

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

IN THE MATTER of the Resource Management Act 1991 (“RMA”)

AND

IN THE MATTER of resource consent applications by Northport
Limited under section 88 of the RMA for a port
expansion project at Marsden Point

APPLICATION NO. APP.005055.38.01
LU 2200107

**FURTHER/FINAL CLOSING LEGAL SUBMISSIONS ON BEHALF OF
NORTHPORT LIMITED**

22 May 2024

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1. INTRODUCTION AND PROCESS UPDATE

- 1.1. At the hearing of Northport Ltd's ("Northport") application on 20 November 2023 we presented interim written closing submissions.¹ We do not resile from those interim submissions, and while we have not reproduced them here, the position for Northport has not materially changed - except insofar as we have provided further updated draft proposed conditions, which we go on to outline below.
- 1.2. Since presenting those interim written closing submissions, the hearing has been adjourned at Northport's request to enable:
 - (a) an engagement process with Patuharakeke Te Iwi Trust Board ("PTITB");
 - (b) expert conferencing on stormwater issues; and
 - (c) circulation of draft updated conditions to both Whāngarei District Council ("WDC") and Northland Regional Council ("NRC"), with an opportunity for feedback.
- 1.3. With respect to each of the above processes, we record:
 - (a) Northport considers that the engagement with PTITB over a four-month period was productive.² While that engagement process was meaningfully undertaken, in a manner which Northport considers is reflective of the established and ongoing relationship between Northport and PTITB, it has not resulted in

¹ The written closing submissions dated 20 November 2023 are not expressly titled as "interim", however given the subsequent adjournment, the Panel has accepted that they are interim closing submissions, and that it may be "*necessary and appropriate, and of material assistance to the Panel... for Northport to provide further/final closing submissions to the Panel*" (refer para 5 of Direction 14).

² Detail of the engagement is provided in the monthly reporting memoranda filed on behalf of Northport.

resolution of the issues as between Northport and PTIB. We address cultural issues below.

- (b) The expert conferencing on stormwater issues resulted in a high level of agreement between the experts.³ This conferencing has informed the updated conditions proposed by Northport.
- (c) Northport has circulated draft updated conditions,⁴ incorporating feedback from the two Councils and identifying those areas of agreement or disagreement with the Councils' positions.⁵ We discuss conditions in more detail later.

1.4. Northport is grateful to the Hearing Panel for accommodating an adjournment to allow these important steps to occur. It is expected that those processes will provide additional information, such that the Hearing Panel is able to reach a better informed, robust decision.

2. SUMMARY OF NORTHPORT POSITION

- 2.1. Nothing has transpired during the hearing or the subsequent adjournment period that has changed or detracted from the principal submissions we made in presenting Northport's case.
- 2.2. To clarify, we maintain our earlier submission that all resource consents sought should be granted because the port expansion proposal ("Proposal" or "Project") satisfies the relevant provisions of the Resource Management Act 1991 ("RMA"). We reiterate the importance of expanded dedicated container port operations to the region and the country; that the Proposal is founded on rigorous expert assessment and incorporates comprehensive measures to address actual and potential adverse effects; and that the effects of the Proposal will be appropriately managed.
- 2.3. We submit that Northport has fully addressed all relevant effects associated with its Proposal. The expert assessment, having regard to the measures proposed by way of conditions, is that those effects will be minor in most instances. Each of the independent expert witnesses engaged by Northport supports the Proposal as being consistent with the relevant planning and policy framework, and otherwise appropriate in the context of s104 of the RMA.

³ Refer the Joint Witness Statement in relation to Stormwater, Groundwater and Planning dated 6 May 2024.

⁴ Refer the memorandum of counsel for Northport dated 16 May 2024.

⁵ As directed by the Panel at para 6 of Direction 18.

- 2.4. In our submission, Northport has equipped the Panel with a sound basis upon which to grant consent, subject to the further updated conditions proposed by Northport.⁶
- 2.5. In support of this submission, and as traversed in detail in interim closing submissions, we say the following.

Specific and directive plan and policy support

- 2.6. The Proposal receives specific and directive enabling support from the plan/policy framework.⁷ Development of Northport *at this particular location*, including by dredging and reclamation, has very clearly been considered and is specifically provided for in the zone provisions.⁸ This zoning is fundamental to the consideration of the Proposal and must be front of mind in considering the application.
- 2.7. The inescapable conclusion of this zoning is that port-related development is not only contemplated at this location, but *it is specifically directed*. NRC has, via its Proposed Regional Plan, established clear policy direction for infrastructure development at this location.⁹ Further, it has specifically anticipated that such development may include construction via dredging and reclamation. These provisions are the result of careful consideration of all relevant, and sometimes competing, considerations. The Proposed Regional Plan does not provide for port activities of this nature and scale in any other location in the region. This plan framework explicitly identifies and provides strong directive enabling support for port-related development at this precise location out of all of Northland's coastline.¹⁰

⁶ As circulated to the Hearing Panel on 16 May 2024.

