an appropriately qualified person.

53. The following section reviews the policy analysis provided in the AEE.

RELEVANT POLICY

54. In Section 24 of the AEE I identified and assessed the relevant policy in the New Zealand Coastal Policy Statement (NZCPS), the Hawke's Bay Regional Policy Statement (within the Regional Resource Management Plan) and the HBRCEP itself. This policy analysis is a requirement of the 4th Schedule to the RMA.
55. I have reviewed the policy analysis I prepared in the light of the submissions, and consider that generally the aspects of policy noted are the relevant ones. However, I wish to add to the analysis in the light of proposals in the Section 42A report that new conditions (outside the scope of the applications) should be applied.

New Zealand Coastal Policy Statement

56. As I was satisfied that the Project was developed in a way that would avoid any adverse effects on Pania Reef, Town Reef and Rangitira Reef, my analysis did not address NZCPS Objective 2 and Policies 13 and 15 in great depth. These provisions direct the preservation of the natural character of the coastal environment, and the protection of natural features by avoidance of adverse effects on outstanding values. A similar policy thread applies through Objective 1 and Policy 11 to indigenous biological diversity which in this case would be associated with the reefs.
57. In particular, Pania Reef is part of an area identified as a Significant Conservation Area (SCA) in the HBRCEP. This feature is described in the background report on which the listing was based²³ as being "the most significant seabed feature in southern Hawke Bay". The principal reasons for its identification are identified as Māori cultural values, and significance for ecosystems, flora and fauna habitats.
58. This identification is reasonably old and the HBRCEP does not categorise Pania Reef as an outstanding natural feature or an area of significant ecological values (other than the listing)²⁴. However, in my view, the

²³ ASCV 13, PANIA REEF in HBRC Report Number 4203, referred to in the definition of such identified areas in the HBRCEP, see Attachment 1 to this evidence. This listing also notes that Pania Reef is a registered waahi tapu, which I have also included in Attachment 1.

²⁴ Such areas are not identified in any relevant statutory document that I could find.

scale and nature of the feature itself, the recognition in the HBRCEP, and the policy and rule protection the plan provides, is sufficient to incorporate Pania Reef into the category of an outstanding natural feature. That would mean that Policy 15(a) of the NZCPS applies and all adverse effects (including actual and potential effects) on the feature must be avoided. It would similarly appear that the reef may be deemed to have outstanding natural character, and thus effects must be avoided under Policy 13(1)(a).

59. If alternative dredging disposal areas are proposed in the Westshore area, as sought in some submissions, I consider that these NZCPS policies would have to be accorded significant weight, as neither dredge disposal plume modelling nor investigations of the post-disposal fate of disposed matter have been undertaken that shows that all effects would be avoided. In contrast, as explained in the evidence of Mr Dawson and Mr de Vos, expert advice and information from consultation suggested that there is a risk of adverse effects on Pania Reef from inshore, shallow-water, disposal of fine sediments.
60. I did not include Objective 5 or Policies 24, 25, 26 or 27 which relate to the management of coastal hazard risks²⁵ in my analysis of the NZCPS due to expert advice that coastal hazards would not be exacerbated by the Proposal, other than the exposure of the Port's own new asset addressed as a potential effect in Section 20 of the AEE.
61. The Westshore area, as with many areas in New Zealand, should be regarded as at some risk due to sea level rise and the increased storminess associated with climate change. However, the Port has deposited substantial material from its capital and maintenance dredging activities in the area since at least the 1970s. Most of the policy in the NZCPS relates to reducing coastal hazard risk by managing land-side use and development in areas of identified risk. While Policy 26 relates to and supports natural defences against coastal hazards, the protection, restoration or enhancement referred to are moderated by the words "where appropriate". I am also well aware of the long-term land-side beach nourishment which has been provided at Westshore, presumably based on sound science.
62. In my opinion, the potential adverse effects associated with deposition of fine material in the near-shore area on the identified culturally, ecologically and recreationally significant Pania Reef area and its natural character and other values, are caught by the "avoid" direction of NZCPS Policies 11 and 13. To seek to override these policies in terms of the

²⁵ I am particularly familiar with these policy provisions and their interpretation due to my involvement in MfE's recent "Guidance" noted in paragraph 3 of this evidence.

policy support that might be found in NZCPS Policy 26 is in my opinion, unsupportable.

Regional Policy relating to Pania Reef

63. Similar gaps are also apparent relating to the Regional Policy Statement component of the Hawke's Bay Regional Resource Management Plan and the HBRCEP itself, if dredged material is to be disposed of other than in the area for which consent has been sought.

64. Relevant to Pania and other reefs at RPS level are:

RPS OBJ 4 – *Promotion of the preservation of the natural character of the coastal environment and its protection from inappropriate subdivision, use and development.*

RPS OBJ 7 – *The promotion of the protection of coastal characteristics of special significance to Iwi, including waahi tapu, tauranga waka, taonga raranga, mahinga kai and mahinga mataitai.*

These objectives reflect NZCPS intentions and suggest that avoidance of adverse effects on Pania Reef's natural character and cultural values should be prioritised.

