

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

**Port Marlborough New Zealand Limited**

Applicant

and

**KiwiRail Holdings Limited**

Applicant

and

**Marlborough District Council**

Applicant

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**Memorandum of counsel responding to Panel's draft  
conditions of consent in relation to LP-14 Waitohi Picton  
Ferry Precinct Redevelopment under COVID-19 Recovery  
(Fast-track Consenting) Act 2020**

**27 April 2021**

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## INTRODUCTION

1. On 13 April 2021, the Waitohi Picton Ferry Precinct Redevelopment Expert Consenting Panel (**Panel**) issued its draft conditions for the Waitohi Picton Ferry Precinct Redevelopment (the **Project**). The Project is a joint initiative between Port Marlborough New Zealand Limited (**PMNZ**) and KiwiRail Holdings Limited (**KiwiRail**) alongside the Marlborough District Council (**MDC**) (together, the **Applicants**).
2. As required by clause 36 of Schedule 6 to the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**CRA**), the Panel has invited comments on the draft conditions from the Applicants and all those who provided comments in response to the Panel's invitation for comment.
3. PMNZ and KiwiRail acknowledge and recognise MDC has multiple functions and roles including as a joint applicant for this Project, an asset owner, and regulatory responsibilities under the Resource Management Act 1991 (**RMA**). This memorandum is lodged on behalf of PMNZ and KiwiRail.
4. PMNZ and KiwiRail welcome the opportunity to comment on the draft condition set. The body of this memorandum addresses draft conditions in relation to:
  - (a) The noise and vibration conditions; and
  - (b) The management of soil and spoil.
5. Annexed to this document and forming part of the response by PMNZ and KiwiRail to the Panel's draft conditions are:
  - (a) Appendix 1: a table outlining PMNZ and KiwiRail's substantial changes to the Panel's version of conditions and reasons for these changes;
  - (b) Appendix 2: an updated set of conditions, outlining the PMNZ and KiwiRail's proposed amendments to the Panel's draft conditions (this is shown in tracked changes); and

- (c) Appendix 3: A letter from Mr Craig Fitzgerald, the Project's noise expert, commenting on the Panel's draft Conditions PA1.18, PA2.10 and PA2.10.1.

## **PROPOSED AMENDMENTS TO NOISE AND VIBRATION CONDITIONS**

6. The Panel's draft Condition PA1.18 provides:

The following shall be achieved through the implementation the Construction Noise and Vibration Management Plan (CNVMP) at Condition PA2.10:

- (a) Construction noise shall be measured and assessed in accordance with the provisions of New Zealand Standard NZS 6803:1999 "Acoustics - Construction Noise" at any occupied building.
- (b) Construction vibration shall be measured and assessed in accordance with German Standard DIN 4150-3:1999 "Structural Vibration – Part 3: Effects of Vibration on Structures" and comply with the limits in Tables 1 and 3 of the Standard.

7. It is widely acknowledged that large-scale infrastructure projects cannot always practicably achieve full compliance with noise standards. Even if such projects could theoretically achieve compliance at all times, a requirement that they do so would add both considerable costs to a project and extend the construction duration and thus disruption to the community. It is therefore standard practice for projects such as this to seek consent to exceed the construction noise standard when necessary and to use a Construction Noise and Vibration Management Plan (**CNVMP**) to manage the exceedance of these effects.

8. The Applicants are concerned that the Panel's draft noise and vibration conditions (specifically Condition PA1.18) cut across both this reality and the purpose of the CNVMP. The CNVMP specifically contemplates management of noise when the Project exceeds the noise criteria listed in Condition PA1.18. For example, at Condition PA2.10(a), the purpose of the CNVMP is stated to be to:

Identify and adopt the Best Practicable Option (BPO) for the management of construction noise and vibration, and to minimise any exceedance of the

construction noise and vibration criteria set out in Condition PA1.18, as far as practicable.

9. This also means that the Panel's draft Condition PA2.10(b) is not accurate as the CNVMP also specifically deals with situations where noise will not comply with the noise standards, and how those activities should be managed. It should therefore read:

Define the procedures to be followed when the noise and vibration standards in Condition PA1.18 are not met.