⁷ Refer in particular policy 9 of the New Zealand Coastal Policy Statement relating to ports; and Regional Policy Statement policies 5.2.1-5.2.2 relating to infrastructure; and 5.3.2-5.3.3 of the relating to Regionally Significant Infrastructure.

⁸ Within the coastal marine area, the Proposal sits entirely within the Marsden Point Port Zone of the Proposed Regional Plan. The purpose of that zone is to: "*Recognise that the purpose of the Coastal Commercial Zone and Marsden Point Port Zone is to enable the development and operation of existing and authorised maritime-related commercial enterprises or industrial activities located within these zones*". All appeals in respect of the Proposed Regional Plan have been resolved, and Council is taking steps to make the plan fully operative. In addition, Policy PORTZ-P1 'Regional Significance' of the Whangārei District Plan, relating to landward port functions, provides: "*To recognise the regional significance of the Port by providing for a wide range of existing and future port operations and port activities within the Port Zone.*"

⁹ It is also worth recording that, prior to the Proposed Regional Plan, the previous Regional Coastal Plan identified the area as appropriate for port facilities at least as early as 2004.

¹⁰ In opening submissions and interim closing submissions we outlined in detail the leading Supreme Court decision in *Port Otago Limited v Environmental Defence Society Incorporated* [2023] NZSC 112 ("Port Otago"). In April 2024 the Supreme Court released its decision on the East West Link roading project: *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26. While the East West Link Supreme Court decision is broadly relevant to the Northport applications, including with respect to the interpretation of "avoid" planning provisions generally, it does not upset the decision in *Port Otago*, which remains the leading decision with respect to port development

- 2.8. That port infrastructure development is directed (in a policy sense) to occur at this location should not be surprising. Northport is located at a strategic position at the mouth of a natural deepwater harbour. It has existing road connections¹¹ and a potential future rail connection¹² to provide an essential infrastructure service to Northland and North Auckland. Marsden Point has long been a focus of infrastructure development. In addition to Northport's existing port, Channel Infrastructure operates a fuel import and distribution terminal immediately adjacent; Marsden Maritime Holdings ("MMH") is progressing plans for He Ara Huringa, a Business Park and Tech Hub incorporating a range of ancillary commercial initiatives to support port-related functions; and Meridian Energy is delivering a grid-connected battery energy storage system (under construction) and solar farm as part of a renewable energy park at Marsden Point.
- 2.9. We submit that this clear policy direction weighs very heavily in favour of:
- (a) any reconciliation exercise against directive 'avoidance' policies - if required - being determined in favour of this specific, location-based enabling directive; and
 - (b) any 'gateway' assessment under s104D(1)(b) – again, if required – finding that the application is for an activity that will not be contrary to the objectives and policies of the relevant plans.¹³
- 2.10. In any event, through careful design and assessment, and comprehensive proposed conditions of consent, all involving input from a range of experienced independent expert advisors,¹⁴ Northport has carefully designed its Proposal such that it achieves the strict 'avoidance' requirement – particularly with respect to the indigenous biodiversity provisions of the Proposed Regional Plan.¹⁵

and the associated application/interpretation of the NZCPS. At [122] in the East West Link Supreme Court decision the majority explicitly confirm that *"Port Otago is not sidelined by our approach"*.

¹¹ Noting the recent Government announcement that Whāngarei to Port Marsden is to be added to the Roads of National Significance listed in the draft Government Policy Statement on land transport 2024.

¹² Refer the commitment expressed by Mr Gordon on behalf of KiwiRail to upgrade the main trunk rail line to Whangārei, and the steps taken to secure the Marsden Rail Link project.

¹³ In our 20 November 2023 interim closing submissions we outlined that the Proposal is a discretionary activity (paragraphs 5.1-5.6).

¹⁴ The evidence outlines how Northport has assembled a team of independent experts in their fields and has, at all project stages, taken on board the independent advice received.

¹⁵ Noting that certain experts, including Ms Kirk for the Director-General of Conservation, hold a different view as to the 'avoidance' requirement.

Policies relating to places of significance to tāngata whenua

- 2.11. We submit that the key provision relating to managing effects on places of significance to tāngata whenua is Policy D.1.4 of the Proposed Regional Plan. That policy reads:

Resource consent for an activity may generally only be granted if the adverse effects from the activity on the values of places of significance to tāngata whenua in the coastal marine area and water bodies are avoided, remedied or mitigated so they are no more than minor.