65. **RPS OBJ 8** is "the avoidance of further permanent development in areas prone to coastal erosion or inundation, taking into account the risk associated with global sea level rise and any protection afforded by natural coastal features". In this respect, no policy emphasis is placed on protection by non-natural means.

66. As set out in the application documentation, the two final RPS coastal policies, **OBJ 9** and **OBJ 10** provide policy support for appropriate provision for economic development, and the enablement of safe and efficient navigation, both of which the Project provides for.

67. In giving effect to the NZCPS and the RPS, the HBRCEP identifies Pania Reef as a SCA, as noted earlier. The first objective, Objective 2.1, mimics RPS OBJ 4 above. The following policies are relevant and helped guide the Port's decision to seek offshore disposal:

Policy 2.1 *To ensure any adverse effects on the natural character of the coastal environment arising from inappropriate use and development within the coastal marine area are avoided.*

Policy 2.2 *To recognise that protecting outstanding natural features and landscapes, areas of significant indigenous vegetation, significant habitats of indigenous fauna and historic heritage features assists in preserving natural character of the coastal environment.*

Policy 2.7 *To have particular regard to the avoidance of adverse effects of the following dynamic coastal processes on the physical environment:*

(a) *wave action*

(b) *tidal flow*

(c) *currents and sediment transport*

(d) *natural water quality and*

(e) *natural substrate composition.*

Policy 2.8 *To have particular regard to the mitigation of adverse effects of dynamic coastal processes on the physical environment and provision made for remedying those effects where complete avoidance cannot be achieved.*

Policy 2.9 *To have particular regard to the maintenance or enhancement of the coastal environment's existing amenity values and cultural values.*

68. While there is a policy, Policy 2.11, which reflects NZCPS Policy 26, this does not support artificial replenishment to maintain a retreating beach:

Policy 2.11 *To promote where practicable, the protection and enhancement of natural values and features (including migration of natural features as a result of coastal processes) that provide a natural buffer against coastal erosion and inundation. These features include dunes, gravel barriers, active off-shore sediment reservoirs, inter-tidal rock platforms, reefs and indigenous coastal vegetation.*

69. The explanation of this suite of policies includes the following statement:

"Further modification of the coast's natural character may be appropriate in some locations (for example, in areas where natural character is already highly modified such as urban areas and harbours or in circumstances for provision of essential infrastructural services). Other parts of the coastal environment having high natural character may include significant conservation areas and natural areas."

70. There is a similar suite of policies relating to outstanding natural features and landscapes²⁶. As noted earlier, I consider Pania Reef to be a subsurface outstanding natural feature of the coastal marine area (including its identification as a SCA).

Objective 3.1 *Protection of outstanding natural features and landscapes within the coastal environment from inappropriate subdivision, use and development.*

²⁶ I note that the landscape assessment has not identified Bluff Hill as an ONL or ONF.

Policy 3.1 *To recognise and provide for the protection of the visual coherence of the existing landscape, seascape and outstanding natural features in the coastal environment.*

Policy 3.2 *To recognise and provide for the avoidance, remediation or mitigation of adverse effects on significant landforms and significant geological features.*

Policy 3.3 *To ensure the visual quality and the physical and ecological integrity of outstanding natural features and landscapes within the coastal environment are maintained and that such areas be restored and rehabilitated where appropriate.*

Policy 3.6 *To promote the restoration and rehabilitation of identified areas where outstanding natural features and landscapes within the Coastal Environment have been degraded by past activities or may be degraded by proposed activities.*

71. Again, these policies were influential in the Port's decision on the disposal location included in the applications.
72. Under Objective 4.1, which seeks protection of indigenous species and habitats, are Policy 4.2 which specifically refers to SCAs, with the first priority being avoidance of effects on ecological systems in such areas; and Policy 4.4 which is "to ensure adverse effects on cultural, ecological, historic, geological, and scenic values" of such areas are avoided, remedied or mitigated.
73. My evidence has set out these particular policies, as they were not addressed in the AEE's policy analysis and have not been recorded in the Section 42A report. I do not consider that sufficient regard has been had to them by some submitters, and in the Section 42A report when recommending inshore disposal of dredged material.
74. Policy, from national to regional, does prioritise the protection of natural aspects of the coastal environment and the protection of outstanding natural features such as Pania Reef. This policy was behind a number of the Port's decisions in scoping the Project. For the reason that a number of potential adverse effects were avoided, this policy did not figure greatly in my policy assessment in the AEE. I return to this later in my comments on the Section 42A report.