10. In addition, Condition PA2.10.1(d) specifically identifies the dwellings where the vibration standards at Condition PA1.18 are predicted to be exceeded.
11. As noted by Mr Craig Fitzgerald (at Appendix 3), the Applicants' version of Condition PA1.18 submitted to the Panel on 17 March 2021, enables exceedances, but 'triggers' further scrutiny of the BPO to minimise to the extent practicable the effects arising from the noise limits being exceeded. The CNVMP sets out how the consent holder will ensure that any residual noise effects are reasonable.<sup>1</sup>
12. The following are examples in case law where specified noise limits have been acknowledged to be unattainable for the particular projects:

- (a) In *City Rail Link Ltd v Auckland Council*<sup>2</sup> (**City Rail Link**), Condition 31 in the approved set of conditions outlines the noise limits that must be complied with, unless there is an approved Site Specific Construction Noise and Vibration Management Plan (**SSCNMP**) which provides otherwise. Condition 37 requires a SSCNMP where construction noise is predicted or measured to exceed the noise standards in Condition 31.

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<sup>1</sup> See Appendix 3 to this response (Mr Craig Fitzgerald's letter commenting on the Panel's draft Conditions PA1.18, PA2.10 and PA2.10.1) at 1.

<sup>2</sup> *City Rail Link Ltd v Auckland Council* [2015] NZEnvC 191.

(b) In *Panuku Development Auckland Ltd v Auckland Council*<sup>3</sup> (**Panuku**) it was agreed by the noise experts that there would be times where the day-time and night-time construction noise limits outlined in the condition set would be exceeded, particularly during piling and when there was concrete cutting.<sup>4</sup> The Court noted that the wording " ... unless otherwise provided for in any CNVMP (refer Condition 110)" means exemptions to the specified standards are permitted if provided for in and CNVMP.<sup>5</sup>

The Court stated that the standard approach normally adopted when formulating conditions is that they should be stand-alone, without the need to revert to management plans to allow specified standards to be exceeded. In the context of this application, the Court acknowledged the detailed consultation that has taken place between Panuku, the Council, the contractor and affected parties, particularly about the potential adverse effects of noise and vibration during piling. The Court also acknowledged the advice it had been given that all affected parties have a clear understanding about how the conditions will work in practice and have given their approval.<sup>6</sup>

Further, the Court recognised that the noise expert, Mr Fitzgerald's, evidence was that the piling methodology proposed represents the BPO because it minimises the duration of piling works, minimises the use of impact and vibratory piling methods, and uses appropriate timing to avoid sensitive periods as far as practicable.<sup>7</sup>

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<sup>3</sup> *Panuku Development Auckland Ltd v Auckland Council* [2018] NZEnvC 179.

<sup>4</sup> At [460].

<sup>5</sup> At [471].

<sup>6</sup> At [486].

<sup>7</sup> At [487].

The Court accepted and found that the conditions proposed by Panuku for limiting the adverse effects of construction noise and vibration were appropriate for this Application.<sup>8</sup>

(c) In the Te Ara Tupua- Ngā Ūranga ki Pito—one - Shared Path Decision of the Expert Consenting Panel (**Te Ara Tupua Decision**)<sup>9</sup> the final condition set also recognises that noise and vibration standards may be exceeded. This was noted at paragraph [118] of the decision and at Conditions CNV.1 and CNV.5.

13. However, in the decision of *Summerset Villages (Lower Hutt) Ltd v Hutt City Council*<sup>10</sup> [2020] NZEnvC 114 (**Summerset**), the Court stated the following:

[78] We have already set out our concern that Condition 19 is not clear on its face as to the noise limits to be met. Those noise limits should not be able to be 'otherwise specified for in the Construction Noise and Vibration Management Plan (CNVMP) specified in Condition 22'. That is to misunderstand the function of management plans and to effectively unlawfully delegate decision-making.

14. The Applicants respectfully consider that the approach taken in the *City Rail Link* and *Panuku* decisions should be preferred over the narrower *Summerset* approach.

15. The Applicants are committed to meeting the applicable standards where it is practicable to do so, minimise exceedance of these and to utilise the best practicable option to manage construction noise and vibration. These obligations are enshrined in the proposed condition set (refer condition PA2.10).

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<sup>8</sup> At [488].

<sup>9</sup> *Record of Decision of the Expert Consenting Panel under Clause 37 of Schedule 6 of the Act Concerning the Te Ara Tupua - Ngā Ūranga ki Pito—one - Shared Path.*

<sup>10</sup> *Summerset Villages (Lower Hutt) Ltd v Hutt City Council* [2020] NZEnvC 114.