- 2.12. As outlined in legal submissions for NRC, the “generally only” qualification in Policy D.1.4 has been carefully and deliberately included to explicitly acknowledge that resource consents can be granted in some situations where effects on the values of places of significance to tāngata whenua are unable to be managed so that they are no more than minor.¹⁶ As outlined in Mr Hood’s evidence, D.1.4 “enables consent to be granted... notwithstanding that tāngata whenua have identified cultural effects as being more than minor.”¹⁷
- 2.13. In summary on this issue, and for the reasons detailed in our interim closing submissions, Northport submits that (i) the qualified nature of Policy D.1.4 sets it apart from some of the enabling policies relating to the Marsden Point Port Zone, and (ii) in any event, the Proposal is aligned with Policy D.1.4.

Positive effects of Proposal

- 2.14. As outlined in legal submissions and in evidence, key benefits of the Proposal include the following:
- (a) A range of economic and social benefits associated with a dedicated container terminal at Marsden Point, representing an integral part of an efficient national network of safe ports.
 - (b) Efficiency improvements which will assist in securing Northport’s ongoing operation into the future by providing container terminal handling capability, along with the key benefits Northport provides to the region - including direct value added (estimated to be up to \$34 million) and the wider economic activity facilitated by the port (estimated at up to \$1.194 billion).¹⁸

¹⁶ Legal submissions for NRC, paras 26-31.

¹⁷ Mr Hood, EIC, at 8.90.

¹⁸ Refer the EIC of Greg Akehurst at Table 1 and para 47. In both instances these are annual values, projected as at 2050. Refer here also the various submissions on behalf of ancillary or downstream business and business groups, such as the National Road Carriers Association.

- (c) The symbiotic relationship between the proposed port expansion and surrounding infrastructure development, including the master planned development proposed by MMH - the He Ara Huringa Business Park and Tech Hub. The Chief Executive of MMH says that the Northport expansion will *“support Northland unlocking its potential and thereby improving the socio-economic well-being across the region”*.¹⁹

Cultural issues

- 2.15. Northport greatly values its relationships with iwi/hapū, and their input to the Proposal. Northport has consistently acknowledged that Whangārei Te Rerenga Parāoa forms an intrinsic part of the culture and heritage of iwi/hapū. Further, Northport is strongly committed to actively fostering its relationships with mana whenua. In that respect, Northport has closely engaged with PTITB, Te Pouwhenua o Tiakiriri Kukupa Trust (Te Parawhau ki Tai), Ngātiwai Trust Board, and other iwi/hapū representatives and entities throughout the scoping, design, and preparation of its application. Northport has approached this engagement in a genuine, open manner and without preconceived ideas. Engagement required acknowledgement of tikanga (protocols) specific to each of the affected iwi/hapū groups – which Mr Isaacs carefully assisted Northport to acknowledge and seek to achieve.
- 2.16. Northport has made a genuine commitment to meaningful engagement, and in the case of PTITB has adhered to the shared values as recorded in the Te Whakahononga / Relationship Agreement. Northport is actively progressing discussions with Te Parawhau around the terms of a potential Relationship Agreement. In summary, we submit that the Panel can be confident that the longstanding consultation efforts made by Northport have been robust, genuine, and meaningful.
- 2.17. Northport has heard the evidence and submissions around actual and potential cultural effects associated with the Proposal, and the various suggestions as to how these might be appropriately addressed.
- 2.18. After hearing those submissions, Northport has pursued the opportunity to further (or differently) address cultural issues, including by proactively engaging with PTITB over the 4-month adjournment period, the costs of which were met by Northport. While

¹⁹ ‘Northport Resource Consent Hearing Verbal Submission – Marsden Maritime Holdings’, 12 October 2023, at para 24.

highly beneficial for the relationship between Northport and PTITB, that process has not resulted in agreement.

- 2.19. We addressed cultural issues extensively in our interim closing submissions. We highlight certain matters below.
- 2.20. There has been a genuine effort by Northport to engage: the inability to reach agreement in and of itself does not represent a failure on Northport's part, nor is it a flaw in the application.²⁰ Many iwi/hapū submitters would prefer to see a different outcome to that which Northport seeks in lodging its application for resource consents for the Project. In our submission, this is not unusual.²¹ Nor does it suggest that the consultation exercise, including in relation to cultural issues, was in any way flawed or deficient.
- 2.21. You have heard submissions and evidence on a range of potential adverse effects of the Proposal on environmental, cultural, and social wellbeing. The challenge for the Panel is to distil and attempt to quantify the effects which the Proposal will have, including on harbour health and, more broadly, on cultural and social wellbeing. The Panel must then assess the extent to which the management measures proposed by Northport address those effects, in order that it can make a balanced decision, having regard to the legislative and policy framework – including those directive plan provisions.²²
- 2.22. Northport has adopted an approach of meaningful and longstanding engagement with iwi/hapū to understand and respond to cultural effects associated with the Proposal. These effects are responded to primarily through the updated draft conditions of consent which Northport proposes.
- 2.23. The email from PTITB's counsel, Mr Matheson, dated 9 April 2024, reinforces Northport's position that the engagement has been meaningful and the relationship a mature one, stating:

²⁰ Refer opening legal submissions at 7.4.

