

## DECISION ON SHELLY BAY ROAD UPGRADE OPTIONS FOLLOWING COMMUNITY ENGAGEMENT

### Kōrero taunaki | Summary of considerations

#### Purpose

1. This report to Te Kaunihera o Pōneke | Council provides an overview of the Shelly Bay Road engagement results and potential options for an upgrade of Shelly Bay Road between Miramar Avenue and Shelly Bay. This follows the resolutions of Council at the meetings of 27 September 2017 (Resolution 'X') and 11 November 2020.
2. This report also seeks direction from Council on an officer recommended approach and provides other options for consideration.

#### Strategic alignment with community wellbeing outcomes and priority areas

Aligns with the following strategies and priority areas:

- Sustainable, natural eco city
- People friendly, compact, safe and accessible capital city
- Innovative, inclusive and creative city
- Dynamic and sustainable economy

#### Strategic alignment with priority objective areas from Long-term Plan 2021–2031

- Functioning, resilient and reliable three waters infrastructure
- Affordable, resilient and safe place to live
- Safe, resilient and reliable core transport infrastructure network
- Fit-for-purpose community, creative and cultural spaces
- Accelerating zero-carbon and waste-free transition
- Strong partnerships with mana whenua

#### Relevant Previous decisions

Resolutions of Council at the meetings of 27 September 2017 (Resolution 'X') and 11 November 2020.

#### Significance

The decision is **rated medium significance** in accordance with schedule 1 of the Council's Significance and Engagement Policy. This project meets the 'medium significance' assessment criteria as assessed in accordance with Council's Significance and Engagement Policy:

**Important to Wellington City** –the road is important to residents, recreation groups, cyclists, and walkers, and is a coastal link between Miramar and Seatoun. However, irrespective of whether Council resolves to upgrade the road or to continue with the consented design, there will not be a significant alteration in the level of service. This decision can also be reversed by a future council.

**Community interest** – there is high interest in the Shelly Bay development. There is also high interest in protecting the environment and coastal areas for recreation, swimming, and

fishing.

**Consistency with existing policy and strategy** – this section of road would not be deemed a priority road for upgrade if not for the Council resolution. However, Te Motu Kairangi is an important recreational area for the city and region and enabling active transport modes is a priority for Council.

**Impact on Council capacity and capability** –\$2.4m capex funding is currently set aside in the Long-term Plan. Any additional funding required will need to be brought back for consideration and decision by Councillors.

### Financial considerations

Nil       Budgetary provision in Annual Plan / Long-term Plan       Unbudgeted \$X

3. \$2.4m capex funding is currently set aside in the Long-term Plan.

### Risk

Low       Medium       High       Extreme

4. The decision is **rated medium significance** in accordance with schedule 1 of the Council's Significance and Engagement Policy.
5. The decision also introduces commercial and legal risks that require consideration, as outlined in greater detail below.

Authors	Alastair Meehan, Development Manager Phil Becker, Manager Build Wellington
Authoriser	Liam Hodgetts, Chief Planning Officer

## **Taunakitanga | Officers' Recommendations**

Officers recommend the following motion

That Te Kaunihera o Pōneke | Council:

- 1) **Receive** the information.
- 2) **Note** that the Developer has been granted a resource consent for the development which includes a requirement to upgrade Shelly Bay Road in accordance with a particular design (the "consented design"). This is the design that will be implemented unless Council determines to do further upgrade works.
- 3) **Note** that officers have investigated the upgrade of Shelly Bay Road, including undertaking key stakeholder engagement, in accordance with the resolution of Council at the meeting of 27 September 2017 (Resolution 'X').
- 4) **Note** that the public engagement shows strong community support for a Shelly Bay Road upgrade which provides a higher level of service for walkers and cyclists than is provided for under the consented design.
- 5) **Note** that upgrade options are impacted by the physical constraints of Shelly Bay Road, and that Council has contractual requirements under the Development Agreement (DA) which require any roading upgrade works to be completed in accordance with an agreed programme.
- 6) **Note** that any upgrade options which meet Waka Kotahi design guidance will require significant planning and lead in times. Due to WCC's contractual obligations under the DA, options that meet this requirement will likely only be able to be physically implemented after the consented design has been completed.
- 7) **Note** the high level initial cost estimates for a design that meets both the Waka Kotahi guidelines and the aspirations of the Great Harbour Way range from \$13.6m up to \$30.4m<sup>1</sup>.
- 8) **Agree** that either:
  - a. The Shelly Bay Road upgrade will be limited to the work undertaken by the Developer to deliver the consented design, plus any localised upgrades as described elsewhere in this report (if agreed by Council). No further work to explore the long-term opportunities to better align the road with Waka Kotahi guidance will be undertaken at this time. This is the recommended option; or
  - b. Officers will further explore the long-term opportunities to upgrade Shelly Bay Road in such a way that will enable the road to meet Waka Kotahi design guidance (as a minimum) and the Great Harbour Way plan (as an aspiration), noting that:
    - (i) No opex costs have been set aside for this work;
    - (ii) Given lead in times, these opportunities will not be able to be implemented until after their consented design has been delivered; and
    - (iii) As no budget (other than the initial \$2.4m capex) is included for any of these options in the long term plan, all

<sup>1</sup> See Table 1 below in Clause 52 below.

options would be subject to future Council decision making processes.