RMA Part 2

75. I included a brief Part 2 analysis in Section 24.6 of the AEE. I confirm that analysis, but would like to add a small number of additional points as follows:
- (1) In terms of Section 6(a), the natural character of the coastal environment, my earlier commentary omitted to note the presence of the SCA and its values. The Project was

developed in a way that was intended to avoid adverse effects on Pania Reef and nearby inshore reefs.

- (2) I also did not include any commentary relating to Section 6(b). In my opinion, Pania Reef is an outstanding natural feature. The Project as applied for was effectively designed to avoid any adverse effect on that feature.
- (3) In relation to Section 6(f), I should also acknowledge Pania Reef wāhi tapu as a place listed by Heritage New Zealand Pouhere Taonga and therefore requiring protection under this subsection. As applied for, the Project sought to avoid any adverse effect on those values.

RESPONSE TO MATTERS RAISED IN SUBMISSIONS

76. A number of submitters raised matters which are within my areas of expertise and which I respond to in the following paragraphs.

Noise Management

77. Seascape Environment Society Inc (Submission 14) and a number of individuals living in the vicinity of the Port (Submissions 15 to 19) have made similarly-worded submissions in which they ask the Port to agree to a number of statements. They oppose the applications on the basis that they wish *“to reduce further destruction of the seabed and land environment for those people effected (sic) now or in the future”*.
78. This opposition appears to be based on a general concern about the expansion of the Port’s activity. The presence of the Port is recognised and its activities provided for in both the Napier City District Plan through the zoning of Port Industrial, and in the HBRCEP through a number of specific plan provisions (such as the Port Management Area).
79. Amongst the relief sought are several that relate to noise aspects. Port Noise is regulated under Rule 28.15 of the Napier City District Plan²⁷, including through the establishment of a Port Inner Noise Boundary with specific requirements to be met on the basis of short-term and longer-term specifications. The rule also requires a Port Noise Management Plan (with specifications), the operation of a Port Noise Liaison Committee, provides specific requirements for some activities within the Port Industrial Zone, and triggers a set of specifications for the Port to assist with acoustic treatment if certain noise levels are reached (this sets out both Port and property owner obligations).

²⁷ HBRC having allocated its CMA noise management responsibilities by agreement to Napier City.

80. Nearby residential zones include, within the mapped Outer Port Noise Boundary, rules that limit new noise, sensitive activities, and set noise insulation standards.
81. I am familiar with these provisions in some detail, having been involved in the Port's submissions on various proposed plans, and the eventual resolution of the Plan provisions.
82. The AEE identifies both construction and ongoing operational noise as potential adverse effects. The application documentation included noise evaluation in Section 14 of the AEE, a noise report addressing, *inter alia*, construction activities (see Appendix J of Volume 3), and information on longer-term Port noise with the new facilities in place (see Appendix K of Volume 3). This included mapped outcomes of modelled noise of peak Port activities in 2026 with the new facilities in place. The conclusion was that the District Plan requirements would be met for the foreseeable future. This is also addressed in the evidence of Mr Craig Fitzgerald.
83. The specific matters raised in the submissions appear more directed at issues which could be raised in relation to Port Noise Management Plan or in a future review of the District Plan. They do not provide any basis to decline the current applications or impose additional conditions.

Risks and Adverse Effects

84. Submitter 21, Napier Fisherman's Association, seeks that all risks on Pania Reef, Town Reef and the ecological environment should be avoided by disposing of all dredge material further offshore. Submitter 35, Kelly Richards, seeks that dredging activities should have "no effects whatsoever" on supplies of replenishment or incidents of erosion at Westshore beach. While other experts are addressing the substance of the submissions, it is appropriate to make a planning comment in relation to the outcomes sought by these submitters.
85. It has been recognised through case law that the RMA is not a "no risk" or "no effects" statute.
86. The ability for the Port to develop to meet regional needs, and to cater for international shipping trends, is supported by a range of policy provisions in relevant statutory documents, including enabling the wider communities and people of Hawke's Bay to provide for a range of well-beings. There are also substantial benefits to the regional economy, and other benefits from the Project.
87. The risks and adverse effects associated with this Project have, generally been avoided or reduced to minor or less. In particular, no relationship between ongoing erosion at Westshore and the Project is able to be

established, with any effects being within the range of natural variability. Ecological effects have been assessed at less than minor.

Rule 140

88. The submissions of the Westshore Residents and Development Association Inc (Submission 23) and Larry Dallimore (Submission 37) claim that there is an “absence of Rule 140 from the HBRC Environment Plan”, or that it is incompletely quoted.
89. With respect to the submitters, Rule 140 is a controlled activity rule under which applications can be made for maintenance dredging within the Port Management Area. This was included in the list of rules relevant to the Project in Table 6-2 of the AEE. However, the rule is not one under which a consent is sought, as the capital dredging area (which also requires a maintenance dredging consent) extends beyond the Port Management Area. If the rule were to apply, the Project would have to meet a number of specified conditions, including “where appropriate, dredged material must be made available for beach renourishment purposes”. Even if it did apply, there would be no compulsion for the Port to seek a consent under that rule.