²¹ Refer for example the decisions where Port of Tauranga were granted resource consents, despite opposition from multiple iwi/hapū groups, *Te Runanga O Ngai Te Rangī Iwi Trust v Bay of Plenty Regional Council* [2011] NZEnvC 402, *Te Runanga O Ngai Te Rangī Iwi Trust v Bay of Plenty Regional Council* [2012] NZEnvC 197, and *Ngati Ruahine v Bay of Plenty Regional Council* [2012] NZHC 2407 (HC).

²² In this regard, we submit that some of the emotive statements made during oral submissions by counsel for PTITB were hyperbolic and not borne out by the evidence (for example comments to the effect that: "I can't think of a situation where such a permanent, significant effect on cultural values" has been proposed; and that the Proposal would, if granted "remove the last remaining area of foreshore from this location").

My client does wish to record its appreciation to Northport for the most recent engagement which, although ultimately unsuccessful, demonstrated good faith by Northport and a willingness to listen to my client's concerns.

- 2.24. Finally in relation to cultural issues, we again reiterate the words of the Northport Board Chair, Mr Jagger:²³

...the guidance, input and views of mana whenua are and will remain crucial when it comes to the decisions Northport makes about its operations and its future capabilities.

...

... through this Project, Northport has been in discussions with mana whenua about further developing the respective existing relationships based on trust, mutual recognition, and ongoing consultation. It is my sincere hope that these relationships are strengthened and, where appropriate, formalised.

Wider community/stakeholder consultation

- 2.25. As outlined above with respect to engagement with iwi/hapū, wider community/stakeholder engagement has also been undertaken by Northport from a very early stage, and feedback was used to inform the scoping and development of the Project. The open and genuine approach to consultation continued both before and during notification of the application.²⁴
- 2.26. It is pleasing for Northport that numerous submitters acknowledged the comprehensive approach by the company towards consultation.²⁵

Adequacy of information

- 2.27. Some submitters have questioned the sufficiency of the investigations and assessment undertaken and the level of understanding about the relevant environmental systems, suggesting that additional information or study by Northport is required.²⁶ This is not uncommon.²⁷ The challenge for the Panel – as it is for any decision maker – is to

²³ Refer Mr Jagger EIC at paras 32-34.

²⁴ A detailed summary of consultation undertaken is contained in the EIC of Mr Blomfield.

²⁵ Including representatives of the Bream Head Conservation Trust (who acknowledged that in contributing to various projects, Northport has “supported the Trust’s mahi”), the Mountains to Sea Conservation Trust, Te Hononga Whakaruruhau o Whangārei Terenga Paraoa, the Ruakaka Residents and Ratepayers Association, Janice Boyes and Joshua Gwilliam.

²⁶ Taking one example, Prof Bryan suggested at para 2.3 of her Summary Statement that “[w]ithout sound calibration and verification data, I cannot be confident that the effects are minor”. More broadly, counsel for the Director-General of Conservation and PTITB have invited the Panel to decline the application on the basis of inadequate information (pursuant to s104(6) of the RMA), although in oral submissions counsel for PTITB resiled somewhat from written submissions in this regard.

²⁷ In interim closing submissions we recorded that an allegation of an “uncertainty”, in the absence of supporting evidence, does not amount to an adverse effect or a relevant consideration for the Panel, and that the Environment Court in *Baker Boys Ltd v Christchurch City Council* ([1998] NZRMA 433, para 21)

carefully examine the evidence and determine whether there are material deficiencies or 'gaps', or whether criticism falls into the category of matters of scientific or technical differences in opinion. We submit that, on this occasion, it is the latter.

- 2.28. We submit that absolute scientific certainty with respect to potential adverse effects cannot be achieved in every case, nor is it required. More information is almost inevitably welcomed for scientific interest, but the relevant question must always be whether additional data is necessary for adequately understanding and managing effects on the environment.
- 2.29. The Panel has an extensive body of robust information before it on which it can confidently decide the application. On each issue the Panel has heard evidence from Northport that demonstrates that the Proposal is robust, conservative, and can be relied upon to manage effects in line with the policy directives. Where evidence has been provided by submitters, Northport's experts have responded. The comprehensive expert assessments undertaken have resulted in any remaining uncertainty being very limited in scope and scale; and the Project design and proposed conditions of consent appropriately manage and sufficiently reduce any residual uncertainty – through the considered use of monitoring and management approaches incorporated as part of the Proposal.
- 2.30. The Panel can therefore be comfortable that the information before it is more than sufficient to grant consents for the Proposal.