16. As noted in the Assessment of Environmental Effects for Package 2A (**Package 2A AEE**)<sup>11</sup>, the Assessment of Effects on Marine Mammals Report sets out that the adoption of the BPO approach should be taken to minimise underwater noise emissions. The Cawthron Institute has had input into the CNVMP, which sets out the requirements for managing certain construction activities, in order to appropriately manage adverse effects on marine mammals.<sup>12</sup> This includes monitoring for the presence of marine mammals before and during pile driving works, reducing noise levels using various mitigation measures, along with monitoring of post-mitigation noise.
17. The Engagement Section of Draft CNVMP sets out the communication, consultation and complaints response procedures the consent holder will need to comply with.<sup>13</sup> The Construction Management Plan (**CMP**) requires the preparation of a Project Communications Plan.<sup>14</sup> It is anticipated that this Plan will provide a mechanism for liaison between the consent holder and affected parties in respect of matters such as construction noise and vibration, power supply, security, and dust.<sup>15</sup> Therefore, the Applicants consider the proposed amended conditions are appropriate for this Project.
18. The Applicants respectfully request that Condition PA1.18 be worded as follows:

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<sup>11</sup> Assessment of Environmental Effects for Package 2A Port Marlborough New Zealand Limited [**Package 2A AEE**].

<sup>12</sup> Section 8.6.13.2 at Package 2A AEE.

<sup>13</sup> Section 7, Draft CNVMP (Appendix Y, Volume 3 of the Project's resource consent application).

<sup>14</sup> See Condition PA2.5.1 of the Project's condition set.

<sup>15</sup> Consultation Outcomes Report (Appendix Qb, Volume 3 of the Project's resource consent application).

The following shall be achieved through the implementation the Construction Noise and Vibration Management Plan (CNVMP) at Condition PA2.10:

- (c) Construction noise shall be measured and assessed in accordance with the provisions of New Zealand Standard NZS 6803:1999 “Acoustics - Construction Noise” and comply with the following Project Standards at any occupied building, unless otherwise provided for in the CNVMP at condition PA2.10.~~at any occupied building.~~
- (d) Construction vibration shall be measured and assessed in accordance with German Standard DIN 4150-3:1999 “Structural Vibration – Part 3: Effects of Vibration on Structures” and comply with the limits in Tables 1 and 3 of the Standard unless otherwise provided for in the CNVMP at condition PA2.10.

19. The Applicants would also accept alternative wording, taking into account the comments made in the *Summerset* decision. This alternative wording is also consistent with the wording in the final condition set of the Te Ara Tupua Decision:

The following shall be achieved through the implementation the Construction Noise and Vibration Management Plan (CNVMP) at Condition PA2.10:

- (a) Construction noise shall be measured and assessed in accordance with the provisions of New Zealand Standard NZS 6803:1999 “Acoustics - Construction Noise” and shall comply, as far as practicable, with the following Project Standards at any occupied building.
- (b) Construction vibration shall be measured and assessed in accordance with German Standard DIN 4150-3:1999 “Structural Vibration – Part 3: Effects of Vibration on Structures” and shall comply, as far as practicable, with the limits in Tables 1 and 3 of the Standard.

20. PMNZ and KiwiRail also request the following amendment to draft Condition PA2.10.1(c):

- (c) That ~~piling~~ piling ~~pile driving~~ will be restricted to the hours of 7am to 7pm, Monday to Saturday, excluding Sundays and public holidays, except where in-water piling is further constrained by Condition PA2.10.1(g)(ii)(e)(i);

21. As noted by Mr Fitzgerald in Appendix 3, in his experience of observing and monitoring marine piling projects, impact and vibration pile driving is undoubtedly the loudest component of piling. Other piling components, such as ground preparatory works, pile setup, alignment and concrete works, are much quieter. PMNZ and KiwiRail consider that 'pile driving' more accurately describes the activity that will generate the most noise effects in relation to piling matters.
22. Mr Fitzgerald also notes in Appendix 3 that the pile driving is a relatively short interval within the total period taken to install a pile. Limiting piling activities more generally could constrain time critical aspects, such as completion of a concrete pour, or give rise to inefficiencies during construction without a corresponding environmental or stakeholder benefit.
23. The amendment that is sought will achieve the outcome that we anticipate is intended by the Panel, while enabling flexibility for other aspects of piling activity that are not significant noise generators.

