

# Decision following the hearing of an application for resource consent under the Resource Management Act 1991



## Proposal

To undertake works to establish a walkway/cycleway and related works, including a seawall structure associated with the protection and enhancement of the esplanade reserve which runs from Kohu Street to Marine View at Orewa Beach.

These resource consents are **REFUSED**. The reasons are set out below.

<b>Application numbers:</b>	BUN60067662 LUC60067306 LUC60067680 DIS60067668 CST60067667
<b>Site address:</b>	Orewa Beach Esplanade Reserve from Kohu Street to Marine View, Orewa Beach
<b>Applicant:</b>	Auckland Council (Community Facilities)
<b>Hearing:</b>	7, 8, August 2017, 9.30am 20 November 2017 - re-convened hearing.
<b>Hearing panel:</b>	Greg Hill - Chair Mark Farnsworth Dr Lee Beattie
<b>Appearances:</b>	<u>For the Applicant:</u> Jeanette Campbell and Jeremy Wilson, legal counsel Ian Murray, Principal Project Manager: Coastal Assets Paul Klinac, Team Manager, Coastal and Geotechnical Services Team Dr. Natasha Carpenter, Principal Coastal Specialist Richard Reinen-Hamill, Senior Coastal Engineer Robert Greenaway, Recreation and Tourism Planner Brad Coombs, Landscape Architect John McKensey, Lighting Advisor Alasdair McGeachie, Traffic Engineer

	<p>Craig Fitzgerald, Acoustic Specialist  Dr. Matt Baber, Principal Ecologist  Justine Quinn, Senior Freshwater Scientist  Leon Saxon, Arboriculture  Tim Allsopp-Smith, Civil Engineer  Sarah McCarter, Planner  Karen Baverstock, Planner (for the re-convened portion of the hearing).</p> <p><u>For the Submitters:</u>  Greg Shaw and Peter Kibblewhite (Engineer)  Peter Stansfield  Bill Howse  Peter Simunovich, Ian Inglis and Garry Green with Sue Simons (legal counsel), Jim Dahm (coastal scientist) and Larissa Clarke (planner)</p> <p><u>For the Council:</u>  Steve Seager, Team Leader  Simon Titter, Reporting Officer  Ainsley Verstraeten, Landscape Architect  Derek Todd, Coastal and Hazard Scientist  Emma Petrenas, Hearings Advisor</p>
<b>Tabled Evidence</b>	Dr Phil and Pauline Mitchell
<b>Hearing adjourned</b>	Tuesday, 8 August 2017
<b>Commissioners' site visit</b>	Tuesday, 8 August 2017 and Monday, 20 November 2017
<b>Hearing Closed:</b>	Tuesday, 21 November 2017

## Introduction

1. This decision is made on behalf of the Auckland Council ("**the Council**") by Independent Hearing Commissioners Greg Hill, Mark Farnsworth and Dr Lee Beattie (The Panel), appointed and acting under delegated authority under sections 34 and 34A of the Resource Management Act 1991 ("**the RMA**").
2. This decision contains the findings from our deliberations on the application for resource consents and has been prepared in accordance with section 113 of the RMA.
3. The applications were publicly notified on 12 April 2017. A total of 25 submissions were received, with 8 in support, 15 in opposition and 2 neutral submissions. The Surfbreak Protection Society withdrew their submission opposing the application on 7 August 2017.

## Summary of proposal and activity status

4. Auckland Council (Community Facilities) has sought resource consents to undertake works, to form walkway/cycleway, seating, lighting and access ramps and stairs to the beach from the esplanade reserve between Kohu Street to Marine View at Orewa Beach, and to establish a seawall structure (including a rock revetment and grouted rock sea wall) associated with the protection and enhancement of the proposed walkway/cycleway and the esplanade reserve.
5. The works and structures will be located within the esplanade reserve, Kinloch Reserve and the coastal marine area (CMA). Victor Eaves Park and Kinloch Reserve are proposed to be used as storage areas staging areas.
6. The Key project elements were set out at section 1.2 of the Applicant's Assessment of Environmental Effects (AEE). They are:
  - Construction of a formed footpath along the esplanade reserve including landscaping
  - An undulating seawall along the length of approximately 600m of coastline from Kohu Street to Marine View with a short interruption at Kinloch Reserve.
  - A ramp and stairs leading to the beach at the end of Kohu Street.
  - Two sets of stairs located on both the northern and southern sides of Kinloch Reserve.
  - Replacement of the existing footbridge over the channel at Kinloch Reserve and construction of a timber groyne at the mouth of the channel.
  - Naturalisation of the dune at Kinloch Reserve.
  - A ramp and stairs at Remembrance Reserve.
  - Maintenance of the current access arrangements to the beach at Marine View (via the existing boat ramp).
  - Extension of the existing stormwater outfalls through the seawall at Kohu Street and Remembrance Reserve.
  - Utilisation of the existing coastal permit for sand transfer from the southern end of the beach to maintain average sand levels in front of the seawall.
  - Allowance for increasing the height of the seawall as sea level rise occurs.
7. Resource consent is also sought for associated enabling works including: earthworks; stormwater infrastructure and discharges; works associated with the realignment of and works within the stream in Kinloch Reserve; tree works, including the removal of two Pohutukawa's in Kinloch Reserve and works in the root zone of protected trees; sediment and erosion control measures; as well as for construction related effects, including noise and vibration.
8. We have set out in some detail the elements of the proposal. The applicant acknowledged, and agreed by the other parties, that the 'drivers' of the project were the construction of the formed walkway/cycleway along the esplanade reserve, as well as the 'upgrade' of the reserves to better provide for recreational activities and public access along the coast.

9. The proposed seawall (a "hard protection structure" where it is in the coastal marine area (CMA), and a building (structure) on land above the CMA) is a 'consequence' of the main project drivers - i.e. to protect the formed walkway/cycleway along the esplanade reserve from coastal erosion. We address this in more detail later, but the main issue in contention was whether a more formalised walkway/cycle, with its positive effects, 'justified' the seawall with the adverse effects it would generate.
10. The 'site' has the following zonings:
  - In the CMA - General Coastal Marine Zone in the Auckland Unitary Plan - Operative in Part (AUP- OP) and General Management Area in the Operative Regional Plan: Coastal (ARP: C).
  - Land - Open Space-Conservation Zone (the esplanade reserve), Open Space - Informal Recreation Zone and Open Space-Sport and Active Recreation Zone (construction) area
11. The Applicant's application/AEE set out the reasons for consent (section 9.1). The Council officer's section 42A report also set out the reasons for the consents (at attachment 9). There was some concern from submitters<sup>1</sup> whether all required consents had been applied for.
12. These 'other consents' identified by Ms Clarke (planner for some of the submitters) are restricted discretionary activities. Ms Campbell (for the applicant) submitted that the applicant had sought all necessary consents to enable the proposal to be undertaken, and accepted there were a number of different activities listed individually and that overall all of the activities (bundled) required consent as a discretionary activity. The Panel agrees.
13. We accept the position adopted by the Council's reporting planner (section 5 - Status of the application in the section 42A report). He set out that proposal involves multiple resource consents under different plans, and that:
  - *All the consents are restricted discretionary or discretionary with the exception the stormwater permit, where consent is required as a controlled activity.*
  - *The consents required, and the matters controlled under the operative plans, overlap in the following regards:*  
*Coastal (Construction and Occupation)*  
*The activity statuses under the relevant planning frameworks are:*
    - *Operative plans:*
      - *AUP(OP) Discretionary*
      - *ACDP:RS Discretionary*
      - *ARP: C Discretionary**The resource consents required overlap, and are considered together as a **discretionary activity** status overall.*

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<sup>1</sup>Simunovich, Inglis and Green -Ms Clarke's planning evidence at section 6.0.

14. With respect to activity status, we record that the Panel raised the issue of whether, overall, the activity status was non-complying. This was on the basis that rule F2. Coastal – General Coastal Marine Zone - F2.19.10 - Activity Table - A142 listed "Hard Protection Structures" as an activity, while Open Space H7.9.1. Activity Table – Open Space Zones listed "Activities not provided for" as non-complying.
15. We record that all of the expert planners (for the applicant, submitters and council) agreed that notwithstanding the AUP-OP is a combined plan, when reading it in its intended context, the application for the seawall is discretionary. While we accept this, it means the seawall on the land (in the Open Space Conservation Zone) is a "building" (which includes structures) and a "hard protection structure" in the CMA.
16. Overall the proposal has been considered as a Discretionary activity.