- 9) **Note** that, given the constraints identified and the levels of community interest in achieving a higher level of service, officers have also investigated how to improve the level of service for active mode users (beyond that provided by the consented design), without delivering a shared path that meets Waka Kotahi design guidance. This has included consideration of the process by which any such change could be delivered.
- 10) **Agree** that officers will progress localised upgrades to the consented design in accordance with the discussion contained below.

### **Whakarāpopoto | Executive Summary**

6. In response to resolutions from Council in 2017 (Resolution 'X') and 2020, officers have been investigating opportunities to upgrade Shelly Bay Road. This has included public and key stakeholder engagement.
7. The community feedback resulting from the engagement highlighted a strong desire to improve the level of service of Shelly Bay Road for active modes. Safety for walkers and cyclists was identified as a key outcome sought, with many submissions identifying that any design solution should meet Waka Kotahi design standards as a minimum.
8. Officers have also engaged technical advice from Tonkin + Taylor, which explored options more closely aligned to Waka Kotahi New Zealand Transport Agency (Waka Kotahi) guidance as a minimum and the Great Harbour Way (GHW) plan as an aspiration.
9. For reasons outlined within the discussion below, there are no options that can meet the minimum Waka Kotahi design standards and that can be delivered within the timeframes specified in the DA. Any upgrade works capable of meeting Waka Kotahi design guidance would need to be delivered after the completion of the Developer's consented road upgrade works.
10. Given the anticipated cost, lack of funding currently available, the timing implications, and the other rationale set out in this report, Officers do not recommend that Council further explores an upgrade that better aligns with Waka Kotahi guidelines at this time.
11. Alternatively, and noting the strong community feedback received, it is open to Council to commit to investigating a roading upgrade that would enable Shelly Bay Road to meet the Waka Kotahi standards. This would also require significant planning (i.e. an Indicative Business Case or similar) and design work, with long lead in times. No funding has been set aside to do this work and this would be subject to future decision making processes.
12. Officers have also explored opportunities to make improvements to Shelly Bay Road that can likely be achieved more quickly and at a relatively low cost, even if these opportunities do not meet the Waka Kotahi guidelines (the "other options").
13. Officers have commissioned T+T to prepare a feasibility assessment which considers how much space is available within the existing roading corridor for any "other" road and amenity upgrade improvements. It is anticipated that this option could include localised areas capable of accommodating a wider path, seating and pause points<sup>2</sup>

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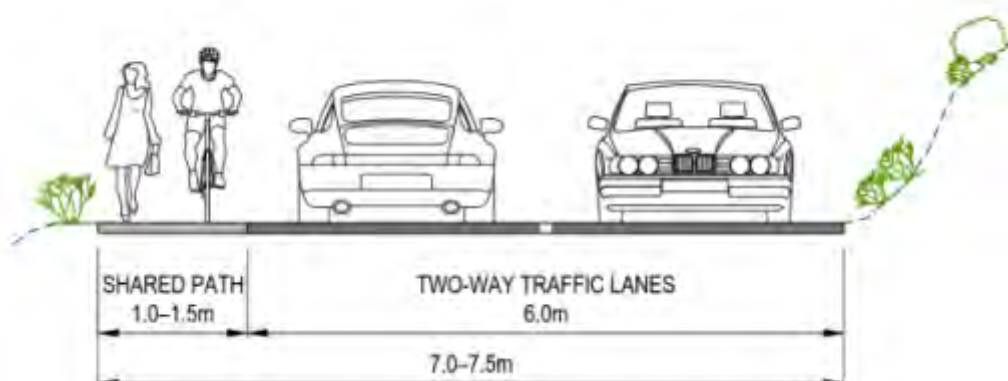
<sup>2</sup> Areas in the shared path design to accommodate users stopping (e.g. seating, lookouts)

and/or planting. The existing \$2.4m capex funding could be used to implement these improvements.

14. To manage risk, officers recommend that any solution that seeks to improve or raise the level of service of the path be advanced by WCC following the completion of the Developer's consented option.