Hazardous Substances/Contaminants

90. The Mauri Protection Agency (Submission 26) and Ngaio Tiuka (Submission 30) consider that the sediments to be dredged may include hazardous substances which would have adverse effects when dumped offshore. This comment would be correct in relation to a number of New Zealand Ports (including, for example, Wellington where handling of bulk cargos such as coal in the past and run-off from urban stormwater systems through the port has resulted in high heavy metal and DDT contamination²⁸). Napier Port is unusual in that investigations in 2004, and 2016 of the wider area to be dredged, and ongoing monitoring of sediments in the inner Port area since 2006, reveal no potential for such effects. This was set out in Section 9.2 of the AEE.

Adequacy of Information

91. The Mauri Protection Agency (Submission 26) and Jonathan Dick (Submitter 33) claim that the applications are based on inadequate information about the marine environment.
92. Adequacy of information involves a judgement. I note that the RMA Fourth Schedule requires only “such detail as corresponds with the scale and significance of the effects that the activity may have on the

²⁸ The latter from runoff from city playing fields well outside the Port vicinity.

environment” (Clause 2(3)(c)). In my opinion, the information that accompanied the application was comprehensive and adequate.

93. While the HBRC did issue one formal Section 92 request for further information and two subsequent informal requests, these were all in the nature of clarifications rather than additional studies.

Adequacy of Policy Framework Recognition

94. Ngaio Tiuka (Submission 30) and Fisheries Inshore NZ (Submission 41) consider that the applications do not adequately address Objectives 16.2, 16.3, 17.2 and 17.3 of the HBRCEP. FINZ further considers that guideline (e) of Policy 17.1 in Table 17-1 has not been adequately addressed, and Ngaio Tiuka considers that Policies 2, 3, 13, 15, 22 and 23 of the NZCPS are not sufficiently given effect to in the Proposal.
95. Starting with the NZCPS, Policy 2 relating to Treaty, Tangata Whenua and Māori heritage was addressed in detail in Section 24.2.3 of the AEE, and Policy 13 and 15 were addressed in Section 24.2.2, although I have added to that commentary in this evidence (paragraphs 56 to 62). Policy 3 relating to the precautionary approach has some relevance, as acknowledged in the application, but generally the effects of what is proposed are well-understood. Both Policies 22 and 23 (relating to sedimentation and discharges to contaminants) have been paid very careful attention to in the development of the Project in order to avoid or minimise actual and potential effects.
96. In relation to the suggestion that HBRCEP policy was inadequately addressed, a detailed analysis of Objectives 16.3, 17.2 and 17.3 and the associated policies and guidelines was provided in Section 24.4.2 of the AEE. Objective 16.2 relates to avoidance, remediation or mitigation of Mauri in the coastal marine area. I understand the Project is generally supported by local Mana Whenua, and that their involvement in management and monitoring of cultural health, as proposed, will contribute to the restoration of Mauri.
97. Guideline (e) of Table 17-1 refers to the disposal of spoil from land-based activities and seeks to avoid them. As the spoil is marine-based, it appears the submitter may have referenced this provision in error.

Surf Break Protection

98. Glenn Abel (Submitter 31) suggests that the Port has not had adequate consideration of locally-significant surf breaks. This assumption is based on my assessment that NZCPS Policy 16 (protection of nationally-significant surf breaks) does not apply. Mr Abel has however clearly not overlooked the extensive investigations undertaken which demonstrate no adverse effect on these local recreational assets, as he has

commented on them earlier in his submission. I confirm that no surf breaks of national significance are involved.

RESPONSE TO MATTERS RAISED IN S42A REPORT

99. I have thoroughly read the Section 42A report and its attachments and wish to comment on a number of matters. In general, the report is supportive of the applications and the conditions are reasonable.

100. I am however most concerned about:

- An apparent emphasis on a claimed lack of adequate information in some respects and an emphasis on complaints in submissions to that effect (particularly relating to Westshore and fisheries).
- Assumptions relating to the perceived adverse effects of the Port not disposing of dredged material inshore, and relating to the benefits of inshore dumping.
- Lack of recognition of the risks and potential effects associated with inshore disposal of dredged material, and the associated policy framework.
- Issues and uncertainties associated with the proposed conditions requiring disposal of suitable material at Westshore (including a suggestion that other consents may be needed – see paragraph 91 of the Section 42A report).

The remainder of my evidence addresses these and a small number of other aspects.

Adequacy of Information

101. As a general comment, the current applications have been distinguished by very high availability of information. This is in contrast to the impression given in paragraph 7 of the Section 42A report where it is stated that it was too late for “the clock to be stopped” to respond to submitter queries. There was more going backwards and forwards between applicant, submitters, and HBRC officers and genuine endeavours to simplify and clarify information for these applications than I have ever experienced before in a consent application²⁹. As well as the fairly limited Section 92 further information request, Port experts responded to two information further information requests and attended caucusing.