## **Procedural matters**

17. The Panel issued a request for further evidence in a Memo dated 16 August 2017. That memo requested the expert coastal scientists/engineers address:

*Is the esplanade reserve at such risk from coastal erosion that it would be 'lost' in the short to medium term (now and up to 30 to 40 years and beyond the life of any 35 year consent) that warrants consent now with the associated adverse effects.*
18. We sought this additional evidence as did not believe that the evidence already before us adequately addressed this issue, or that we sufficiently explored this issue before adjourning the hearing.
19. We received two joint expert witness statements from the coastal engineers/scientists dated the 8 September and 13 October 2017. We reconvened the hearing on the 20 November 2017. In addition to the joint witness statements, we received
  - A statement from Mr Titter and Mr Seagar stating that the joint witness statements "*do not change Council's opinion or later the overall recommendation to grant*".
  - Further planning evidence from the applicant (Ms Baverstock),
  - Further legal submissions from Ms Simons and planning evidence from Ms Clarke for the submitters they represented, and
  - Further evidence from Mr Shaw.

## **Relevant statutory provisions considered**

20. In accordance with section 104 of the RMA, we have had regard to the relevant statutory provisions including the relevant sections of Part 2 and sections 105 and 107 relating to discharge permits and coastal permits where the proposal would otherwise contravene s15 (or ss15A or 15B).
21. Despite all section 104 considerations being "subject to part 2", the High Court in RJ Davidson Family Trust v Marlborough District Council [2017] NZHC 52 has held that recourse to Part 2 is only required, or relevant, where certain circumstances exist. Those circumstances include where there is "conflict between provisions" or where there is "invalidity, incomplete coverage, or uncertainty of meaning" in the relevant

planning documents, which requires that Part 2 is considered to resolve the matter. Where there is an absence of those circumstances, there should be no need for the consent authority to have recourse to Part 2.

22. We find that the AUP-OP and the ARP: C have fully addressed the relevant Part 2 matters and those in the New Zealand Coastal Policy Statement (NZCPS), and there is no conflict between provisions, invalidity, incomplete coverage, or uncertainty of meaning in the planning documents.
23. We acknowledge the AUP-OP and the ARP: C were developed before the addition of section 6(h) *the management of significant risks from natural hazards*. Notwithstanding this, we find that the AUP-OP (in particular) and the ARP: C appropriately address this matter, and accept it is an important manner in determining these applicants for consent.
24. We note that none of the legal counsel or planners disagreed with this position with respect to the matters addressed in paragraphs 22 and 23.

### **Relevant standards, policy statements and plan provisions considered**

25. In accordance with section 104(1)(b)(i)-(vi) of the RMA, we have had regard to the relevant policy statements and plan provisions of the following documents.
  - New Zealand Coastal Policy Statement,
  - Auckland Unitary Plan - Operative in Part, and
  - Regional Plan: Coastal.
26. We also considered the following other matters to be relevant and reasonably necessary to determine the application in accordance with section 104(1)(c) of the RMA.
  - Orewa Beach Esplanade Enhancement Programme (OBEEP)
  - The Coastal Management Framework for the Auckland Region.

### **Summary of legal submissions and evidence heard**

27. The Council's section 42A report, prepared by Mr Titter, recommending that the applications be granted, was circulated prior to the hearing. That report also contained specialist reviews including:
  - A peer review from a landscape and visual effective perspective by Ms Verstraeten Specialist Landscape Architect Auckland Design Office, Auckland Council.
  - A Coastal Process Assessment Prepared by Mr Todd of Jacobs. Mr Todd was also a signatory to the experts' joint witness statements.
  - A technical review of the ecological assessment submitted undertaken by Ms Woolly Ecologist, Biodiversity Team, Environmental Services Auckland Council.
  - A Technical Memo from Ms Harte, Specialist Advisor – Earth and Stream Works, Trees and Contaminated Land, Auckland Council.
  - An Engineer's Report prepared by Mr Ray Smith, Auckland Council.
28. Mr Titter also filed a statement following the coastal experts' joint statements setting out that his opinion and recommendations had not altered due to those statements.

## **Applicant's Submissions and Evidence**

29. Ms Campbell and Mr Wilson, Legal Counsel provided written legal submissions. Key points included:
- In considering the implications of *Davidson*<sup>2</sup> reference to Part 2 only in circumstances of invalidity, incomplete coverage, or uncertainty of meaning.
  - New direction provided by section 6(h) *the management of significant risk from natural hazards* should colour the panel's consideration of lower-order objectives and policies.
  - The application delivers significant public benefit in terms of access to and along the coast and the adjacent public esplanade reserve.
  - Alternative have been assessed, evaluating a range of options, and
  - The proposal is supported by and is consistent with the relevant statutory planning documents.
30. Mr Murray's evidence provided:
- A background to this walkway and seawall project;
  - An overview of the existing and current management of Orewa Beach, specifically the management of the reserve between Kohu Street and Marine View, including the previous resource consent application lodged in 2010;
  - The alternative options considered. in relation to the project; and
  - A summary of the engagement undertaken by the Council for this project.
31. Mr Klinac's evidence provided:
- An overview of the Coastal Management Framework which includes reference to coastal hazards and sea level rise being developed for the Auckland Region;
  - Alignment of the Orewa Coastal Walkway and Seawall Project and OBEEP with Auckland Council's regional approach to coastal management; and
  - An assessment of the submissions received relevant to my evidence.
32. Dr Carpenter's evidence addressed the following matters:
- A description of the geomorphology and coastal processes influencing Orewa Beach;
  - A summary of the shoreline change that has occurred along Orewa Beach and key coastal management issues;
  - A discussion on the potential to manage existing and future change at the site through sand transfer; and
  - An outline of the potential adverse effects from the walkway and seawall proposal and her response to submissions.
33. Dr Carpenter was also a signatory to the coastal experts' joint witness statements.
34. Mr Reinen-Hamill's evidence provided

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<sup>2</sup> *RJ Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81

- A description of the setting in terms of physical environment and the wave, water levels and design conditions that informed the options consideration and design process;
  - A summary of the large scale and local site specific issues that lead to the design objectives that underpinned the options development;
  - A summary of the options evaluation and the outcome resulting in the preferred solution;
  - A description of the design principles used to determine the details of the design;
  - A description of the effects of the project on the physical coastal environment;
  - An assessment of the submissions received relevant to his evidence; and
  - An assessment of matters raised in the Council planner's s 42A Report.
35. Mr Reinen-Hamill also provided a supplementary brief of evidence addressing the matters raised in the evidence of Mr Dahm and Mr Kibblewhite. Mr Reinen-Hamill was a signatory to the coastal experts' joint witness statements.
36. Mr Greenaway gave evidence on the local demand for coastal recreation and the existing level of recreation amenity at Orewa Beach. He outlined the effects on recreation amenity of the "preferred option" to managing coastal erosion at Orewa Beach compared with the potential loss of the esplanade reserves.
37. Mr Coombs provided evidence which assessed the landscape, natural character and visual effects of the proposed coastal walkway and seawall structure along the 600m section of Orewa Beach. He also provided a set of visual simulations illustrating the proposed coastal walkway and seawall.
38. Mr Mckensey's evidence described the proposed lighting and its associated effects, finding they were less than minor.
39. Mr McGeachie's evidence included:
- A summary of the existing transportation environment;
  - A consideration of how access to the sites will be provided;
  - An assessment of the potential traffic generation during construction and the effects of that traffic generation, safe truck routing between the work site and the storage yard site as well as potential traffic management methods.
40. Mr Fitzgerald provided evidence on construction noise and an assessment of the matters raised in relation to noise in the Stansfields' submission.
41. Dr Baber's evidence:
- Described the ecological characteristic and values of Ōrewa Beach including the Significant Ecological Area (SEA\_T\_3652);
  - Discussed the potential for ecological effects resulting from project; and
  - Responded to submitter's comments where they relate to the ecological values of Ōrewa beach and/or (SEA\_T\_3652), potential ecological effects associated with the project and the mitigation



42. Ms Quinn's evidence was on the ecological characteristics and values of the freshwater ecosystem present at Kinloch Reserve and a discussion on the ecological effects resulting from the project.
43. Mr Saxon's evidence:
- Described and assessed the arboricultural effects of the proposal; and
  - Commented on the management of those effects.
44. Mr Allsopp-Smith's evidence provided a description of:
- The construction methodology of the proposal; and
  - How the Construction Management Plan will manage effects on the environment.
45. Ms McCarter provided planning evidence, and:
- Set out the regulatory framework;
  - Identified and assessed the proposal against the relevant objectives, policies and rules of the relevant planning documents;
  - Assessed the effects of the proposal including matters raised through submissions, and
  - Gave an opinion that consent could be granted subject to appropriate consent conditions.
46. Ms McCarter also provided a summary statement and supplementary evidence in response to submitters' evidence and questions raised by the Panel and addressed:
- A further overview of the proposal;
  - Consent requirements;
  - The permitted baseline;
  - An assessment of environmental effects;
  - A statutory assessment;
  - The purpose of the esplanade reserve; and
  - Proposed conditions including lapse / expiry date.
47. Ms Baverstock provided planning evidence in relation the coastal experts joint statements. As Ms McCarter was unavailable Ms Baverstock provided further policy analysis focusing on the key relevant provisions of the NZCPS as they related to the information contained in the two joint witness statements.