### **Takenga mai | Background**

15. Shelly Bay Road is a narrow, coastal road around 2.4km in length. The existing topography constrains the road corridor, with steep slopes on the landward side and the coastal marine area on the other side. There is a footpath on the western side of the road from the intersection with Miramar Avenue/Cobham Drive for a length of approximately 450m. Beyond this, there are currently no provisions for pedestrians or cyclists. The road has an average width of 6 - 7m. The road and coastal environment attract a number of walkers, dog walkers and cyclists, as well as recreational fishers.
16. The Shelly Bay development is a \$500 million development on the western edge of Miramar peninsula being undertaken by Shelly Bay Taikuru Limited, in partnership with the Port Nicholson Block Settlement Trust (PNBST), Tai Kuru Limited Partnership (TKLP) and Taranaki Whānui Limited (TWL).
17. In 2017, resource consent was granted to The Wellington Company Limited, including the requirement to upgrade Shelly Bay Road. This consent was subject to a judicial review in which the Court of Appeal directed the council to quash its decision and reconsider the application. Consent was once again granted in October 2019 by a panel of independent commissioners.
18. The resource consent granted to The Wellington Company Limited includes a requirement to upgrade Shelly Bay Road (the "consented design"). This includes a minimum 6m carriageway (2 x 3m wide traffic lanes) and a 1 to 1.5m wide shared path, as shown in **Figure 1** below:



*Figure 1: The consented design*

19. In September 2017 Council requested (Resolution 'x') that officers:

*“further investigate, including key stakeholder engagement, the upgrade of Shelly Bay Road between Miramar Avenue and Shelly Bay, comprising options that more closely align to New Zealand Transport Agency guidance as a minimum and the*

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*Great Harbour Way plan as an aspiration, which aims to deliver a safer and more inviting environment for walkers, cyclist and other users”.*

20. This has involved commissioning technical advice to inform an options assessment, and a stakeholder and community engagement process. The results of these respective work packages are provided in this report's subsequent sections. This report is being provided in satisfaction of the requests contained within the Resolutions dated 27 September 2017 (Resolution 'X') and 11 November 2020.
21. From 2017 through to March 2021, the Council has been involved in or impacted by several legal proceedings related to the Shelly Bay development. Additionally, since November 2020 the Council has been in negotiations to conclude the DA.
22. In December 2021 Council entered into a DA with the Developer which introduces various obligations upon WCC in relation to the timing of any roading upgrades. These are discussed further in the sections below.
23. Under this DA, Council's contribution to the estimated \$20 million joint infrastructure fund relating to the ISPA works<sup>3</sup> for the development is currently capped at \$10 million with responsibility for any costs above the \$20m fund cap falling to the Developer. Any further works contemplated beyond the resource consent requirements (for the road upgrade) would be at Council's cost.
24. In early 2021, the Innovating Streets project investigated the feasibility of changes to Massey Road (one way option), from Shelly Bay to Scorching Bay. This work is not currently being progressed.

## **Kōrerorero | Discussion**

### ***Consented Design***

25. Resource consent for the development was granted in 2019 by a panel of independent commissioners. This includes a requirement that the road be upgraded to align with the consented design, including a shared path with a variable width (between 1 – 1.5m). A typical cross section aligned with the Developers consented design is shown in **Figure 2** below.

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<sup>3</sup> ISPA works include the infrastructure works, seawall works, public realm works and the road realignment works