3. IRRELEVANT CONSIDERATIONS

- 3.1. As outlined in our interim closing legal submissions, matters traversed in submissions include some matters which we submit are not relevant to the Panel's consideration of these resource consents. Such matters include:
 - (a) **Grievances not related to the Proposal:** submitters have raised observations and issues relating to general degradation of the Whangārei Harbour and other environments that are not related to the Proposal. Many such matters are historical, and several were advanced by submitters without any evidential basis.

noted that an evidentiary burden arises for a party to support with evidence any relevant allegations it makes.

- (b) **‘Necessity’ or ‘need’ for the Proposal:** there is no policy nor legal requirement to demonstrate demand or that the Proposal is a “necessity”.²⁸ Counsel for NRC agrees.²⁹ The s42A Report Addendum concedes that the interpretation of the policy framework previously advanced by the s42A author regarding demand/need was incorrect.³⁰ Notwithstanding that there is no requirement to demonstrate that the Proposal is needed, Northport has provided comprehensive evidence on future demand and demonstrating that the proposed footprint is required to handle predicted container volumes.³¹ No opposing evidence seriously called this into question. That evidence confirms that Northport will require further wharf extensions and reclamation as early as 2032.³² If Northport waits for demand to be manifest before seeking RMA approvals, it will be too late.
- (c) **Potential future western reclamation – dry dock:** Northport is aware of speculation as to potential future development to the west of the existing Northport facility.³³ As clearly explained in its application,³⁴ Northport had earlier considered a western expansion as part of its Vision for Growth, incorporating a shipyard and dry dock. This was ‘decoupled’ from the current application and Northport currently has no plans to advance a possible westward expansion. Any potential future application by any party for the area to the west of Northport is hypothetical and of no relevance to the current application.
- (d) **Marine and Coastal Area (Takutai Moana) Act 2011 (“MACA Act”) applications:** Given that no customary marine title or protected customary rights have been issued in respect of the area of Northport’s resource consent application, the MACA Act is of no further relevance to the current application and should not – and cannot – affect the Panel’s consideration of the Proposal under the RMA.³⁵

²⁸ Refer to para 7.26 of our opening submissions.

²⁹ Legal submissions for NRC, paras 19-21.

³⁰ S42A Report Addendum, para 35 (referencing the legal submissions for NRC).

³¹ In opening legal submissions we outlined that the evidence demonstrates that the Proposal is consistent with RPS Policy 4.8.1, which requires, among other things, that the “*area occupied is necessary to provide for or undertake the intended use*”; the intended use being a 500,000 TEU container terminal.

³² Mr Akehurst EIC, para 18.

³³ Refer for instance, media articles such as <https://www.nzherald.co.nz/northern-advocate/news/northlands-dry-dock-to-cost-at-least-500-million-to-build/4L4W7S5IQJE3TFRRC47YJMJGHA/>.

³⁴ Refer the Issues and Options report (forming Appendix 2 to the application and AEE) at section 9.1.8.

³⁵ This is confirmed in *Ngāti Kuku Hapū v Bay of Plenty Regional Council* [2023] NZEnvC 163 at [122]. During oral submissions, counsel for PTITB essentially accepted this position.

4. FURTHER UPDATED CONDITIONS

4.1. Since filing updated proposed conditions together with its interim closing legal submissions, Northport has continued to refine the proposed conditions. In accordance with the Hearing Panel's directions:³⁶

(a) the further updated proposed conditions have been canvassed with the two Councils, and feedback received; and

(b) the further updated suite of proposed conditions has been circulated to the Hearing Panel prior to this reconvened hearing.³⁷ They represent the updated position for Northport, subject to some final amendments to the proposed stormwater conditions, as traversed in these submissions below.

4.2. Below we summarise material changes to the further updated proposed conditions.³⁸ In doing so, we also identify areas where Council recommendations have *not* been incorporated into the further updated draft conditions and outline the reasons for that.

4.3. At the outset we record that, in our submission, the further updated proposed conditions are exhaustive and provide an appropriate basis on which consents can be granted.

District consents 'split' into construction and operation

4.4. Following feedback from WDC officers that it would assist with implementation and enforcement, Northport has 'split' the district consent into two separate consents authorising: (i) construction, and (ii) operational activities, respectively. We submit that nothing turns on this change.

Lapse period

4.5. Northport had earlier taken on board concerns raised by other parties as to lapse period and, as a result, seeks a lapse period of **20 years**. It says that a lapse period of 20 years is necessary to cover the likely development period for the Proposal, with allowance for its complex nature, size and scale, and the range of external and

³⁶ In particular, Direction 18.

³⁷ Refer the memorandum of counsel for Northport dated 16 May 2024.

³⁸ Northport has provided the Hearing Panel with marked-up versions of the further updated proposed conditions detailing all of the changes against the previous versions. For each condition set, it has also provided to the Hearing Panel a table setting out those areas of agreement/disagreement with Council recommendations as to conditions. Accordingly, these submissions address only the key changes.

unpredictable events which can cause delay to construction planning; and that this is consistent with other large-scale infrastructure projects.