### **Submitters submissions and evidence**

#### **Support**

48. Dr Phil Mitchell (for Phil and Pauline Mitchell) tabled evidence supporting the proposal; that the Orewa seawall would provide a permanent solution to the very serious erosion and it would also protect beachside properties. He was entirely satisfied that the project was necessary and that the adverse effects of the seawall, once constructed, would be appropriately avoided, remedied or mitigated.
49. Bill Howse presented on alternatives to the construction of the proposed seawall.

## Opposition

50. Ms Simons, legal Counsel for Messrs Simunovich, Inglis and Green, provided two set of the legal submissions (hearing and re-convened hearing). In summary, it was her submissions that proposal did not meet the purpose of the RMA due to:
- The proposal, which would occupy part of the beach and form a hard barrier between the land and the sea, would have immediate significant adverse effects on the amenity of the beach.
  - The proposal would contribute to erosion of the beach over the longer term and that the experts had not demonstrated that one annual transfer of sand will be sufficient to mitigate the effects of the sea wall on the beach.
  - The proposal was inconsistent with the outcomes anticipated in the Auckland Unitary Plan for the Open Space Conservation zone.
  - The proposal was inconsistent with the objectives and policies of the relevant regulatory instruments including the direction to take a precautionary approach to development in the coastal environment and to use hard protection structures only in very limited circumstances.
  - The analysis undertaken by the experts demonstrated that there was no urgent need for a sea wall to protect the reserve and that it was not a choice between this wall or the loss of the reserve.
  - There were other options to manage the beach in the short and medium term and there was time to develop an appropriate long term management strategy.
51. Messrs Inglis, Simunovich and Green all described their use and enjoyment of Orewa beach, and explained how the proposed sea wall would impact on this. They all expressed concern that the proposal would result in a substantial change, which would be adverse, to their access to the beach. They all had a preference that if the Council was to form a walkway that it be done without the seawall and use the sand transfer process to protect the beach and the reserve from erosion.
52. Mr Dahm, provided expert evidence supporting the submissions of Messrs Inglis, Simunovich and Green. He was also a signatory to the experts joint witness statements. He opined that serious long term erosion was likely to accompany projected sea level rise, and the adverse effects (lowering and narrowing of the beach) was likely to be extremely severe and would seriously degrade the beach and associated human use and natural values. He firmly disagreed with Mr Reinen-Hamill and Dr Carpenter that these adverse effects would be minor.
53. Mr Dahm opined, that in the longer term, given the serious erosion likely to accompany projected sea level rise of up to 1m, that the only long-term options that would protect the access and amenity values of the beach were either living with erosion (including progressive retreat of assets as required) or major beach nourishment (requiring large volumes of suitable sand to be sourced from outside the beach system, not simply internal sediment transfers).
54. Ms Clarke provided planning evidence supporting the submissions of Messrs Inglis, Simunovich and Green, setting out (in summary) that the proposal was inappropriate due to:

- The scale of the proposal does not reflect the current erosion risk;
  - In the long term there are other more appropriate mitigation measures that can be taken to manage coastal erosion which better align with the policy direction in the AUP-OP and NZCPS;
  - The Proposal would result in actual and potential moderate to high effects on the natural character and amenity of Orewa beach which could not be appropriately mitigated (including by way of sand transfer) and would consequently adversely affect the social and economic wellbeing of the Orewa community;
  - The proposal was contrary to the objectives and policies of the AUP-OP and the relevant provisions of the Operative Coastal Plan, Legacy District Plan, ARPS, NZCPS and Hauraki Gulf Marine Park Act. She considered the proposal was not consistent with the purpose of the esplanade reserves (section 229 of the RMA) or the purpose of the Open Space Conservation zone;
55. Ms Clarke also produced a supplement statement of evidence which addressed questions raised by the Panel and other matters including:
- The activity status of the proposal;
  - Permitted baseline; and
  - A consideration of higher order planning documents and Part 2 of RMA.
56. Ms Clarke produced a further statement of evidence for the re-convened hearing where she maintained her view that the proposal was neither appropriate nor necessary to manage the stated coastal erosion risk and provide for public access along the esplanade reserve in the manner proposed.
57. Mr Shaw's evidence provided evidence-in-chief as well as evidence in light of the experts joint witness statements. These focussed on:
- that there was no need for the seawall, and that the seawall would have the effects set out by Mr Dahm, and
  - That having lived on the Orewa beachfront for 30 years and being a coastal/marine engineer, it was his position that the beach had not eroded much in that 30 years and in some areas had accreted. While he accepted that with climate change, sea level rise and more severe storms were likely, he did not consider that there was a need for a sea wall to protect the proposed walkway or esplanade reserve.
58. Mr Kibblewhite, a Chartered Professional Engineer provided expert evidence supporting Mr Shaw's submission. Mr Kibblewhite was a signatory to the first of the expert joint witness statements. He considered there were alternatives to the seawall, in particular using the sand "locked in the estuary" and removing the groyne at the southern end of the beach. He considered the effects of the proposed seawall would be similar to those set out by Mr Dahm.
59. Mr Stansfield emphasised the adverse effects of the proposal as set out in his submission. In summary his concerns were similar to those set out by Messrs Green, Inglis and Simunovich.

### ***Hibiscus and Bays Local Board***

60. A letter of support for the Orewa Beach Esplanade Reserve resource consent application was received from Ms Parfitt - Chairperson of the Hibiscus and Bays Local Board.

### **Principal issues in contention**

61. The entire proposal was in contention as many of the submitters opposing the development sought the applications be refused, in particular the seawall. This view was 'summed up' in Ms Simmons' legal submissions dated 20 November 2017, where she submitted at paragraph 1.6:

*In summary, the Submitters' position following the production of the Joint Witness Statements has not altered. To the contrary, the outcomes of the expert caucusing process confirm the Submitters' conclusions that the only scenario in which the wall is "necessary" is to protect the proposed walkway. Given the significant adverse effects that the proposal would have on the natural environment, it is clear that the project is misconceived. In that regard, the Submitters say:*

- If the walkway is not constructed, a range of other more appropriate measures are available to manage the beach over the short, medium and long term;*
- There is no evidence that there is an urgent need for measures to protect the reserve from erosion;*
- There is no evidence that the erosion effects of the sea wall on the beach can be adequately mitigated; and*
- The walkway and sea wall will have significant adverse effects on the amenity of the coastal environment which cannot be avoided, remedied or mitigated, either in the short, medium or long term. (emphasis added)*

62. Other issues raised<sup>3</sup>by those supporting and opposing the development, and which this decision has addressed in more detail, are:

- Coastal processes;
- Public access to and along the CMA;
- Natural character and landscape values; and
- Amenity – visual, impact on the use of the beach/recreational as well as noise and lighting.

63. We record that matters relating to construction effects, earthworks (related effects of land stability, runoff, dust, traffic etc), traffic and ecological effects (including freshwater) were not particularly in contention. We only briefly address these below.

### **Main findings on the principal issues in contention and reasons**

64. The Council's rationale for the proposal was set out by Mr Murray - Principal Project Manager: Coastal Assets and supported by the evidence of Mr Klinac - Team Manager, Coastal and Geotechnical Services Team. Mr Murray set out at paragraph 5.1 of his

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<sup>3</sup>A table summarising the submissions received and the issues raised is in attachment 6 of the Section 42A Report.

evidence that "Orewa Beach is key asset for the community and visitors to Orewa" and at paragraph 7.1 that "Retention of access along the coastline at Orewa Beach continues to be a high priority due to its location on high profile land next to a popular beach in an urban area, which provides recreational opportunities to a diverse range of people".