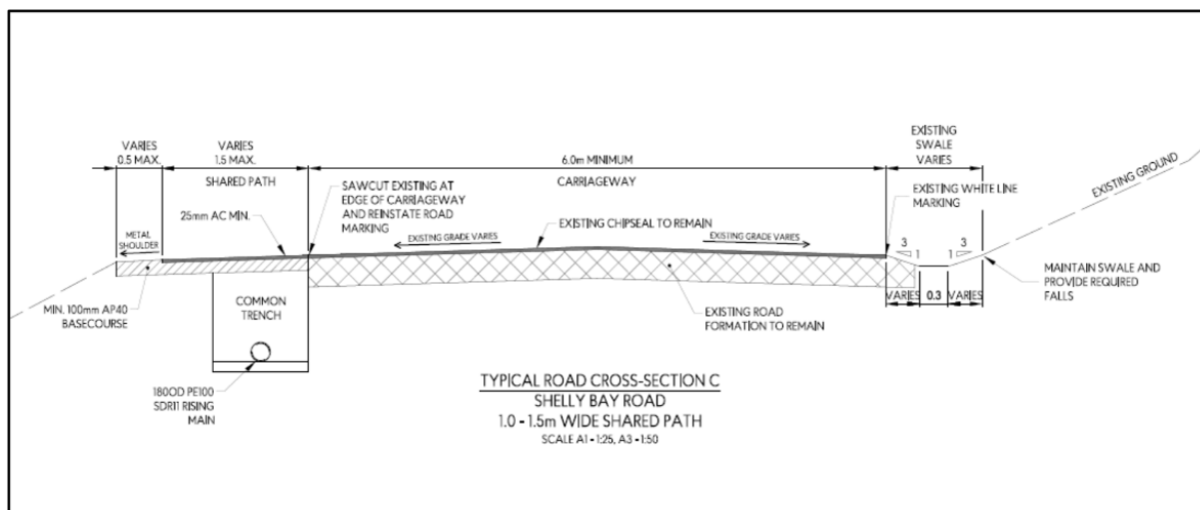


Figure 2: Typical cross section for the Developers consented option

26. There has been significant public criticism about the consented design, in particular regarding possible safety issues for walkers and cyclists. In 2020, Enterprise Miramar Peninsula Incorporated brought judicial review proceedings, challenging the Panel's decision granting resource consents on the basis of transportation effects and roading infrastructure. These two grounds for review were both declined by the High Court which found:

- The Panel had sufficient probative evidence before it to reach the conclusion that the transportation effects were no more than minor; and
- The Panel also had sufficient evidence before it from which it could reasonably conclude that there would be sufficient and appropriate roading infrastructure to support the development.

While the High Court's decision did not involve a review of the merits of the Panel's decision itself, it does provide some independent confirmation that the Panel's decision making process was sufficiently robust on the totality of the available evidence.

27. The consented design does not comply with the Council's Code of Practice for Land Development. This was also dealt with in the 2020 Judicial review. The judgement refers to the affidavit evidence of Council's expert Mr. Steve Spence and states:

*"Mr Spence explained that the Code of Practice is a guide for development and subdivision in Wellington, which includes technical standards for the construction of subdivisions, including roading design and construction. He explained the Code of Practice is applied flexibly, particularly in the context of upgrades of existing road networks (rather than the construction of "green fields" developments)."*

The judgement also stated:

*"In relation to the Code of Practice, I again note that it is applied flexibly, especially in the context of upgrades to existing infrastructure, and its standards are unrealistic for most Wellington roads."*

28. The Developer has substantially progressed its detailed design for the public realm infrastructure works (including the design of the road and shared path, based upon the consented design). These designs have been provided to WCC's regulatory team for certification.

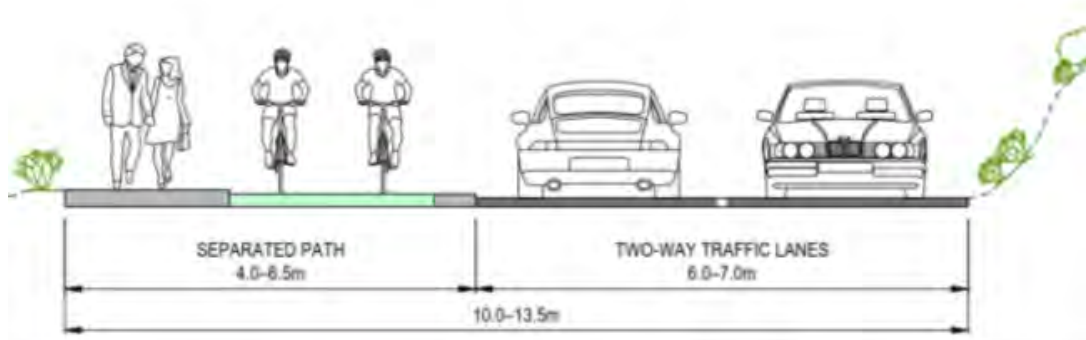
29. The consented design has been included in the MCA as the base level design, to reflect the fact that this is the design that will be implemented if the Council does not proceed with a further roading upgrade.

***Engagement overview and results***

30. Resolution 'X' requested that officers engage with key Shelly Bay stakeholders. From 2017 to March 2021 the Shelly Bay development was subject to several legal proceedings which made engagement on the road impracticable. Additionally, from November 2020, the Council was in negotiations to conclude the Development Agreement (DA) which was finally agreed in December 2021.
31. This informed the timing of the engagement, noting that the signing of the DA was the point at which a deal between WCC and the Developer was formally executed. There was also limited value in progressing with any engagement prior to the DA being agreed, given it contains timeframes and commitments from the Council, which were directly relevant to the engagement process.
32. Mana Whenua also requested that Council not start engagement on the road upgrade until the DA was completed and signed which aligned with officer's recommendations about the timing of the engagement.
33. In March 2022 Council brought together a number of stakeholder organisations to form a community advisory group. Members attended two workshops with Mana Whenua, Council staff, Tonkin + Taylor and Wellington Company representatives to review the possible options, ask questions of technical experts, and share their views on what is important to their communities. The basis of the discussions was a draft short-list of options which were compiled from the July 2020 report (as described in the section below).
34. Representatives from the following organisations attended one or more workshops:
- a) Port Nicholson Block Settlement Trust;
  - b) Miramar Residents Association;
  - c) Enterprise Miramar Peninsula Inc;
  - d) The Wellington Company Ltd;
  - e) Cycle Wellington;
  - f) Living Streets;
  - g) Places for Penguins (Forest & Bird);
  - h) Nuku Ora (Sport Wellington); and
  - i) Great Harbour Way Trust.
35. A four-week public engagement process was initiated on April 29th, closing on May 27th. An interactive web page was designed, showing real-time comments from the submitters and submission statistics. Further details on the process and the themes that came up is contained in the Shelly Bay Road Engagement Feedback summary (June 2022), at Appendix 2. A total of 332 submissions were received during the four-week period.
36. Information was made available to the public on a range of issues that are applicable to the Shelly Bay environment, including:



- a) Coastal assessment.
  - b) Range of road layout options.
  - c) Preliminary slope hazards.
  - d) Constraints mapping of the road.
  - e) Additional links to Shelly Bay Development information.
37. Council used online channels and multiple posts were made through all Council social media channels, including Facebook, Twitter and LinkedIn. Articles were published in weekly e-newsletters (which also go to the resident's associations). Members of the advisory group were also asked to promote the engagement opportunity through their channels.
38. In order to seek further feedback from the community and stakeholders, Council released the Upgrade Options Assessment Report, prepared by Tonkin and Taylor, in June 2022. The report was posted to the Council transport website, as well as sent to stakeholder groups. In addition, the period for feedback was extended to 11 August to allow the community an opportunity to review and comment on the report. All those who had made submissions were notified via email of this extension and invited to provide further feedback. No further feedback was received.
39. Further details on the methodology and the themes that came up are contained in the Shelly Bay Road Engagement Feedback summary, in Appendix 2.
40. The community feedback resulting from the engagement highlighted a strong desire to improve the level of service of Shelly Bay Road for active modes. Safety for walkers and cyclists was identified as a key outcome sought, with many submissions identifying that any design solution should meet Waka Kotahi design standards as a minimum. There is a high degree of community support for a design that provides facilities akin to those shown in **Figure 3** below - namely, a separated path for pedestrians, a separated path for cyclists and two-way traffic flow for vehicles.



*Figure 3: Indicative view of an option aligned with community feedback*

### **Options Assessment Process**

41. In order to give effect to 'Resolution X' from 2017, officers also engaged technical advice from Tonkin + Taylor in 2020, which explored options more closely aligned to Waka Kotahi New Zealand Transport Agency (Waka Kotahi) guidance as a minimum and the Great Harbour Way (GHW) plan as an aspiration.

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42. Through this process, a long list of 19 options was identified for upgrading Shelly Bay Road. As per the Council resolution only options that met Waka Kotahi minimum standards were considered as a basis for identifying the long list.
43. Since the first T+T report was written in July 2020, the options assessment process has been progressed. The initial report outlined a long list of options to upgrade the road. This long-list of options has been refined down to a short list of options through a series of workshops with officers, a community advisory group for the project, and a resulting Multi-Criteria Analysis (MCA). The details of this MCA process are outlined within Appendix 1.
44. This short-list, which filtered out options from the initial longlist that did not achieve the project objectives, was available to submitters during the engagement phase.
45. The following facilities (physical features) were considered for pedestrians and cyclists on Shelly Bay Road:
- a) **Footpath and cycle lanes:** This option includes a footpath for pedestrians and on-road cycle lanes for cyclists. Cycle lanes are located on both sides of the road and delineated from motor vehicles by road markings, with the opportunity to provide protection through narrow separators, such as bollards.
  - b) **Separated path:** This option includes a separated path that provides designated areas for pedestrians and cyclists. Separated paths are physically protected from motor vehicles by safety barriers and/or grade separations.
  - c) **Shared path:** This option includes a shared path that provides shared space for pedestrians and cyclists. Shared paths are physically separated from motor vehicles.
  - d) **Footpath only:** This option includes a footpath for pedestrians and no cycle-only infrastructure. Cyclists would be required to share the traffic lane with motor vehicles.
  - e) **No walking/cycling facilities:** This option does not include any facilities for pedestrians or cyclists. Pedestrians and cyclists would be required to navigate road shoulders and share the corridor space with motor traffic
46. The following facilities (physical features) were considered for motor vehicle traffic on Shelly Bay Road:
- a) **Two traffic lanes:** This option includes two traffic lanes that accommodate two-way motor vehicle traffic at all times.
  - b) **Two traffic lanes (time restricted):** This option includes two traffic lanes that are restricted to use by certain road users depending on the time of day and/or the day of the week. At times, the traffic lanes would allow for two-way motor vehicle traffic, while at other times motor vehicles would be restricted and the lanes would be available for use by active transport modes.
  - c) **Two traffic lanes (local one-way controls):** This option typically provides two traffic lanes that accommodate two-way motor vehicle traffic. At localised sections, only a single traffic lane is provided, and one-way controls are required, such as Give Way signage or traffic signals.