²⁹ This includes exchanges of emails, meetings, phone calls, as well as the formal and informal further information requests and pre-hearing meetings.

102. I do not accept that there is anything more than a normal level of uncertainty in regards to technical matters, despite the technical complexity of the applications. The level of information is far better than in many situations, in my experience³⁰.
103. In terms of the specific matters raised in paragraph 10 of the Section 42A report:

- (1) Concern is expressed relating to effects on the finfish fishery. While the evidence of Mr Sneddon addresses this matter, I can make some general comments.

My earlier experience in several consents in Hawke Bay³¹ and elsewhere indicates that these matters are often raised, but because only consolidated information by very broad area is available, it is easy for industry representatives to make claims and very difficult for applicants to respond to them other than on the basis of the information that is available³².

In terms of the applicant's responsibility to provide such information, HBRC is equally able to access such material, particularly as I understand that it has established a consultative group with Iwi and commercial and recreational fisheries interests to work actively towards improving sustainable fisheries management³³. The material forwarded to the applicant by HBRC was the same as already applied by the applicant's expert³⁴.

Finally, I note HBRC concluded it was able to grant aquaculture consents in an area close to the Wairoa Hard, despite opposition from fisheries interests who claimed major adverse effects from loss of fishing area. The area was many times larger in area than the disposal consent currently sought and would have involved the permanent presence of structures. This area is now an AMA in the HBCREP (see planning maps in Volume 2 of the application documentation) although I understand that little of the total area has been used for aquaculture.

³⁰ This includes previous coastal consents granted by HBRC, which I have been involved in.

³¹ Including the very large (6km x 12km) offshore aquaculture applications.

³² As fully set out and discussed in Appendix H, Volume 3 of the application documentation.

³³ See <https://www.hbrc.govt.nz/assets/Document-Library/Fact-Sheets/Marine-Environment-Info-Sheet.pdf>

³⁴ Comprising the information available from MPI.

- (2) There is also a suggestion that there was outstanding information relating to coastal modelling. It is my understanding that this information was provided in full to those involved in the coastal caucusing on Thursday 26th July, so would have been available prior to the completion of the Section 42A report.
- (3) The third item where it is claimed there is a lack of detail relates to loss of sediment within the nearshore area. There is a presumption in this section that there will be an actual loss due to trapping by the larger port channel. This was addressed in the application and was noted in the summary of effects as a negligible adverse effect as there is already little contribution of sediment from south of the Port to the north. I note that the caucusing record recognises that “there will be an increased (unquantified but likely to be small) loss of fine sands...” in response to Question 3. It is my understanding that there is a good level of agreement in terms of the science understanding of processes, and that this understanding aligns with the information in the original application.

Adverse Effects of the Port Not Disposing Material at Westshore

104. The officer’s report assumes, for example in paragraphs 10(3) and later in paragraphs 199 and 200, that there will be an adverse effect caused by the Project. In the light of the assessment provided by the applicant and the caucusing statement, it is difficult to conclude that this is an actual or even a potential adverse effect that is of any significance.
105. Frequently throughout the Section 42A report there is an implication that the Port has been providing sediment which contributes to “nourishment of Westshore beach”. It is my understanding that the dredged material has never contributed to beach nourishment – this has been done separately by Napier City Council. Only since 1999 has the Port been permitted to dispose of material close to shore³⁵, but this is limited to beyond 200m from mhws. Thus all that can be said is that part of this material may make its way into the active surf zone and temporarily contribute to beach sediments.
106. Current periodic disposal of maintenance dredging material is undertaken under a consent which lapses in 2033 and is not subject to any requirement to actually deposit any material. In my opinion, this

³⁵ Much of the material deposited over time has been in the areas I and R – forming Dredge Disposal Area 1 and the seaward part of Area 2 in the current plan. These areas are at considerable distance from Westshore beach.

consent cannot be considered to comprise part of the existing environment against which adverse effects can be assessed.

107. Looking at the long-term record of disposal of dredged material³⁶, it could be argued that the Port has actively contributed to the volume of sediment available in the nearshore area from its past dredging activities (including a substantial volume of capital dredging material which would otherwise have been unavailable). In my opinion, there is no basis to imply that that results in any continuing obligation to supply such material, particularly when there are no demonstrated adverse effects of not doing so.