65. He also set out (paragraph 7.1 ) "that this project is identified as OBEEP's highest priority due to:

- (a) *The reduced width of reserve due to ongoing storm damage; and*
- (b) *The importance of continued upgrade of public access to and along the foreshore to meet increasing use."*

66. At paragraph 72 he stated:

*The Council continues to manage Orewa Beach including this section in accordance with OBEEP. Sand transfer from the southern end of the beach to the narrowest part of the reserve (between Kohu Street and Marine View) is ongoing. The beach area seaward of the reserve between Marine View and Kohu Street receives approximately 500m<sup>3</sup> to 1,000m<sup>3</sup> of sand most years in spring time. The intention is to create a dry high tide beach and protection for the reserve area. This is part of a wider sand renourishment programme, which also includes the main Orewa Reserve, designed to provide a buffer against wave action and storm damage landward of Mean High Water Springs (MHWS).*

67. In terms of the Council's rationale for the proposal one of Mr Klinac's key conclusions set out in paragraph 2.1 of his evidence was:

*The proposal represents an appropriate management response for this section of Orewa Beach, when considering the prioritised objectives of OBEEP, and Council's regional approach to coastal management.*

68. The question before the Panel was whether the Council's rationale for the proposal, as set out above, can be supported by the statutory RMA planning documents (the AUP-OP and ARP: C). Our findings are set out below.

### **Zoning - Open Space Conservation and General Coastal Marine Zone and Overlay**

69. We think it important to set out the purpose and relevant provisions of the zonings of the AUP-OP as well as the Significant Ecological Area - Terrestrial (SEA-T) overlay which applies to this 'site'. The zonings are the Open Space Conservation and General Coastal Marine Zone<sup>4</sup>, as well as the SEA-T. We then address the 'Auckland- wide' provisions in some detail; coastal processes, public access, natural character and landscape, and amenity/recreational values.

#### Open Space Conservation Zone

70. The objectives of the zone are:

##### **H7.4.2. Objectives**

- (1) *The natural, ecological, landscape, Mana Whenua and historic heritage values of the zone are enhanced and protected from adverse effects of use and development.*

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<sup>4</sup>We find that the provisions of the AUP- OP are more relevant than those in the Operative Regional Coastal Plan.

(2) *Use and development complements and protects the conservation values and natural qualities of the zone.*

#### H7.4.3. Policies

(1) *Enable appropriate use and development that conserves, protects and enhances the natural, landscape, and historic heritage values of the zone.* (emphasis added)

71. We accept that Orewa beach and its immediate surroundings is a modified urban beach environment. Notwithstanding this the 'site' is zoned Open Space Conservation in the AUP-OP (recently operative). There is a clear emphasis on enhancing and protecting the (remaining) natural values of this coastal environment
72. The site is also identified as an SEA (SEA-T-3652) which features sub factors (2) 'Threat status and rarity' and (4) 'Stepping-stones, migration pathways and buffers'. Dr Baber, for the applicant confirmed that the SEA met the first criterion but in his view failed to meet the second criterion. He considered that the SEA did not provide an ecologically significant migration pathway or an ecologically significant buffering function. We accept Dr Baber's opinions and do not think the proposal significantly adversely affect the SEA.
73. The 'site' is also zoned Coastal – General Coastal Marine Zone. While it is accepted that much of the proposal is on land, and the seawall and back filling to create the walkway/cycleway would create dry land, a significant portion of the seawall will be in what is currently the CMA.
74. Objective F2.16.2.(1) states that structures (the seawall) are generally limited to those that have a functional need to be located in the coastal marine area, or those that have an operational need and that cannot be practicably located outside of the coastal marine area. We accept that the seawall has a functional need to be located here.
75. However Objective F2.16.2.(3) states:

*Structures are to be appropriately located and designed to minimise adverse effects on the ecological, natural character, landscape, natural features, historic heritage and Mana Whenua values of the coastal marine area, and avoid to the extent practicable the risk of being adversely affected by coastal hazards.* (emphasis added)
76. The zone provisions go on to expressly set out the policies relating to "*Foreshore protection works – hard protection structures*". We have set this out in full as it is important in terms of whether a seawall is an appropriate structure at this site.

*(14) Avoid a proliferation of hard protection structures in the coastal marine area by requiring:*

  - (a) hard protection structures to be located landward of mean high water springs where practicable, particularly if the structure is for the purpose of protecting private assets;*
  - (b) evidence to demonstrate that the adjoining landward area, or development in the coastal marine area, is at risk from a coastal hazard, and the degree of risk;*
  - (c) evidence to demonstrate that the options of non-intervention, managed retreat, abandonment or relocation of any landward development or structures are not practicable; and*

- (d) *evidence to demonstrate that the proposed structure is the most appropriate method for remedying or mitigating a coastal hazard having regard to the entire area affected or potentially affected by the hazard, and taking into account alternative methods, including soft engineering works.*
77. Of particular significance in terms of this policy is (b), which we have addressed in some detail in the next section (Coastal Processes), but also (c) and (d).
78. If a seawall were determined to be appropriate, then policy 16 sets out:
- (16) *Require the design and location of hard protection structures to:*
- (a) *minimise adverse effects on natural character and amenity values;*
- (b) *avoid restricting public access to or along the coastal marine area; and*
- (c) *take into account dynamic coastal processes, including the effects of climate change, sea level rise, assessed at least over a 100 year timeframe, including the potential for inundation or for the coastal marine area to advance inland.*
79. We have also set out the relevant provisions from E36 Natural hazards and flooding as they are also important in the context of this determining if this proposal (the seawall) is appropriate.

#### E36.2 Objectives

- (6) *Where appropriate, natural features and buffers are used in preference to hard protection structures to manage natural hazards.*

#### E36.3 Policies

##### General

- (3) *Consider all of the following, as part of a risk assessment of proposals to subdivide, use or develop land that is subject to natural hazards:*
- (a) *the type, frequency and scale of the natural hazard and whether adverse effects on the development will be temporary or permanent;*
- (b) *the type of activity being undertaken and its vulnerability to natural hazard events;*
- (c) *the consequences of a natural hazard event in relation to the proposed activity;*
- (d) *the potential effects on public safety and other property;*
- (e) *any exacerbation of an existing natural hazard risk or the emergence of natural hazard risks that previously were not present at the location;*
- (g) *the ability to use non-structural solutions, such as planting or the retention or enhancement of natural landform buffers to avoid, remedy or mitigate hazards, rather than hard protection structures;*
- (i) *the effect of structures used to mitigate hazards on landscape values and public access;*

##### Defences against coastal hazards

- (11) *Consider hard protection works to protect development only where existing natural features will not provide protection from the natural hazard and enhancement of natural defences is not practicable.*
80. It is clear in terms of the provisions above that a risk based approach is required - i.e. what is the risk (likelihood and consequences) from hard protection structures. It is also

clear that intervening with hard protection structures is 'discouraged' and a 'last resort' once all other options have been considered and determined not to be appropriate. Having set out the provisions, it is within this context that we considered the coastal process matters that were a significant part of the hearing and the main issue in contention - was the seawall necessary and appropriate.

### **Coastal processes.**

81. As already set out, the proposal before us is to construct a public walkway/cycleway to provide for public access along the esplanade reserve, and to protect the it, as well as the long-term protection of the esplanade reserve, by constructing a seawall.
82. In relation to the seawall, we accept that the relevant policy and planning provisions provide a clear direction that we should assess the natural hazard risks, the need for some form of protection, as well as the effects of this application, over the long-term. We also note that Objective B8.3.1. 7 (RPS - AUP-OP) states that "*In areas potentially affected by coastal hazards, subdivision, use and development avoid increasing the risk of social, environmental and economic harm*". We also acknowledge section 6(h) the management of significant risks from natural hazards is a matter of national importance.
83. In summary, having heard the evidence of the experts at the hearing on the 7 and 8 August 2017, and considered the statutory imperatives and the plan provisions, we were unsure in taking a long-term view, that it was necessary to construct the seawall, certainly over the short to medium terms (up to 30 to 40 years - beyond the life of any coastal permit) with the accompanying adverse effects. We address this below.
84. We were provided with a number briefs of expert evidence which addressed coastal processes. The main areas on contention centred on the impact that the proposed wall would have on coastal processes; and how these processes in turn impact on the esplanade reserve erosion potential and beach morphology seaward of the wall. We heard different perspectives, which we summarise below.
85. All of the coastal experts agreed that the proposed seawall needed to be evaluated against a 1m sea-level rise and a 100-year time frame. They also accepted that a 1m sea-level rise was likely to give rise to serious erosion/inundation and that a 56m permanent in-land retreat was not unreasonable. There was also general agreement that the proposed seawall was a robust structure that would hold the shoreline against erosion likely to accompany a 0.5m sea-level rise and that it could be modified to hold the shoreline against a higher sea-level rise if required.
86. What was not agreed was the extent of the adverse effects that would be created from the seawall, particularly on the beach.
87. Dr Carpenter and Mr Reinen-Hamill considered that the adverse effects on coastal processes would be no more than minor. Dr Carpenter's assessment of beach morphology showed the progressive steepening and retreat of the backshore. Sand transfers as the sole management option would not be effective against erosion which is confirmed by short term analysis of nourishment volumes pre, and post, storm events.
88. Mr Reinen-Hamill supported Dr Carpenter's view that Orewa beach and estuary was a closed system with no significant source of beach sand, and that the beach had historically experienced erosion. The seawall proposal in combination with sand



transfers was in his opinion the preferred option for this area. The sand transfers would assist in mitigating the effects of sea-level rise, but considered that sometime in the future alternative options would be needed.