- d) **One traffic lane (northbound or southbound flow):** This option includes one traffic lane for one-way motor vehicle traffic at all times. The traffic flow may be in the northbound or southbound direction (not selected at the long list stage).
  - e) **One traffic lane (tidal flow):** This option includes one traffic lane for the tidal flow of motor vehicles. The tidal flow would allow traffic to travel in one direction at times and in the opposite direction at other times.
  - f) **No traffic lanes:** This option does not include any facilities for motor vehicle traffic at any time. Motor vehicles would be required to use an alternative route.
47. The list of short-listed options was further categorised by T+T as follows:
- a) Category 1: Options that fit within the existing corridor width
  - b) Category 2: Options requiring a wider corridor – up to 12.0m
  - c) Category 3: Options requiring a wider corridor – up to 15m

*Options requiring widening of the road corridor*

48. As outlined in Appendix 1, any option that would require significant widening of the road corridor (i.e., Category 2 or 3) would significantly affect the delivery timeframes due to increased consent requirements and design complexity compared to the consented design works. It is unlikely that any such option could be implemented in time to meet the timeframes required under the resource consent and DA.

*One-way option within the road corridor*

49. The Developer has obligations under its resource consent to deliver a roading upgrade aligned with the consented design. This includes a two-way road design with a minimum width of 6m. Under the DA, any further upgrade undertaken by council must, as a minimum, deliver upon this consented design. Any option not meeting the requirements of the minimum consented design road (for example, only one traffic lane instead of two) would likely need to go through a further consenting process led by the developer. This is consistent with the assessment contained within T+T's options assessment<sup>4</sup>. Accordingly, it is not reasonably practicable to implement a one-way system in the short-term. This option remains available to council (as the Road Controlling Authority) at a later date, following delivery of the Developers consented design.
50. Any upgrade capable of meeting Waka Kotahi design standards would involve a substantial capital outlay. Cost estimates are included in Table 1 below. With the exception of the \$2.4m in capex discussed elsewhere in this report, there is no funding currently allocated towards any such roading upgrade under the LTP and therefore would be subject to further decision-making processes.
51. For these reasons, there are no options that meet the minimum Waka Kotahi design standards, and that can be delivered within the timeframes and requirements specified in the DA. While Council has the option to proceed with an option that meets the minimum Waka Kotahi standards, any such option would require either significant road widening or a reconfiguration of the existing road layout (i.e. a one-way roading environment) and would therefore require a relatively long lead-in time or place council in breach of its obligations under the DA. As such, any design would need to be

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<sup>4</sup> See Section 4.6.2.1 of the 2022 T+T Report

delivered after the Developer had implemented their consented design works. This could require redoing works in this road corridor.

52. Given the strong community feedback received however, Council may wish to commit to a fulsome assessment of a roading upgrade that would enable Shelly Bay Road to meet the Waka Kotahi standards (i.e. via an Indicative Business Case or similar). This will have cost implications that have not currently been budgeted for under the LTP and would be subject to further decision making processes.
53. Indicative cost estimates for a design which meets Waka Kotahi design guidance and Great Harbour Way aspirations, and involves widening of the existing corridor, is provided in Table 1 below. These are early estimates that could remain subject to change should a design process be further progressed:

*Table 1: Cost estimates (Source: T+T Options Assessment Report dated June 2022)*

Option	Indicative cost range		
	Base estimate	Expected estimate	Project estimate 95 <sup>th</sup> percentile
<b>Option 2A/2C (Great Harbour Way aspiration)</b>	<b>\$13.6-\$21.7m</b>	<b>\$16.3-\$26.0m</b>	<b>\$19.0-\$30.4m</b>

54. The consented design has been through a regulatory decision-making process which considered the level of safety for users. Any future design iteration within the corridor to meet Waka Kotahi design standards would consider safety for users. Whilst this has not yet been undertaken, it is anticipated that any option complying with Waka Kotahi design standards will improve the level of safety for end users.

**Other options (outside of Waka Kotahi guidelines)**

55. Given the discussion above, officers have also explored opportunities to make improvements to Shelly Bay Road that can likely be achieved more quickly and at a relatively low cost, even if these opportunities do not meet the Waka Kotahi guidelines (the “other options”). These opportunities were outlined (at a high level) on the Shelly Bay engagement page<sup>5</sup> and included sections of the road identified as having more space to deliver improvements. It is anticipated that these areas could accommodate a wider path, seating and pause points<sup>6</sup> and/or planting.
56. Officers have commissioned T+T to prepare a feasibility assessment which considers how much space is available within the existing roading corridor for any other road upgrade option. This information can be used to inform the design of an upgrade to Shelly Bay Road which is capable of being implemented more quickly than any option which would meet the Waka Kotahi design guidelines, noting the various constraints identified in the discussion above. This feasibility assessment will be received by officers shortly and will identify the nature, location and scale of these opportunities.