Lack of Recognition of Risks and Potential Effects Associated with Inshore Disposal of Dredged Material

108. The Section 42A report, in supporting and seeking to require ongoing deposition of “suitable” material at Westshore, appears to overlook or dismiss out of hand a number of aspects of the application documentation, particularly the general unsuitability of the material and the impossibility of separating out what might be deemed to be suitable material from unsuitable material.
109. The evidence of Mr Ben Williams explains why the capital dredge material is unsuitable for inshore deposition. This relates to compatibility with the material on which it would be deposited in the nearshore area, and the high proportion of very fine material which is highly likely to remain in suspension causing persistent turbidity (I note that this aspect was not addressed in Question 6 of the caucus statement, which refers only to fine sand and not silt and clay sized particles).
110. The potential for effects associated with disposal of fine dredged material were not considered when the current (1998) disposal consent was granted. While direct ecological effects were evaluated, and consideration was given to the depth of the “mounds” at both disposal sites, there was no information provided on sediment movement or turbidity and it is only recently (since the Advisian investigations) that there has been any understanding of the potential for transport of sediment south and east (although earlier papers had indicated a gyre in this inshore area).
111. Setting aside the question of “suitable” material at this stage, it is my opinion that inshore disposal of the material yielded particularly by capital dredging carries with it a risk of adverse effects of turbidity and

³⁶ See table in second response to information request from HBRC dated 3rd July 2018.

sediment movement in the nearshore area which could result in adverse effects on Pania Reef and Rangitira Reef in terms of water quality, fine sediments, and consequent adverse cultural impacts. The Section 42A report does not consider such potential effects, nor the relevant policy, which I have covered earlier in this evidence.

112. As can be seen from my earlier policy comments, such potential effects would be contrary to policy at national and regional level, none of which has been identified in the Section 42A report.
113. A further more pragmatic aspect relates to the ability to separate out suitable from unsuitable material. It is my understanding that the only material that might be deemed suitable is the portion that is fine sand or larger. Unless lenses of pure sand are found in the subsurface strata during the capital dredging programme³⁷, all capital dredging material must be ruled out as being suitable as the material cannot be sorted. This leaves maintenance dredging material, but as explained in the application, it is likely that removal of such material will form part of a capital dredging campaign and will not be able to be separated out.

Issues and Uncertainties Relating to the Proposed Conditions

114. I do not wish to be overly critical of the conclusion reached by the reporting officer, and his recommendations. However, I consider the recommendation to condition the current applications to require some component of placement of suitable material from these applications in the nearshore, to have a number of problems and flaws.
115. As I understand it, the logic flows from paragraph 200 where it is stated that an adverse effect (being the trapping of material by the larger channel) should be mitigated, through to paragraph 161 where it is suggested that fine sand may “offset” an existing sediment deficit at Westshore beach³⁸. This leads to a set of three recommended draft conditions³⁹, which requires the consent-holder of the dredging consents to:
- Dispose of all “suitable material” within Area R Ext.
 - Dispose of the material in accordance with certified plans
 - Undertake bathymetric surveys.

³⁷ Which have not been identified so far. However, this possibility has been recognised in the AEE (see paragraph 232 of the Section 42A report).

³⁸ As noted earlier, I do not see that this is a causal connect, and no “offset” is actually required.

³⁹ These conditions are repeated in all recommended sets of conditions for the dredging applications.

116. This condition appears to rely on the Port's existing consent relating to Area R Ext, but elsewhere it is mentioned that additional consents may be needed⁴⁰ (this is also indicated in the wording of the first condition above). I do not think this is tenable. It is my understanding that a condition that requires a consent holder to obtain further consents would normally not be considered reasonable.
117. It has been explained that it is intended that the suitability of any material is to be worked out within the scope of the Dredging and Dredge Disposal Management Plan, presumably as part of information yielded in Item (a) – *the estimated volume and nature of the dredged material*⁴¹, and then through Item (n) – *the disposal strategy for dredged material*.
118. I consider this is an entirely unsatisfactory approach, leaving the question of suitability of material, and thus associated environmental impacts, to be internalised within a subsidiary plan that the applicant has to prepare, subject to certification by HBRC and relying on disposal under a consent which is not part of the mitigated suite of consents for which effects have been assessed. No guidance is given as to suitability of material, and the consent-holder could be 'held to ransom' due to the certifications required.
119. Further, I disagree that such a condition can be imposed under Section 104B in terms of Section 108 and 108AA. In particular, Section 108AA prevents conditions that are not directly connected to an adverse effect of an activity on the environment or an applicable rule or standard, unless the applicant agrees. I consider there is no direct connection between the deposition that the Council seeks to achieve and the application (which was made on the basis that all material would be disposed of at the proposed dredge disposal site) and its actual or potential adverse effects. Rather, it appears the conditions are being proposed to appease some submitters.
120. That is not to say that such material, if identified, could not be disposed in an inshore location. As explained in the evidence of Mr Dawson, the Port has already given an undertaking to make any such material available. This is not limited to so-called beach nourishment but could be used for any future soft structures or other mechanism which has not yet been identified. In my opinion this is a much more appropriate way to manage the situation where beneficial uses are possible, but adverse

⁴⁰ See paragraph 92, Section 42A report.

⁴¹ See paragraph 233 of the Section 42A report.

effects need to be considered thoroughly. It also enables community input.