89. Mr Todd's position was that given the Council "*appear committed to a longer term structural solution*", on this basis, "*the type, design and location of the proposed sea walls are appropriate, and as far as possible mitigate the potential effects of these types of structures.*"(Hearing agenda page 28)
90. Mr Todd also noted the potential for adverse coastal effects in the form of potential end erosion effects outside the application area to the north of Kohu Street. In his opinion existing end effects could potentially be exacerbated to some degree by the proposed seawall despite the best design principles being applied. However, Mr Todd recommended that any potential effects could be addressed through the ongoing monitoring of shoreline position in this area with provision for mitigation if end effects erosion was identified.
91. Mr Dahm, firmly disagreed that the adverse effects would be minor, setting out that the immediate siting of the seawall would result in a loss of the beach, taking away what is left of the dry beach at high tide. He also stated that in the longer term, given the serious erosion likely to accompany projected sea level rise of up to 1m, the only long-term options that would protect the access and amenity values of the beach were either living with erosion (including progressive retreat of assets as required) or major beach nourishment (requiring large volumes of suitable sand to be sourced from outside the beach system, not simply internal sediment transfers)
92. Mr Dahm considered that there are other short and medium term solutions which would provide appropriate means of maintaining access to the coastal marine area. It was his view that these should be pursued before opting for measures such as the seawall, with the inherent risk of major social and economic loss to the Orewa community as a result of damage to the beach; one of its most important asset.
93. Mr Kibblewhite (and Mr Shaw) was of the view that realignment of the estuary channel and the provision of coastal defences had totally removed the beach's ability to respond through natural processes. He did not consider that the proposed seawall would only have minor adverse effects, but significant adverse effects. He and Mr Shaw both considered prior to any further hard protection work being contemplated that the entire beach system be considered, with consideration being given to returning the estuary entrance back to original alignment and using the available sand in the estuary to be transferred on to the beach.
94. We also heard from a number of submitters who had lived on the beachfront for many years (up to 30 years in some cases). The observational evidence from them was that the beach had eroded very little, and in some places it had accreted. They accepted that the storm events had at times removed significant parts of the foreshore, but that the sand had returned. They all supported on-going sand transfer, but acknowledged that it often did not stay in-situ for long.
95. After our initial consideration of the coastal process evidence before us, we determined that we needed more information given the divergent opinions that been expressed. This was coupled with an uncertainty on the actual magnitude of potential

effects, and whether in taking a long-term view it is necessary to construct the seawall over the short to medium terms (up to 30 to 40 years - beyond the life of the coastal permit) with the accompanying adverse effects.

96. We sought further evidence on this; posing the question:

*Is the esplanade reserve at such risk from coastal erosion that it would be 'lost' in the short to medium term that warrants consent now with the associated adverse effects?*

97. In seeking this evidence, it was our preliminary view that in the absence of a clear 'risk based' need to protect the esplanade reserve over the short to medium term, that the adverse effects of the proposal were unlikely to be acceptable and meet the purpose of the RMA. The adverse effects of the proposal that we referred to included effects from coastal processes (lowering and narrowing of the beach and end effects), public access to and along the beach (as opposed to the reserve and the loss of high tide dry beach), natural character, landscape and amenity values, all of which we address below in this decision.
98. In our view, this was, at least in part, confirmed by the Orewa Beach Esplanade Enhancement Project 2014 version (e.g. - paragraph 4 under the Synopsis of Coastal Setting) and the before and after photos on page 16 of the AEE which shows the situation of an area north of Kinloch Reserve after the storm on the 24 September 2013 with an after photo of the same area showing sand 'build up' in September 2016 after "a smaller storm and prior to a regular sand transfer". However we accept that sand transfer had also occurred.
99. Moreover, the Orewa Coastal Walkway and Seawall: Coastal Processes Synthesis Report was completed "to assist in the identification of an appropriate management response" (Introduction section). While doing so that report did not address the time scale issue. The Conclusions and Recommendations section (paragraph 3) sets out that with the placement of sand there is a "gradual loss of the reserve during storm conditions" and "while the buffer provided by the placed sand increases the amenity value and dry high tide beach, it ultimately does not protect the reserve from erosion".
100. We sought that on the basis of the issues set out in the Panel's Memorandum, further evidence on the extent of the loss or potential loss of the esplanade reserve over 10, 20, 30 and 40 years if no seawall was built and with regular sand replenishment placed in front of the application area utilising the existing sand transfer consent (accepting that that consent expires in 2041), and/or the smaller amounts of enabled as a permitted activity in the AUP. This was in part to assist in determining if there were significant risks from natural hazards that needed to be managed as a matter of national importance, and in fact if any intervention was needed at all.
101. The coastal engineers/scientists provided two joint statements dated the 8<sup>5</sup> September and 13<sup>6</sup> October 2017. The first statement recorded their initial consideration of sand

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<sup>5</sup>Attended by: Carpenter, Daham, Kibblewhite, Reinan-Hamill and Todd

<sup>6</sup>Attended by: Carpenter, Daham, Reinan-Hamill and Todd

volumes required to maintain the beach crest level and scoped out the further analysis that need to be done. The second statement provided a joint assessment of:

- A quantification of the erosion under a 'do nothing' scenario;
- Determining storm cut effect;
- A risk-based assessment of the potential loss of reserve over the next 40 years considering both sea-level rise and storm effects;
- Utilising existing sand transfer consent to meet Condition 59 with future sea-level rise.

102. All the experts agreed that the esplanade reserve faced an erosion risk as a result of sea level rise. It was largely agreed that the beach was currently in an eroded beach state and that the remnant 'protection' structures would not prevent the beach from eroding landward, and that the remnant structures were poorly designed and likely to have limited positive effect in terms of long term protection of the esplanade reserve.
103. Dr Carpenter, Mr Reinan-Hamill and Mr Todd were of the view that the present eroded state was largely not a consequence of a period of increased storm erosion but included a significant component of permanent erosion due to the combination of anthropogenic and natural processes acting in this area. Mr Dahm offered a different perspective noting that the beach fluctuates between eroded and accreted conditions but exhibits little to no net erosion over time. His view was that present eroded state of the beach was largely due to a period of increased storm erosion, but that the beach would eventually recover naturally. Mr Shaw made the same observations.
104. A table, amongst other things, was provided setting out the experts' projections for the total percentage loss of the existing reserve along the application 'site' considering the effects of sea-level rise on selected beach profiles (measured 28/07/88). Three agreed scenarios, high, medium and low sea-level rise, over the next 40 years were considered under the assumptions of the Brunn Rule<sup>7</sup> and a 'do nothing' approach. In simple terms (noting that the second joint statement was very comprehensive), all the experts agreed that for all scenarios 6.5% of the reserve could be lost over a ten-year timeframe, and that over 90% of the reserve would be lost over a 40-year timeframe.
105. The experts also provided commentary on their risk-assessment of potential loss of reserve over the next 40-years considering both sea-level rise and storm effects. One of the effects of sea-level rise will be to reduce the amount of sand available from the currently consented borrow area as shoreline retreat will happen along the entire beach reducing the capacity of the borrow area.
106. The second joint witness statement confirmed that, taking into account sea level rise, the esplanade reserve is at risk from coastal erosion. It provided an analysis of the 'likely' loss of the reserve over a series of timeframes as requested by us.
107. However it is clear that there remained disagreement between the experts (Dr Carpenter, Messers Reinen-Hamill, Todd, and Mr Dahm) regarding the coastal processes occurring at Orewa beach. As pointed by Ms Clarke in her further statement of evidence, this suggests that the available data can be interpreted in different ways

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<sup>7</sup>All of the signatories to the second joint statement agreed this rule was appropriate in this context, despite its known limitations.

and accordingly there remains uncertainty regarding the behaviour of beach and its ability to positively respond to storm damage in future.