<sup>5</sup> See <https://www.transportprojects.org.nz/current/shelly-bay-road/the-opportunities/>

<sup>6</sup> Areas in the shared path design to accommodate users stopping (e.g. seating, lookouts)

57. The feasibility assessment will not provide concept and/or detailed designs; however, it will identify areas on Shelly Bay Road where there is scope to integrate various features into the shared path, including:

- a) variable path widths (i.e. wider than 1-1.5m);
- b) additional traffic calming measures;
- c) seating and improved access to the coastal marine area;
- d) cultural and historic narrative displays; and/or
- e) planting and wayfinding signage.

**Figure 4** gives an indication of what these potential design interventions may include, noting that this remains subject to a further design process.



*Figure 4: Images showing the nature of potential design interventions. Clockwise from the top left shows; (1) traffic calming measures (speed humps and road narrowing); (2) seating and planting; (3) planting and path markings; and (4) physical separation of a path from the road.*

58. The integration of these features into the Shelly Bay shared path would need to progress through a separate design process. Officers expect that the opportunities to integrate these features into the Developer’s consented design will be primarily located within areas of the Shelly Bay road corridor with more space available. These were referred to as “opportunity areas” during the recent engagement process, and are indicatively shown in **Figure 5** below:



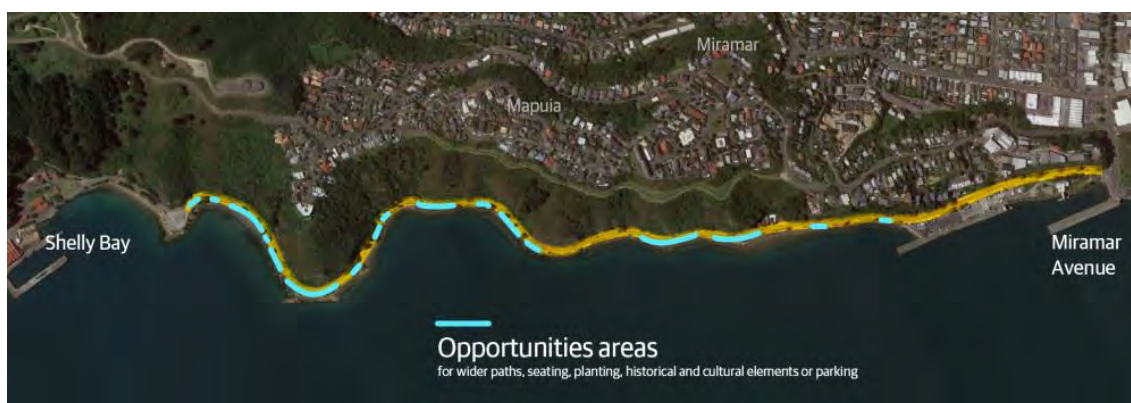


Figure 5: Image showing the "opportunity areas" for possible further design interventions

59. In light of this, officers have considered the process by which these design changes could be given effect, and identified some key risks that must be given appropriate consideration. These risks are identified below.

#### **Delivery of other option(s)**

60. As per the KCTs agreed to by Council in November 2020, the DA includes specific processes whereby WCC can elect to either :
- a) Deliver the upgrade to Shelly Bay Road in place of the Developer, provided certain requirements and timeframes are achieved; or
  - b) Seek variations/upgrades to any of the infrastructure works (at its cost) in certain circumstances.
61. Although Council has the opportunity to undertake these works themselves, or to request a variation through the DA so that they are undertaken by the developer, this is not recommended. Doing so introduces legal and commercial risks whilst also putting significant strain on the team's resources.
62. Exercising its rights to undertake these works directly would require WCC to deliver the roading upgrades in accordance with the the timeframes and conditions specified in the DA. If WCC cannot deliver the roading upgrade per those requirements, WCC risks liability to the developer under the DA, which could be significant.
63. Instead, given the relatively limited scale of any localised changes, it is recommended that any solution that seeks to raise the level of service of the path be advanced by WCC following the completion of the Developer's consented option.
64. Given that a design has not yet been advanced, the costs for such an option are currently unknown. However, \$2.4m CAPEX funding is currently set aside in the LTP. Any additional funding required will need to be brought back for consideration and decision by Councillors.

#### **Discussion on the bus depot being proposed adjacent to Burnham Wharf**

65. Council has received a resource consent application from NZ Bus to construct and operate a bus depot facility on privately owned land at 19 and 25 Shelly Bay Road, adjacent to the Burnham Wharf.
66. The resource consent application is being considered under Council's usual regulatory decision-making role. A decision on the application has not been made.