## **SOIL AND SPOIL MANAGEMENT**

### *Condition PA1.12 Soil classification*

24. In the Package 2A AEE, the Applicants note the following:<sup>16</sup>

The use of the site for spoil storage and construction laydown activities is not provided for as a Permitted Activity, Controlled Activity or Restricted Discretionary Activity or limited as a Prohibited Activity. The use of the site will also include the discharge of contaminants to land as the dredge spoil and soil contain contaminants. The use of Lot 2 DP 346226 for spoil storage and laydown activities will therefore require discretionary activity resource consent.
25. The Panel's draft Condition PA1.12(d) provides:

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<sup>16</sup> Package 2A AEE, at 42.

Cleanfill material disposed of at Shakespeare Bay on Lot 2 DP 346226 must be in accordance with MDC Certificate of Compliance U130279 or resource consent authorising such activity at this site.

26. The Applicants have sought to use the Shakespeare Bay site (i.e. the 'Cleanfill Site' as labelled in the Spoil Sites Plan in Appendix 1 of the Applicants' response to the Panel's first further information request (**RFI#1**)) as a disposal site as part of the resource consent application for the Project.
27. Limiting disposal to existing authorisations or requiring future further approvals for an activity is either tantamount to declining the consent or could frustrate the consent (see further discussion below commencing at paragraph [45]).

*Condition PB2.6(g) Dredge Spoil Management*

28. The Panel's draft Condition PB2.6(g) is:
  - (g) Containment sites and sites and processing areas for dredged spoil classified as non-cleanfill under section 7.5.5 of the CMP shall be managed so as not to result in any liquid, dewatering or contaminated stormwater discharges. Any dewatering liquid or contaminated stormwater must be authorised by resource consent held for the containment site.
29. Similarly, the Applicants have sought consent for discharges provided the discharges meet the appropriate guideline of the Australia and New Zealand Guidelines for Fresh & Marine Water Quality (ANZECC 2000) Table 3.4.1 Trigger values for toxins for freshwater at the level of protection of 80 per cent of species (as per section 7.6.4 of the CMP).
30. As noted in the Package 2A AEE:

Resource consent is therefore required in accordance with the following:

- **Any discharge to water not provided for as a Permitted Activity or Controlled Activity, or limited as a Prohibited Activity, Rule 2.19.2 Discretionary Activity:** Incidental discharges to water during demolition and construction are not captured by any other permitted, controlled or prohibited activity rule.

...

The discharge of any intercepted groundwater, or water from stockpiled marine sediments will be managed through the CMP. No alternative methods, such as discharging to another receiving environment, are available as the discharge will be incidental to the site works and will be effectively managed by the controls in the CMP.<sup>17</sup>

...

If groundwater is encountered during excavation works on land, and if groundwater is required to be discharged, groundwater testing may be required to assess human health and environmental risk and to confirm discharge options. This will be managed through the CMP.

Likewise, water which may leach out of dredged sediment while this sediment is stockpiled will be managed in a similar manner through the CMP.<sup>18</sup>

31. As identified above, reference to requiring future further approvals for an activity is either tantamount to declining the consent or could frustrate the consent (see further discussion below commencing at paragraph [45]).

*Condition PB2.6 Dredge Spoil Management – Advice note*

32. The Panel's amendments also includes the inclusion of the following advice note at Condition PB2.6:

**Advice Note:** *This consent does not authorise the storage, stockpiling of or disposal of dredge spoil at 'The Farm' site or/and the 'Cleanfill Site' located in Shakespeare Bay, and as identified on the WSP Plan C-1031 Rev. H. Any such activity shall be undertaken in accordance any existing resource consents held and/or any resource consent granted for such activities.*

33. However, the Applicants specifically sought resource consent for the use of both of these sites for spoil storage. As noted in the Package 2A Application:

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<sup>17</sup> Section 8.6.3, Package 2A AEE.

<sup>18</sup> Section 8.6.6.4, Package 2A AEE.

The use of the site<sup>19</sup> for spoil storage and construction laydown activities is not provided for as a Permitted Activity, Controlled Activity or Restricted Discretionary Activity or limited as a Prohibited Activity. The use of the site will also include the discharge of contaminants to land as the dredge spoil and soil contain contaminants. The use of Lot 2 DP 346226 for spoil storage and laydown activities will therefore require discretionary activity resource consent.<sup>20</sup>

...