108. Given these uncertainties, we find that care must be taken in drawing conclusions about the effects of the proposal on the coastal environment. As we have set out the policy direction of the planning provisions is that hard protection structures are 'discouraged' and a last resort. Accordingly, the effects of any intervention needs to well understood and all other options investigated; and in this case questioning, as we have, the rationale for the seawall in the first instance (to protect the proposed walkway).
109. The AUP -OP provisions, as set out above (and Policy 26 of the NZCPS) provides for the protection, restoration or enhancement of natural defences (where appropriate). Policy F 2.16.3 - 14 requires the avoidance of a proliferation of hard protection structures by requiring:
- (b) *evidence to demonstrate that the adjoining landward area, or development in the coastal marine area, is at risk from a coastal hazard, and the degree of risk;*
  - (c) *evidence to demonstrate that the options of non-intervention, managed retreat, abandonment or relocation of any landward development or structures are not practicable; and*
  - (d) *evidence to demonstrate that the proposed structure is the most appropriate method for remedying or mitigating a coastal hazard having regard to the entire area affected or potentially affected by the hazard, and taking into account alternative methods, including soft engineering works.*
110. We do not consider that this proposal satisfies this policy, and particularly so as the purpose of the seawall is to protect the proposed constructed walkway/cycleway. It is our finding that in terms of the effects on coastal processes, based on the information in the second joint statement, that there is time (at least 10 years over which 6.5% of the reserve is predicted to be lost) to consider other opportunities to better provide for public access while also enhancing and rehabilitating natural character values of the coastal environment.
111. Overall, we accept that while the second joint witness statement confirms there will be a likelihood of loss of (some of) the reserve to erosion (considering both sea level rise and storm damage), this of itself does not support the proposal as presented by the applicant.

#### **Public access to and along the CMA and Recreational values**

112. As set out by the applicant (in the application, legal submissions, and evidence (Klinac and McCarter in particular) the seawall proposal is necessary to protect the esplanade reserve, so as to protect the proposed walkway to improve public access to and along the coastal marine area, and to improve the recreational amenity values for the whole of the community, including people of differing ages and abilities.
113. We accept Mr Greenaway's evidence on the importance of recreational values, and the importance of access to and long the CMA. We also accept that Orewa, like many other areas, has a limited supply of locally-accessible natural recreation settings. As set out by Mr Greenaway at paragraph 1.2 of his evidence, *"the existing esplanade reserve area is poorly developed and defined, but is still well-used, including by people relying on mobility aids. The local and regional population is set to increase – particularly in the*

*age groups most dependent on accessible walking options for recreation. The supply of local natural open space is unlikely to grow – although it could decrease if the esplanade reserve is lost."*

114. As we have addressed above, the question we have in relation to this proposal is:- notwithstanding the improved recreational opportunities and public access that would occur from this proposal - is the form of that access (a formalised path and access points to the CMA) which necessitates the seawall (with its adverse effects which we have addressed in this decision) appropriate. In brief, we have found that it does not.
115. Ms McCarter sets out in her planning evidence (paragraph 6 2- Public access recreation) that *"Overall, I consider the long-term effects on public access and recreation of the project to be beneficial..."* and she set out a comprehensive set of reason for her opinion including in summary:
- The evidence of Mr Greenaway, which addressed the recreation opportunities provided by Ōrewa Beach and the Ōrewa Beach esplanade reserve,
  - Improvements to north-south connectivity,
  - Better access at high tides when there is limited beach to walk on, and
  - Improved access for less able-bodied people.
116. In the same section of her evidence Ms McCarter accepts that:
- The proposed seawall will have potential adverse effects on the east-west connectivity between the landward reserve and the beach, particularly between Kohu Street and Kinloch Reserve where regular sand transfer activities have formed a sandy buffer, which can be walked over, and
  - There will be some adverse effects on private landowners who can walk directly from their properties across the esplanade reserve to the beach.
117. In terms of these 'adverse' effects Ms McCarter addresses these by stating that in terms of the east-west connectivity, there are regular access points proposed at each east-west connection (Kohu Street, Kinloch Reserve and Remembrance Reserve) in order to maintain access between the reserve and the beach. She considered (at 6.2 - d and e) that *"this appropriately mitigates the potential adverse effects on connectivity between the reserve and the beach, noting that the project will improve the existing formal accessways"*, and *"I rely on Mr Greenaway's findings that overall, the positive public recreational benefits outweigh these adverse effects on individual property owners"*.
118. We note Ms Verstraeten, for the Council reporting on the application, at section 5.0 Amenity Values - Access, raised concerns about the level of access to the beach. She stated that she was *"...not convinced that enough access/egress points have been provided along the 600m length of the project. I support the proposed locations of the stairs and ramps as they line up with the roads however I consider that the distance between them to be too far."* We question whether she is the appropriate expert to raise this matter (we address this later) but share the same concerns about the extent to which access is provided to the CMA; for both the public and those properties which front this portion of the esplanade reserve.

119. The Council requested further information in relation to whether additional access points could be provided to address this issue. Mr Reinen-Hamill advised (page 258 of the hearing agenda)

*“We have considered locating more formal built in access steps and ramps in between the reserve ends however this can affect the performance of the sea wall as well as locally increasing wave run up and potentially increasing damage to the reserve area. Providing timber stairs that span the rock revetment have a higher maintenance component. It also creates more disruption to recreational beach users who may seek a quieter spot on the beach between the access points.”*

120. In this respect we find that the proposed sea wall, while providing some better access along the esplanade reserve, will create fewer options to access the beach than if the sea wall were not present (with distances of up to 200m between access points).

121. Submitters opposing the proposal, including those who presented at the hearing - Messrs Stansfield, Shaw, Green, Inglis and Simunovich, accepted that the result of the seawall and formed pedestrian/cycle way would provide a form of public access along the esplanade reserve. However, this would be at the expense of public access to and along the CMA, and for some them adversely affect access from their properties across the esplanade reserve and on to the beach. That is:

- currently there is access from the esplanade reserve to the beach, but the proposal would provide limited and defined access points, with people unlikely to climb up, over or down the rock revetment (due to health and safety issues),
- the sea wall would eliminate any 'dry' beach at high tide and this would affect people's access along the beach (and their enjoyment of the beach), and over time the beach would be further lowered and narrowed due to the coastal processes acting on the seawall, unless there was substantial sand replenishment or renourishment.

122. In short, these submitters questioned the mandate for the long-term solution proposed to the erosion of the esplanade reserve, which in their view, prioritised the long-term protection of the esplanade reserve over people's use and enjoyment of the beach.

123. Ms Clarke, planner for a number of the submitters, expressed this matter at 5.6 of her evidence:

*The benefits of providing this access are used at multiple points in the consideration of effects to counter the identified adverse effects on landscape, character, amenity and on coastal processes. The need for this enhanced walking and cycling access of this scale in this location is not in my view demonstrated at any point in the application material and I remain unclear as to why this 'aim' or objective is seemingly elevated above the identified adverse impacts on other values. Noting that the redevelopment of the esplanade reserve seemingly requires the formation of the seawall structure in the proposed location to deliver the walkway*

124. There is no doubt that the proposal would, for some people, provide improved public access along the esplanade reserve. However, as set out by a number of submitters, the access proposed by the applicant is at the expense of some access to and along the beach. Submitters also set out that an improved formed access along the esplanade reserve could be constructed without the proposed seawall.

125. As pointed out by Ms Clarke, and which the Panel agrees, it appears that the *"redevelopment of the esplanade reserve seemingly requires the formation of the seawall structure in the proposed location to deliver the walkway"*. This, in part, was the purpose of the Panel's memo seeking further expert coastal science/engineering evidence on the effects of coastal process on the esplanade reserve, and we have addressed our findings on this in the Coastal Processes section earlier.
126. It is necessary to consider the matters raised above in terms of the statutory planning provisions.
127. Recognising and providing for the *"maintenance and enhancement of public access to and along the coastal marine area"* is a matter of national importance issue (section 6 of the RMA). This is addressed in the NZCPS and the AUP-OP (RPS and Plan) and the ARP: C.
128. In our view the AUP-OP can be relied upon to address public access as it gives effects to the higher order planning documents. While the coastal plan provisions of the AUP-OP are not operative (as the Minister of Conservation is yet to approve it) there is no inconsistency between the AUP-OP and ARP: C and there are no outstanding appeals to the AUP-OP in relation to public access.
129. The relevant AUP-OP provisions include:

Regional Policy Statement-

*B8.4 Public Access and open space set out the following relevant provisions:*

- (1) Public access to and along the coastal marine area is maintained and enhanced, except where it is appropriate to restrict that access, in a manner that is sensitive to the use and values of an area.*
- (2) Public access is restricted only where necessary to ensure health or safety, for security reasons, for the efficient and safe operation of activities, or to protect the value of areas that are sensitive to disturbance.*
- (3) The open space, recreation and amenity values of the coastal environment are maintained or enhanced, including through the provision of public facilities in appropriate locations.*