- 4.6. In responding to the updated draft proposed conditions, Council suggest a lapse period of 10 years. For the various reasons traversed above, and in our interim closing legal submissions, Northport disagrees.
- 4.7. We submit that a lapse period of at least 20 years is necessary and appropriate in the context of the Proposal.

Duration

- 4.8. During the hearing, no submitter seriously challenged the consent durations sought by Northport.³⁹
- 4.9. It seems that the NRC remains of the view that there should be a specified duration for the consents authorising the reclamation, which is unusual. Section 123(a) of the RMA provides that the default position is that a reclamation consent duration is unlimited. We are advised that Northport's previous reclamation consents included unlimited durations, which is routine. The rationale for the recommendation for a shorter duration is unclear.⁴⁰ Once the reclamation is complete, there is nothing in the CMA to which the regional consents apply (i.e. NRC's jurisdiction over the reclamation ends).⁴¹

Stormwater

- 4.10. Following the hearing, technical questions were posed by the Hearing Panel, focusing on achieving a better understanding of the status of ancillary discharges into the ground from the sand-lined base of the stormwater canal.⁴²
- 4.11. At expert conferencing among stormwater experts, the Joint Witness Statement ("JWS") records that a high level of agreement was reached, including that "*there is no requirement for groundwater monitoring on the basis that volumes discharged to ground are low*",⁴³ and that "*no new or additional condition matters have been*

³⁹ Although Mira Norris suggested that the consents should be granted for a maximum of five years - refer the statement of evidence of Mira Norris on behalf of Te Parawhau ki Tai, at the paragraph numbered 9.

⁴⁰ We do not understand Mr Masefield's comments that an unlimited duration is "wholly inappropriate" or that the reclamation duration would "logically be the same" as the other permits (s42A Addendum Report, para 40).

⁴¹ Refer *Bayswater Marina Holdings Ltd v North Shore City Council* (2009) 15 ELRNZ 258.

⁴² Refer here to Hearing Panel Direction 15 (dated 1 December 2023) and Direction 17 (dated 15 March 2024).

⁴³ Refer the 6 May 2024 JWS at 7(b), page 8.

identified as a result of this JWS process".⁴⁴ Put simply, there is good alignment on stormwater issues between the independent experts for Northport and NRC.⁴⁵

- 4.12. Following that expert conferencing, Northport has updated its stormwater conditions.
- 4.13. Because discussions between independent experts for NRC and Northport were continuing at the time the further updated proposed conditions were circulated to the Hearing Panel,⁴⁶ certain technical aspects relating to stormwater have been subsequently refined. Following those technical expert discussions, updated stormwater conditions are now attached as **Appendix A**. The conditions set out in Appendix A replace in their entirety the further updated proposed conditions relating to stormwater, as recently circulated.⁴⁷ Changes include:
- (a) Updated requirements for the Stormwater Monitoring and Maintenance Plan ("SMMP"), including specifically around entrainment of contaminants in stormwater and operational and maintenance details for ponds, channels, and spillways.⁴⁸
 - (b) Updated requirements around stormwater compliance parameters and threshold values for specific contaminants; and monitoring and reporting for the same.⁴⁹
 - (c) A new condition requiring notification of changes in cargoes handled at the port, with the intention that the SMMP will be adapted as necessary based on potential changes to contaminants that might result from those new/different cargoes being handled.

⁴⁴ Refer the 6 May 2024 JWS at 3.2, page 8.

⁴⁵ Refer the Joint Witness Statement in relation to Stormwater, Groundwater and Planning dated 6 May 2024. Refer also to the earlier Appendix C9 to the s42A Report, being the Technical Memo – Stormwater, by John McLaren, Haigh Workman Ltd, dated 12 July 2023. That Technical Memo agrees with the adequacy of information provided by Northport and concludes that there is sufficient information to grant consents, on a 35-year term, subject to some minor amendments to conditions. Mr McLaren indicated that he was *"fairly impressed with existing Northport operations"*, and that he was *"very happy with how the sand filter is operating"*.

⁴⁶ As recorded in 'Table 1: Northland Regional Council Recommended Amendments and Northport Response', provided to the Hearing Panel as part of the package of information referenced in the memorandum of counsel for Northport dated 16 May 2024.

⁴⁷ The replaced provisions are conditions 217 – 229, Appendix 2, and a new definition of "first annual discharge" to be included in the NRC conditions.

⁴⁸ Council has suggested additional prescriptive detail for the SMMP. Expert advice provided to Northport is that the existing SMMP requirements in the attached conditions are sufficient.

⁴⁹ Council has suggested multiple monitoring locations and associated frequencies. Expert advice provided to Northport is that multiple monitoring locations are not necessary. Council has further suggested sediment monitoring be undertaken; and that a split monitoring regime be imposed for different locations (in the canals and downstream of the pumps). Expert advice provided to Northport is that this is not necessary. Accordingly, the Council suggestions here are not incorporated into the attached conditions.