Coastal Hazard Strategy

121. The Section 42A report, paragraphs 201 to 204, notes the Clifton to Tongio Coastal Hazard Strategy. This process was in the engagement stage during the development of the application. The report referred to was released only in February 2018 well after the applications were lodged. I am familiar with the details of the investigations and process. The report and its contents have no statutory status at this stage. The recommendations are only that. It is my understanding that they have not been costed or adopted. They should not be influential in the consideration of the current applications.

Other Conditions

122. I note that a number of modifications and additions have been made to the draft conditions proposed in the AEE. In general terms these are acceptable.
123. It appears that the request for a “no lapse” condition or provision has not been addressed. This is important in relation to all but applications 1 and 6 and should be provided for.
124. Although I note that Dr McClelland indicates in her evidence that she is happy with the extension of the suggested Little Blue Penguin Management Plan to other species, that outcome would be achieved adequately by item (d) in draft condition 21 of consent CL 180008C. The general provision in item (e) that requires identification and implementation of *“any practicable enhancements to improve the habitat for avian species in the vicinity of Napier Port”* is not based on any identification of adverse effects and could involve requirements that are otherwise adverse to port operations (e.g. it applies to all species, including those that may impede activities or involve health and safety concerns).
125. Given the suggestion of the new conditions for inshore disposal, I am now however very concerned about the certification conditions which were included in the draft conditions proposed in the AEE. While certification is a normal requirement and usually occurs without much modification or delay, the requirement to include provisions in the DDMP (and by implication in the WQMP) sorting out whether material is suitable or not, and how much (as **all** suitable material must be disposed of inshore), as well as effectively doubling up the management and monitoring requirements for disposal, involves considerable risk to the Port in terms of certainty and timing in certification. This does not sit

comfortably with an open-ended certification process. To overcome these concerns, I suggest that the wording in all relevant conditions that in the current draft read “*works shall not commence prior to certification*” should be changed to read “*works shall not commence within two months of the submission of the [relevant] plan unless certified earlier*”. This would provide the Council a reasonable period to consider and certify, but would ensure that the consent-holder could proceed if the Council prevaricates or delays. This is particularly important where dredges must be ordered well in advance and cannot be delayed without penalty.

126. I do not see this as being necessary if the conditions are limited to reflect the applications actually made.

CONCLUSIONS AND RECOMMENDATIONS

128. My evidence has addressed the background and basis for the applications for a comprehensive suite of consents which would enable Napier Port to undertake future activities and occupy an extended area in the coastal marine area, to meet the needs of the people and communities of Hawke’s Bay for transport of goods by sea with considerable flow-on economic and social benefits (and also enhancing the Port’s lifelines ability and thus health and safety). The adverse effects on the environment associated with the various components of the Project are generally less than minor taking into account the mitigation proposed. A range of conditions was proposed to embed the mitigation into the Project. Most of the minor adverse effects are temporary only. Specific provisions are needed (and were proposed) to address the one effect which was more potentially than minor. An adaptive management approach was developed to address any risk to Pania Reef.
129. The Project as proposed is well-aligned with national and regional policy. There is a moderate to significant economic benefit at regional level, and a number of other benefits associated with the Project.
130. The additional draft conditions proposed requiring inshore deposition of “suitable material” are inappropriate on a number of grounds, including that their effects have not been assessed, they are contrary to relevant policy and they are not necessary in response to any demonstrated adverse effect. These should not be adopted as part of the final suite of conditions in relation to any consents. My evidence also notes issues with a small number of other conditions.
131. In my opinion, the Project should be granted the consents sought, subject to the conditions proposed in the application documentation and with the minor modifications which I have not otherwise

commented on, included in the draft conditions attached to the Section 42A report.

Sylvia Allan

6th August 2018

ATTACHMENT 1

- Pania Reef SCA
- Heritage New Zealand Listing of Pania Reef
as Wāhi Tapu

ASCV 13 PANIA REEF

SITE NAME: PANIA REEF

SITE NUMBER: HAWKE'S BAY ASCV 13

MAP NZMS 262-07-848187

REFERENCE:

NZMS 260-V21-485874



Brief Locality Description and Summary

Pania Reef is the most significant sea bed feature in southern Hawke Bay. It is situated approximately 800 m north of the Port of Napier breakwater, and consists of a broken linear series of banks and pinnacles extending 3.2 km in a north easterly direction. Depth of the surrounding sea floor ranges from 13 m at its southern end, to 19 m at the northern end. Pania Rock itself rises to within 1.6 m of the surface, and is situated approximately halfway along the reef.

Boundary of Significant Area

That part of the Coastal Marine Area enclosed by a line commencing at a point 39°27.75'S and 176°55.2'E (700 m northeast of beacon 'B'Fl.R.2s; Hydrographic Office R.N.Z.N. Chart N.Z.5712, North Island-East Coast, Napier Roads); then proceeding southeast 1 km to a point 39°28.1'S and 176°55.7'E; then proceeding northeast 4.8 km to a point 39°26.1'S and 176°57.85'E; then proceeding northwest 1.0 km to a point 39°25.75'S and 176°57.35'E; then proceeding in a straight line to the point of commencement.