**B8.4.2. Policies**

- (1) Subdivision, use and development in the coastal environment must, where practicable, do all of the following:*
  - (a) maintain and where possible enhance public access to and along the coastal marine area, including through the provision of esplanade reserves and strips;*
  - (b) be designed and located to minimise impacts on public use of and access to and along the coastal marine area;*
  - (c) be set back from the coastal marine area to protect public open space values and access; and*
  - (d) take into account the likely impact of coastal processes and climate change, and be set back sufficiently to not compromise the ability of future generations to have access to and along the coast.*

(3) Restrict public access to and along the coastal marine area, particularly walking access, only where it is necessary to do any of the following:

- (a) protect public health and safety;
- (b) provide for defence, port or airport purposes;
- (c) protect areas with natural and physical resources that have been scheduled in the Unitary Plan in relation to natural heritage, Mana Whenua, natural resources, coastal, historic heritage and special character;
- (d) protect threatened indigenous species;
- (e) protect dunes, estuaries and other sensitive natural areas or habitats;
- (f) have a level of security necessary to carry out an activity or function that has been established or provided for;
- (g) provide for exclusive use of an area to carry out an activity granted an occupation consent under section 12 of the Resource Management Act 1991;
- (h) enable a temporary activity or special event; or (i) in other exceptional circumstances sufficient to justify the restriction. (emphasis added)

130. We note that these provisions give effect to the Policy 19(3) of the NZCPS, and are addressed in the Coastal Plan portion of the AUP-OP.

#### F2. Coastal – General Coastal Marine Zone - F2.1. Zone description

*The purpose of the Coastal – General Coastal Marine Zone is to provide for use and development in the coastal marine area, in particular those forms of use and development that have a functional or operational need to be undertaken or located in the coastal marine area, while amongst a number of things:*

- *maintaining and enhancing public access, open space, recreational use, amenity values, and access to and along the coastal marine area;*

131. The relevant objectives and policies (set out by activity) support and give effect to the Zone description. In terms of "structures" the most relevant objective is:

#### F2.16.2. Objectives [rcp]

- (2) *Structures provide for public access and multiple uses where practicable, other than those restricted by the location or functional requirements.*

#### Policies

7 *Require structures in the Coastal – General Coastal Marine Zone to be located to minimise:*

- (b) *adverse effects on recreational use;*
- (c) *adverse effects on public access to and along the coastal marine area;*
- (d) *visual impacts, .*



132. It is our finding that in the absence of an urgent need to protect the esplanade reserve as outlined by the applicant (noting that the Mr Reinen-Hamill considered that there was an urgent need if the proposed walkway was to be protected, and Mr Todd agreed but only if the walkway as proposed was considered "necessary"), that planning provisions do not, overall, 'support' the seawall in terms of public access. The reasons for this are:
- None of the scenarios set out in the RPS Policy B8.4.2 (3) applies to the present application and this is not a situation where exceptional circumstances apply that would justify the seawall (as a barrier between the land and the sea) given our findings in relation to coastal processes;
  - Access to and along the beach and the existing esplanade reserve is currently better provided for by not having a seawall, with all of its consequential adverse effects (as set out in this decision) including on public access to and along the beach. The seawall will immediately narrow the beach (due to the siting of the wall), and this along with coastal process effects (narrowing and flattening the beach), would result in longer periods in which access to and along the beach would not be available. This would not be consistent with the plan provisions set out above.
  - There would be some adverse effects on recreational activities due to the seawall being a barrier to the beach, with fewer access points as well as wall being difficult to 'clamber' over. This would not be consistent with policy 7 above.
  - That access to and along the CMA for less-abled people, one of the positive effects set out by the applicant, is available at other parts of the beach, including the roads that terminate at the beach, some of the existing reserves as well as immediately south of Marine View from the 'site' and at the southern end of the beach where there are more formalised pathways.
  - That even if this proposal were granted and constructed, continuous access along a foreshore/esplanade reserve would not be available.
  - That a walkway could still be constructed on the esplanade reserve, but not in the form proposed in the application. While we accept this would likely need to be less 'formalised', it would enable better access along the esplanade reserve.
133. We accept that the access to and along the esplanade reserve will be enhanced for some people by this proposal, and would be consistent with the Orewa Beach Esplanade Enhancement Programme (OBEEP). However, as we have addressed the nature of the proposed form of access will be at the expense of some access to and along the beach.
134. We agree with Ms Clarke that the need for the 'enhanced' walking and cycling access of the scale proposed in this location is not demonstrated, or that to 'provide' the public access benefits as opined by Ms McCarter requires the formation of the seawall structure, which of itself results in restrictions on public access, especially in relation to the beach (as opposed to the esplanade reserve).
135. Our findings are; given our reasons set out above, those in relation to coastal processes and the time scale in relation to the loss of the esplanade reserve, when taking the public access plan provisions in the round, that the positive and adverse effects on

public access cancel each other out. That is we do not find there is overall, positive public access benefits.

#### **Natural character and Landscape.**

136. Expert evidence was presented by Mr Coombs for the Applicant and by Ms Verstraeten (reporting on the application for the Council).

137. Mr Coombs' evidence comprehensively set out the issues relating to natural character, landscape and amenity, and included a set of visual photo simulations of the 'before and after' situation if the seawall (with and without the up-stands) was constructed. This was summarised succinctly in his executive summary (section 2) where he states:

*2.2 The proposed walkway and seawall is to be constructed within an area that has been modified by ad hoc erosion protection works over a period of time, including various other seawalls in a state of disrepair, on an area of urbanised edge at Orewa Beach. The surrounding environment is urban and has compromised landscape and natural character values as a result of that urbanisation.*

*2.3 I consider that the natural character values of the site are **low**.*

*2.7 If constructed according to the proposed design and landscape conditions, I provide the following summary of the potential adverse effects:*

- The adverse landscape effects of the project on the surrounding environment would be very low to low.*
- The adverse natural character effects of the project on the site and the beach at Orewa would be moderate.*
- The adverse effects on the amenity of the area would be low. For some users that can currently not access the esplanade reserve or beach, or that find access difficult, the effects may be positive.*
- The adverse visual effects of the projects on walkway users would be minor; for residents along the length of the site would be low to moderate or moderate (with 800mm upstands); and for beach users would be low to moderate.*

138. Ms Verstraeten peer reviewed the proposal. In her report (input to Mr Titter's section 42A report) she finds (set out under different heading) the following

#### *Natural character*

*I concur that the level of effects will be varying and in my opinion this is due to the different levels of natural character along the length of the site. For example the section between Kohu Street and Kinloch Reserve has a greater level of perceived naturalness than the rest of the subject site due to the relative absence of rock protection. I therefore consider the effects on natural character to be high at the northern end of the proposal and moderate from Kinloch Reserve south. I am unconvinced that the modulation, separation of the grouted rock wall/ rock revetment elements and planting will provide any meaningful mitigation to this proposal although I appreciate the dune planting at Kinloch Reserve offers a break in the hard edge.*

### Visual Effects

*"As mentioned previously I am unconvinced by the ability of [the mitigation] measures to reduce adverse effects...The modulations at the interface between the grouted rock wall sections and rock revetment are visually clunky, utilitarian in character and have an engineered appearance. In some instances these proposed mitigations measures are at an insignificant scale that the compound the adverse visual effects."*

*Overall I consider the visual effects to be moderate.*

### Conclusion

*"Overall I consider the location of the proposed seawall to be appropriate. It is my opinion that it will create moderate to high adverse landscape and visual effects.*

139. Ms Verstraeten goes on to state in her Conclusion that:

*However, these adverse effects are balanced by the positive recreational and erosion protection impacts of the proposal."*

140. In relation to the latter concluding comment, we do not think it appropriate for Ms Verstraeten to offer this opinion. Ms Verstraeten's expertise is in landscape architecture (not recreational, coastal science or planning) and therefore not appropriate for her to offer an opinion on "balancing" adverse landscape and visual effects of the proposal against other effects.