Construction of spoil dumps on the farmland nearby to the wetland is unlikely to disturb them significantly since the increase in activity and noise would be located at some distance from the birds and would not be continuous.<sup>21</sup>

34. At paragraph [95] of RFI #1, in response to Specific Question 6, the Applicants confirmed that dredge spoil may be temporarily stored and dried at The Farm or the Cleanfill Site in Shakespeare Bay if the main Port site (as a first option) or log yard (as a second option) are not available due to space constraints.
35. Any use of The Farm and the Cleanfill Site for the temporary storage of dredge spoil would be for dewatering/drying of the spoil only. Proposed Condition Part B 2.6(m), confirms that mixing or blending of dredge spoil will not occur at these sites.
36. As noted in paragraph [8] of the Applicants' response to the Panel's third further information request (**RFI #3**), the site referred to as the Cleanfill Site has been used by PMNZ for the storage of dredge spoil. A certificate of compliance and a resource consent was obtained for this activity and a management regime imposed to ensure that discharges of sediment or other contaminants to the tributary watercourse that connects to the estuary were avoided. This

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<sup>19</sup> Site refers to Lot 2 DP 346226.

<sup>20</sup> Package 2A AEE, at 42.

<sup>21</sup> Package 2A AEE, at 98.

information was provided in response to what was perceived as a question about whether or not those existing activities are authorised.

37. However any such existing approvals are unrelated to this Project and may not be able to be utilised for such purposes. For example, resource consent U160643 allows the discharge of wastewater from the deposited spoil from dredging Waimahara Berth expansion in Shakespeare Bay and Picton Harbour. Condition 6 notes that once filling works commence dredged spoil will only be brought to the site for a period of up to six months.
38. The Applicants have specifically sought consent for the use of the Cleanfill Site and the Farm Site to be used for the temporary storage of dredge spoil as part of the Construction of the Project. The inclusion of these restrictions does not achieve what was sought in the resource consent application. For example, it is made explicitly clear in the AEE for Application 2A and in RFI #1 and RFI #3 that consent has been sought to authorise the stockpiling of dredge spoil at 'The Farm' site and the 'Cleanfill Site'.

#### *CRA requirements*

39. The Environmental Protection Authority (**EPA**) must determine if the application contains all the information under clauses 9 to 13 of Schedule 6.<sup>22</sup> Clause 9 of Schedule 6 states that every consent application for a listed project must include a description of the proposed activity and an assessment of the activity against any relevant provisions in any documents such as a regional policy statement and a plan or proposed plan. Clause 10 of Schedule 6 details the information required for the assessment of an activity's effects on the environment.
40. On the 15 January 2021 the EPA confirmed it was satisfied that the application complied with clause 3(1) of Schedule 6 of the CRA, and

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<sup>22</sup> CRA, sch 6, cl 3.

that the EPA was required to provide the consent application to the panel appointed to determine the application.

41. For listed projects, the Panel's ability to decline a consent application is restricted to two specific grounds. These are where a Panel considers that granting the consent would be inconsistent (with or without conditions) with:<sup>23</sup>
- (a) Any national policy statement, including a New Zealand coastal policy statement; or
  - (b) Section 6 of the CRA, which requires all persons exercising powers under it to act in a manner that is consistent with the Principles of the Treaty of Waitangi and Treaty settlements.
42. Clause 34(2) of Schedule 6 reiterates that a panel must grant a resource consent for a listed project if neither of the grounds described above apply. It follows that a listed project must be approved if it is consistent with those matters, taking into account the conditions that the Panel may lawfully impose.<sup>24</sup>
43. The Description of the Project in Schedule 2 is broad and 'The Farm' site and the 'Cleanfill Site' are both identified as laydown and spoil areas for the Project in the plan attached to Schedule 2 of the CRA, shown below:

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<sup>23</sup> Sch 6, cl 34(1).

<sup>24</sup> Sch 6, cl 30.



44. PMNZ and KiwiRail respectfully note that if the activities applied for in the Application for the Project are consistent with the matters in clause 34(2), then the Panel must grant consent for the activities which were sought. This includes stockpiling dredge spoil at 'The Farm' site and the 'Cleanfill' Site and incidental discharges. We are not aware of any suggestion that these aspects of the Project bring the grounds to decline consent into play.