Requirement for Technical Advisory Group (“TAG”) deleted

- 4.14. At the suggestion of NRC, the conditions requiring the involvement of the TAG have been deleted in their entirety. This recognises that the TAG, as originally proposed:
- (a) had a limited role; and
 - (b) in considering the comprehensive approach to monitoring dredging and turbidity (for example the requirements of the Capital Dredge Management Plan, Environmental Monitoring and Management Plan, and capital dredge monitoring programme, together with the turbidity triggers and tiered compliance levels set out in conditions), was not warranted.

Funding of Tangata Whenua Relationship Group

- 4.15. Northport has made minor changes to the comprehensive suite of cultural conditions put forward at the interim closing of Northport’s case. Those conditions represent a genuine attempt by Northport to recognise and provide for the exercise of kaitiakitanga of Māori who have a kaitiaki relationship with Whangārei Te Rerenga Parāoa.
- 4.16. Following various attempts at engagement on the cultural conditions with PTITB (and others), some feedback has been received, including on behalf of Te Parawhau, and that feedback has been incorporated into the changes proposed.
- 4.17. A key amendment is that the funding by Northport for the Tangata Whenua Relationship Group (“RG”) be amended slightly, in order to provide more clarity and certainty of outcomes. The revised RG conditions provide for funding as follows:
- (a) An initial payment of \$25,000 for establishing the RG; and
 - (b) \$25,000 per annum (index-linked) funding for administration of the RG from ‘day 1’ for the duration of the consents (i.e. up to 35 years); and
 - (c) an additional \$75,000 per annum funding for projects which are demonstrated to be consistent with the RG roles/functions as set out in the conditions, available from the commencement of reclamation works for the duration of the consents (i.e. up to 35 years). Note that this fund is not to be index-linked.

Shellfish repopulation plan

- 4.18. Northport does not agree with the suggestion on behalf of NRC that conditions requiring a shellfish repopulation plan be included.

- 4.19. The issue of declining harvestable shellfish populations at Te Poupouwhenua / Marsden Point is not new. It has been observed anecdotally for some time. The evidence acknowledges that there has been a major decline in shellfish in recent years, including Mair/Marsden Bank pipi.⁵⁰ Despite many attempts to understand the cause of this decline, there is no clear understanding of the cause(s)⁵¹ – although it is worth recording that, given the timing, the cause(s) is clearly independent of the Proposal. Notwithstanding this, given the significance of Mair and Marsden Banks, including to the local community/iwi/hapū, Northport’s experts⁵² have carefully considered potential adverse effects on these features. More specifically, Dr Lohrer has raised issues around ecological connectivity and sediment issues potentially impacting larval transport of shellfish.⁵³ These concerns are directly rebutted by Dr Kelly.⁵⁴
- 4.20. While Northport fully agrees with comments such as that from Dr Lohrer that he “*would like to see a bolstering of the pipi population*” in the harbour,⁵⁵ it must be remembered that the effects of Northport’s Proposal on shellfish, outside the immediate footprint, have been assessed to be low,⁵⁶ and that wider, existing, environmental concerns are not something that Northport is, or can be, solely or primarily responsible for through this consent process or otherwise.⁵⁷

Mair Road improvement works

- 4.21. The *Augier* condition providing for improvement works at Mair Road has been amended, following feedback during the hearing, and subsequently from WDC officers, as to its practical application and certainty.

⁵⁰ Refer for instance the statement of Hollie Kereopa, undated, which states “[w]hen going diving in the channel recently to assess the state of the pipi beds, I was disheartened by the lack of living organisms [sic] and ecosystems”; and Ms Chetham EIC, which states at 3.10 “[m]ussels are mostly gone from the harbour and what pipi and cockle remain are of unharvestable size. Our taonga species are in a dire situation...”.

⁵¹ A point acknowledged by numerous witnesses, including Ms Chetham who noted that “a direct causal link between Northport and pipi dieback” had not been found. Refer response to questions from the Panel, Hearing Day 7.

⁵² Including in particular Mr Reinen-Hamill and Dr Kelly.

⁵³ Refer section 6.1 of Dr Lohrer’s Technical Memo forming Appendix C3 to the s42A Report. Dr Lohrer’s concerns are echoed by Dr Bulmer at para 3.2 of his EIC.

⁵⁴ Refer Dr Kelly EIC at paras 87-100, and rebuttal evidence at para 7.

⁵⁵ Response by Dr Lohrer to questions from the Panel, Hearing Day 2. Northport considers that a continued healthy shellfish population is essential for, among other things, maintaining the geomorphological stability of the harbour entrance.

⁵⁶ Refer Dr Kelly EIC at Table 1.