141. As we have with the other 'effects' we have considered in light of the relevant statutory plan provisions. The AUP-OP sets out the following:

*E18. Natural character of the coastal environment (Auckland Wide)*

*E18.2. Objectives [rcp/dp]*

- (1) The natural characteristics and qualities that contribute to the natural character of the coastal environment are maintained while providing for subdivision, use and development.*
- (2) Where practical the natural character values of the coastal environment are restored or rehabilitated.*
- (3) Manage the effects of subdivision, use and development in the coastal environment to avoid significant adverse effects, and avoid, remedy or mitigate other adverse effects, on the characteristics and qualities that contribute to natural character values, taking into account:*
  - (a) the location, scale and design of the proposed subdivision, use or development;*
  - (b) the extent of anthropogenic changes to landform, vegetation, coastal processes and water movement;*

*F2. Coastal – General Coastal Marine Zone - F2.1. Objectives*

- (3) Structures are appropriately located and designed to minimise adverse effects on the ecological, natural character, landscape, natural features, historic heritage and Mana Whenua values of the coastal marine area, and avoid to the extent practicable the risk of being adversely affected by coastal hazards.*

142. While Mr Coombs considers that the natural character values of the site are low his opinion was that the adverse natural character effects of the project on the site and the beach at Orewa would be moderate.
143. Ms Verstraeten's opinion was that the effects on natural character to be high at the northern end of the proposal and moderate from Kinloch Reserve south. She was also not convinced that the modulation, separation of the grouted rock wall/rock revetment elements and planting would provide any "*meaningful mitigation*" to this proposal.
144. A number of the opposing submitters also considered the seawall to be visually obtrusive. Mr Green stated that the "*wall will be a visual blight*" and Mr Inglis said it would be "*unsightly*".
145. Given the experts' views, and those of the submitters, we do not find that that the natural characteristics and qualities that contribute to the natural character of the coastal environment would be maintained by the seawall as set out in objective 1 above. Furthermore in relation to objective 3 above, we do not find that the adverse natural character effects would be avoided, remedy or mitigated even accepting that the area has been modified (anthropogenic changes to landform, vegetation, coastal processes and water movement).
146. We also agree with Ms Verstraeten's that the proposed planting would not provide any meaningful mitigation to this proposal given the nature and scale of the seawall (materials, its height, width and its length). We also find that while the sand transfer (utilising the existing consent) would provide some mitigation, it cannot necessarily be relied upon to provide that mitigation, given that the coastal experts and some of the beach front residents stated that transferred sand may only stay in-situ for a very short time (depending on the weather).
147. The other issue raised was that the full volume of sand transfer enabled by the consent is not used annually, and therefore the extent of mitigation cannot be certain. However we note that the applicant offered a condition (condition 59) requiring the consent holder to undertake annual transfers of sand to the area in front of the structure in order to mitigate the adverse effects of the proposal on the beach by maintaining a prescribed beach profile in front of the wall. We address this matter further below.
148. A strong policy direction in the NZCPS and the AUP-OP is one of, where practical, restoring or rehabilitating the natural character values of the coastal environment. Given our findings on natural character, those relating to coastal process and the 'need' to construct the seawall, we find that the proposal has not particularly addressed the objective and policy directive of restoring or rehabilitating the natural character values of the coastal environment.
149. The coastal experts all agreed that the existing sand transfer has only short-term benefits and would need to be constantly repeated and would be inadequate to offset the beach loss in front of the seawall. We accept this and find that while the sand transfer offered by the applicant (in terms of the existing consent) is useful mitigation, it is more about amenity effects and creating a dry beach, as opposed to longer term protection of land or mitigating the adverse effects of the proposal seawall.

150. Mr Dahm, in his evidence, addressed the issue of mitigation of adverse effects of the seawall, which is also relevant to the issue of restoring and rehabilitating natural character. He set out at paragraph 5.22 of his evidence.

*Broadly speaking, there are two longer term mitigation options available:*

- (a) Major beach nourishment to fully offset the passive erosion and other effects;*  
*or*
- (b) Removal of the structure to allow the entire beach profile to adjust, thus maintaining the upper beach profile. This would essentially amount to gradual/managed retreat with asset relocation as required.*

151. Mr Dahm acknowledged that the major beach nourishment option would involve importing very large volumes of suitable sand from a source outside of the beach system and placing it on the beach. It was his opinion that this was the only option that could mitigate the passive erosion effects likely to occur with sea level rise while leaving the wall in place. He also considered that sand retention structures (e.g. offshore reefs) might also be used to help hold the placed sand, though he acknowledged this would be less certain (paragraph 5.23).
152. We acknowledge that neither of these options was before us and that we have no detailed evidence about them other than what Mr Dahm has set out. We raise this issue as we do not find that the applicant has or can mitigate the effects of the seawall (in terms of natural character and landscape), or has in any meaningful way addressed the issue of restoring or rehabilitating the natural character values of the coastal environment. We find that relying on the existing sand transfer consent (ignoring any vires issues about this as raised by us and discussed with legal counsel) while providing some mitigation, would not provide sufficient mitigation to warrant a grant of consent.

**Amenity – use of the beach/recreational impact as well as noise and lighting**

153. “Amenity values” is defined in section 2 of the RMA as:

*“... those natural or physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.”*

154. We accept that people's amenity values in relation to the beach and the surrounding area, in the context of this application when dealing with the public domain, will depend upon the perspective of those using the beach and/or the esplanade reserve as well as those people who live adjacent to or near this proposal. We also accept that some people's amenity values would likely be enhanced by the proposed walkway and upgraded reserve area.
155. However, the majority of the submitters in opposition, painted a different picture, telling us that their amenity values would be adversely affected. This would be in terms of a significant built form (the seawall and associated works), a more formalised pattern of development (including lighting) as opposed to the current more casual beach environment, as well as personally affecting their use and enjoyment of their properties and the surrounding coastal environment. These matters will be fully set out in the evidence of Messrs Green, Inglis and Simunovich and addressed by Mr Stansfield at the hearing.
156. Given our findings in relation to all of the other issues addressed above, and that there are alternative options to achieving enhanced public access along the esplanade resource, we accept that the majority of submitters, including those who appeared at the hearing, would have their amenity values adversely affected if this proposal were granted.

**Construction effects – earthworks (related effects of land stability, runoff, dust and, traffic), Traffic, Ecological effects, including Freshwater ;**

157. Expert evidence was presented on these matters. That evidence was not contested by the Council (as set out in the section 42A report) or by submitters. It is our finding that had consent been granted, the effect arising from these matters could all be managed by appropriate consent conditions, such that those effects were either avoided, remedied or mitigated.
158. Due to this finding we have not addressed these issues in anymore detail.

**Overall findings**

159. We agree with the applicant (and submitters) that Orewa beach is of key importance to the Orewa community. This is in terms of its recreational and amenity value and in terms of the social and economic wellbeing of the Orewa community and those who visit and use the beach. However it appears to us that in relation to the application, the Council's premise is that a walkway/cycleway is necessary (OBEEP), and to protect that 'investment' the seawall is required to provide long term protection to it and the esplanade reserve.
160. We find that the analysis undertaken by the coastal experts demonstrates to us that there is no urgent need for a seawall to protect the esplanade reserve. We accept Dr Carpenter and Mr Reinen- Hamill's opinions that there is an urgent need for the seawall to protect the proposed walkway/cycleway if it was to be constructed. Mr Todd had the same opinion, but clearly set out that the seawall was only necessary if it was determined that the walkway/cycleway was appropriate.
161. Mr Dahm on the other hand, considered that there are other short and medium term solutions which provided appropriate means of maintaining access to the CMA, and his view was that these should be pursued before opting for measures such as the seawall

with the inherent risk of major social and economic loss to the Orewa community as a result of damage to the beach. We agree with Mr Dahm (and Ms Clarke - planner) for all of the reasons we have set out above in this decision.

162. We find, for the reasons we have set out that the proposal is inconsistent with the relevant objectives and policies of the statutory planning provisions. This includes the clear policy directions of preserving the natural character of the coastal environment; seeking where practical to rehabilitate and restore that character; and that intervention by hard protection structures is a 'last resort' given the risks associated with interference in coastal processes and the potential damage that can occur.
163. The proposal, while having some positive effects in terms of improved recreational opportunities and for some people improved access, generates a number of adverse effects. These have been fully set out above, but include adverse effects on: coastal processes, public access, natural character, landscape and visual and amenity values.
164. The Council's proposal is to build a walkway/cycleway along the esplanade reserve. In order to achieve that it was determined necessary to establish the space for and to construct a seawall. We find there is no urgent need for a hard protection structure and that the seawall will have adverse effects now and in the future and is, overall, inconsistent with the NZCPS, the AUP-OP and ARP: C. The proposal does not meet the purpose of the RMA.

## Decision

165. In exercising our delegation under sections 34 and 34A of the RMA and having regard to the foregoing matters, sections 104, 105 and 107 and Part 2 of the RMA, we have determined these resource consents be **refused** for the reasons set out above



Greg Hill  
Chairperson

30 November 2017