Principal Reasons for the Objectives

1. MAORI CULTURAL VALUES

The iwi of Ngati Kahungunu consider the entire Coastal Marine Area to be of significance to Maori (Hawke's Bay Regional Council, 1994).

Pania Reef is an important source of kaimoana (Pene, 1989). It is also waahi tapu, as the dwelling place of Moremore, the kaitiaki of this part of Hawke Bay (Pishief, pers. comm.). In 2000, Pania Reef was registered as a 'wahi tapu area' in the New Zealand Historic Places Register.

2. ECOSYSTEMS, FLORA AND FAUNA HABITATS

Pania Reef is the only significant offshore reef system inside Hawke Bay west of Mahia Peninsula. Habitats present on the reef system include the low reef crest, dominated by dense beds of mussels (*Perna canaliculus*); urchin-grazed barrens; Ecklonia forest; and deep reef areas dominated by sponges, hydroid trees and large colonies of jewel anemones (*Corynactis haddoni*). All sections of the reef support large populations of reef fish and reef-associated planktivorous fish.

Large schools of parore (*Girella tricuspidata*) are commonly seen in the Ahuriri Estuary and on the shallow sections of Pania Reef. Parore do not appear to be resident in the estuary (C. Duffy, pers. obs.), and probably regularly move between it, Pania and Town reefs. These movements may be associated with growth, feeding and possibly spawning. This species is close to the southern limit of its distribution on the east coast, and is rare south of Hawke Bay (Duffy, 1992; Paulin & Roberts, 1992).

Objectives

1. Maintenance of the habitat of Pania Reef;
2. Avoidance of sediment discharges to the reef arising from non-natural sources;
3. Protection, from activities, of the physical integrity of the reef;
4. Avoidance of the discharge of any pathogens, exotic flora and fauna, or toxic substances to the waters influencing the reef;
5. Prevention of the dumping of any sediment, rock or foreign material onto the reef, or the sea floor adjacent to it;
6. Prohibition of all permanent structures, other than navigational aids.

References

Central Fisheries Management Planning Team (1987): Regional Background Discussion Paper on areas to be investigated for proposed marine protected areas in the Central Fisheries Management Area. Unpublished, reference copies lodged in MAF Central Library, Wellington.

Duffy, C. A. J. (1992): Shallow rocky reef habitats in Hawke's Bay. Unpublished, reference copy held in the library, Department of Conservation, Napier.

Hawke's Bay Regional Council (1994): Minutes of a Meeting of the Maori Committee, Napier, 26 April 1994.

Pantin, H. M. (1966): Sedimentation in Hawke Bay. New Zealand Department of Scientific and Industrial Research Bulletin 171 (N.Z. Oceanographic Institute Memoir No 28), Wellington, 71 pp.

Paulin, C. D; Roberts, C. D. (1992): The Rockpool Fishes of New Zealand. Museum of New Zealand, Wellington.

Pene, D. (1989): Summary of statement by David Pene, Secretary Ahuriri Maori Executive, Chairman Waiohiki Marae. Town and Country Planning Appeal No. 597/88, Planning Tribunal Hearing Hawke Bay Water Classification.

Personal Communication: Elizabeth Pishief, Hawke's Bay Archaeological File Keeper, New Zealand Archaeological Society.

Personal Observation: Clinton Duffy, Department of Conservation, Napier.

DRAFT

Pania Reef

Napier Harbour, Napier

List Entry Information

List Entry Status

Listed

List Number

7494

List Entry Type

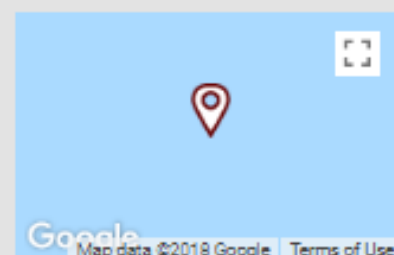
Wahi Tapu Area

Date Entered

14th June 2000

Public Access

Private/No Public Access



Location ▾

Extent of List Entry

Pania Reef is within Napier Harbour. It is significant as a food gathering place and is still used as 'he wahi mahinga kai'. Pania, who was an ancestor of Ngati Paarau, was turned into a reef by her people. The reef is described as a wahi tapu of outstanding significance.

City/District Council

Napier City

Region

Hawke's Bay Region

Additional information ▾

Historical and associated iwi/hapu/whanau

Ngati Kahungunu ki Heretaunga

Construction Dates

Other Information

Please note that entry on the New Zealand Heritage List/Rarangi Korero identifies only the heritage values of the property concerned, and should not be construed as advice on the state of the property, or as a comment of its soundness or safety, including in regard to earthquake risk, safety in the event of fire, or insanitary conditions.