⁵⁷ We add that shellfish reseeded is unproven to have results at this location – as acknowledged by Dr Bulmer in response to questions from the Panel on Hearing Day 7 that he “*wouldn’t throw all my eggs in that basket*”.

- 4.22. As reframed, the condition requires the consent holder, before commencing construction of the Proposal, to create a 'Mair Road Improvements Plan' covering a range of matters, and to provide that plan to WDC for certification. The objective of the Plan is to investigate and detail improvements to the Mair Road carpark, beach access, and surrounding reserve area, to provide further mitigation of the effects of the port expansion Project on the coastal access and recreation values of East Beach and the adjacent public park. Importantly, the consent holder is then required to give effect to the improvements detailed in the Plan.
- 4.23. This amended condition provides the Hearing Panel with certainty that the Mair Road improvements will be delivered, and accordingly, that recreation mitigation will occur in a location proximate to the Proposal.

Activity controls on the reclamation

- 4.24. Northport does not agree with the suggestion from WDC that the conditions should identify component aspects of port operations and identify areas where those component aspects can occur. The controls proposed by WDC are overly prescriptive, for example limiting what area of the reclamation (on a percentage basis) can be occupied by empty containers, or container maintenance and repair. Such controls would unduly constrain port operations and are unjustified. They would likely be unworkable and lead to major inefficiencies.
- 4.25. Northport has not adopted these suggested conditions.

Seasonal restriction on dredging campaigns

- 4.26. In interim closing submissions we pointed out the lack of evidentiary basis for, and potentially onerous implications of, a condition prohibiting capital dredging between 1 October and 31 January in any given year.
- 4.27. While not resiling from that position, Northport has agreed to:
- (a) a new condition (NRC condition 120) which restricts the consent holder from undertaking capital dredging between 1 October and 31 January *in two successive years*; and
 - (b) a new condition (NRC condition 181) which prohibits maintenance dredging between 1 October and 31 January, "*unless necessary to do so as a result of unforeseen events or there is no practicable alternative timing*". This is a

pragmatic step, reflecting Northport's intent to schedule maintenance dredging outside that ecologically important time period, but acknowledging the practical importance of maintaining a safe and effective channel/turning basin.

Maintenance of sandbank bird roost

- 4.28. Northport has done everything necessary through this resource consent process to ensure that the bird roost is able to be provided. In response to issues traversed at the hearing, and a recommendation of NRC, Northport has clarified the obligation to continue to maintain the bird roost in perpetuity. The updated condition (NRC condition 50) provides "*Subject to obtaining the necessary consents to do so, the Consent Holder must maintain the bird roost in perpetuity*". The Advice Note following that condition clarifies the intention is that the bird roost be maintained in perpetuity, or at least as long as the port is operating. We submit this updated condition and Advice Note are adequate, and that any further steps would be both unnecessary and opaque.
- 4.29. A complete/updated, Word version of the conditions can be provided through the Hearings Administrator, should this assist the Panel.

5. PRINCIPAL SUBMISSION

- 5.1. We repeat the principal submission in our interim closing submissions, which is that the totality of the evidence should give the Panel a high degree of confidence that that there are no impediments to granting the consents sought by Northport, and that they therefore should be granted.
- 5.2. The Proposal will bring meaningful benefits for the district, the region, and nationally, facilitating the much-needed expansion of Northport. Northport considers that the Proposal represents a significant and valuable opportunity to expand the Port as a nationally significant infrastructure resource and a key regional asset, and to contribute to regional and national social and economic wellbeing in an environmentally sustainable manner.
- 5.3. Northport's principal submission is that all consents sought should be granted because, having assessed the Proposal against all the requirements of the RMA, including s104:

- (a) Appropriate measures are in place to ensure that any adverse effects are avoided or appropriately managed, by way of both detailed design and proffered consent conditions, as demonstrated by the expert evidence.
 - (b) The Proposal sits comfortably within the applicable statutory planning regime.
 - (c) The Proposal will enable Northport to keep pace with growing demand and meet the future shipping needs of the upper North Island, unlocking tangible benefits for the region and its communities.
- 5.4. Ultimately, the Panel's assessment of the application requires a pragmatic weighing of the evidence presented and the concerns raised by submitters; namely between the Proposal's local adverse effects (which have been addressed through comprehensive conditions), as against the significant local, regional, and national benefits that will be generated over a long timeframe. This exercise must take proper account of both adverse and positive effects, considering relevant matters under the RMA and the applicable planning framework.
- 5.5. Northport submits that the Proposal is well conceived; strongly supported by the relevant planning framework; will have a range of important positive benefits; and appropriately manages environmental effects.

C H Simmons & K R M Littlejohn
Counsel for Northport Limited
22 May 2024

**APPENDIX A: REFINED STORMWATER CONDITIONS FOLLOWING TECHNICAL
EXPERT DISCUSSIONS**