*Frustration of consent*

45. Application 2A is made on behalf of PMNZ for the construction, operation and maintenance of a new ferry terminal facility at Waitohi Picton to replace the current facility and associated works and activities. This involves the construction of temporary structures, loading areas, laydown and spoil areas for use during construction works.<sup>25</sup> The draft conditions circulated by the Panel will require the Applicants to obtain further approvals to carry out the activities that

<sup>25</sup> Package 2A AEE, at 3.

have been sought in the Application for resource consent for the Project.

46. A panel may grant a resource consent subject to conditions it considers appropriate.<sup>26</sup> Clause 35 of Schedule 6 provides that standard RMA conditions considerations apply to fast-tracked projects.<sup>27</sup>
47. The “*Newbury*<sup>28</sup> test” is a reference to common law requirements that planning consent conditions must be imposed for the purposes of the RMA, fairly and reasonably relate to the permitted development and not be unreasonable.<sup>29</sup>
48. Case law has recognised that a condition may be invalid if it frustrates the consent. As stated in *Lyttelton Port Company Limited v Canterbury Regional Council*, the Court cannot impose a condition that would nullify the grant of consent.<sup>30</sup> To use the conditions of consent to subsequently negate that consent would be unacceptable.<sup>31</sup> Examples

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<sup>26</sup> CRA, sch 6, cl 35.

<sup>27</sup> Sch 6, clause 35: s 108, 108A to 112 and 220 of the RMA apply. We note that section 108AA of the RMA is not stated to apply.

<sup>28</sup> Test articulated in in the House of Lords decision in *Newbury DC v Secretary of State for the Environment* [1981] AC 578.

<sup>29</sup> *Waitakere City Council v Estate Homes Ltd* [2006] NZSC 112, [2007] 2 NZLR 149 at [20].

<sup>30</sup> *Lyttelton Port Company Limited v Canterbury Regional Council*, Environment Court, Christchurch, 26 January 2001, C08/2001 at [11]. *Conservation v Marlborough District Council* [2004] 3 NZLR 127 (HC) cited this proposition with approval at [22].

<sup>31</sup> *Taranaki Regional Council v Willan EnvC*, Wellington W150/96, 23 October 1996, at 5.

include conditions which require application for further resource consents in order for the proposed activity to occur.<sup>32</sup>

49. Despite being decided under the Town and Country Planning Act 1953, in *Riley v Golden Bay County Council*, the decision noted that the applicant must have the ability to comply with such a condition without having to acquire further rights.<sup>33</sup> This proposition was noted in *Wellington City Council v Milburn New Zealand Ltd* W118/98 (EnvC) at [78].
50. The application for consent has sought approvals for spoil storage to occur at these two sites. Condition PA1.12(d) and the advice note at Condition PB2.6 note that these activities cannot occur unless they are provided for by other authorisations. The draft conditions, as worded, frustrate the consent holder's ability to utilise the consent and undertake the particular activity at these sites.
51. PMNZ and KiwiRail therefore respectfully request that draft Condition PA1.12(d) and the advice note at Condition PB2.6 should be deleted and Condition PB2.6(g) be amended as follows:

- (g) Containment sites and processing areas for dredged spoil classified as non-cleanfill under section 7.5.5 of the CMP shall be managed so as not to result in any contaminated liquid, dewatering or contaminated stormwater discharges. Any dewatering liquid or contaminated stormwater that meets the ANZECC, 2000 criteria may be discharged to the stormwater network.~~must be authorised by resource consent held for the containment site.~~

## Conclusion

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<sup>32</sup> Jennifer Caldwell, Michael Garbett, Alastair Logan and Martin Williams *Resource Management Law Association Roadshow: Conditions of Consent* 2016 at [20(c)] retrieved from: [010714 conditions of consent legal paper.pdf \(rmla.org.nz\)](https://www.rmla.org.nz/010714-conditions-of-consent-legal-paper.pdf)

<sup>33</sup> *Riley v Golden Bay County Council* Town and Country Planning Appeal Board, 26/5/1977 (A47/48).

52. Further detail on PMNZ and KiwiRail's amendments to the Panel's draft conditions are set out in Appendices 1 and 2. Appendix 3 outlines Mr Fitzgerald's position on the noise conditions.
53. PMNZ and KiwiRail appreciate the work the Panel has undertaken in considering the Applicants' proposed set of conditions. PMNZ and KiwiRail trust these comments will be of assistance to the Panel in its further considerations.



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Dated 27 April 2021