67. It should be noted from the outset that the Shelly Bay development has obtained the necessary resource consent approvals. This includes a requirement to upgrade Shelly Bay Road in accordance with the consented design, which is the design that will be implemented unless Council determines to undertake further upgrade works (as described earlier in this report). As such, this design forms part of the “existing environment” to which consideration will be given in assessing the bus depot application.
68. As part of the regulatory decision-making process, the applicant for the bus depot will be required to consider and assess the effects upon the existing environment resulting from its proposal (including upon the Shelly Bay Roothing upgrade). This remains subject to a regulatory decision-making process and is beyond the scope of this report.

### **Kōwhiringa | Options**

69. **Options in relation to the 2017 resolution requiring options that more closely align with the Waka Kotahi guidelines**
- A. Further investigate roading upgrades that will enable the road to meet Waka Kotahi design guidance (as a minimum). This would require further investigation (i.e. a detailed feasibility assessment / business case etc) and could be funded by either the reallocation of existing funding within the current financial year (if available) or by seeking funding through the Annual Plan or LTP process.
- Officers would revert back to Council once these further investigations are complete, and the project would then be subject to decision-making processes in a future LTP.
- Given this timing and the requirements of the DA, the implementation of an upgrade that met these standards would not be able to be implemented prior to the consented design, and may require road works done as part of the consented design to be removed and redone to the upgraded standard.
- B. Determine not to further investigate roading options to meet the Waka Kotahi guidelines. This would mean that the Shelly Bay Road upgrade will be limited to the work undertaken by the Developer to deliver the consented design, plus any localised upgrades as described elsewhere in this report (if agreed by Council). No further work to explore the long-term opportunities described in (65)(a) will be undertaken at this time.
70. **Other options for roading improvements:**
- C. Do nothing and accept the consented option represents the final solution for Shelly Bay Road; or
- D. Instruct officers to advance a design process for minor upgrades to Shelly Bay Road that are confined by the existing roading environment and uses the existing capex budget of \$2.4m that already exists in the LTP. Under this option, construction would not commence until the Developer has completed the consented option.
- 71.

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## **Whai whakaaro ki ngā whakataunga | Considerations for decision-making**

### **Alignment with Council's strategies and policies**

72. Officers have considered the alignment of the proposed Shelly Bay Road upgrades with Council's strategies and policies, including:
  - a) Te Atakura – First to Zero;
  - b) Paneke Pōneke – Bike Network Plan; and
  - c) Great Harbour Way / Te Aranui o Pōneke.
73. Te Atakura – First to Zero is a policy adopted by WCC in June 2019 to make Wellington City a zero-carbon capital by 2050. Under the policy, transport has been identified as one of the main initiative areas to reduce Wellington's greenhouse gas emissions. Therefore, the policy is relevant to any changes being made to Wellington's road network.
74. Paneke Pōneke – Bike Network Plan is a policy adopted by WCC in March 2022 which sets out the Council's approach to creating a safe, connected and high-quality network of cycling routes around the city. Shelly Bay Road is classified as a Secondary Route, providing a collector function within the wider network. This plan identifies that there is a strong demand for better bike lanes, and that poorly designed or maintained cycleways presents a barrier to cycling uptake. It identifies that WCC will take account of current design guidance when planning improvements to the network.
75. Great Harbour Way / Te Aranui o Pōneke is a vision for a walking and cycling route around Te Whanganui-a-tara, the harbour of Wellington, New Zealand, from Ōruapouanui /Baring Head in the east, to Te Rimurapa / Sinclair Head in the west. It identifies that its vision is to provide a safe continuous walking and cycling route for both transport and recreation, which is predominantly designed to accommodate a continuous 2-way path.
76. Shelly Bay Road is subject to substantial constraints which makes the realisation of a shared path which is fully aligned with these aspirations challenging in the short-term. Full alignment with these strategies and policies would likely require Council to commit to an investigation into a comprehensive upgrade of Shelly Bay Road. This option is described above.
77. Officers have also recommended that Council advance the design of another upgrade which, while not fully aligned with the level of service anticipated within the strategies and policies identified above, will nonetheless raise the level of service for users when compared with what could otherwise be expected along the Shelly Bay Road corridor.

### **Implications for Māori**

78. Shelly Bay and Te Motu Kairangi are of great significance to mana whenua. Taranaki Whānui people lived in Shelly Bay until 1835 and have strong cultural connections to the harbour and peninsula. As guardians of the area's natural, historical and cultural dimensions, we use mana whenua's cultural and historical values and perspectives to assess the options for the road.



79. Port Nicholson Block Settlement Trust attended the community advisory group workshops (as a strategic relationship partner), and shared cultural and historical values for the area. This narrative has informed other coastal projects around Wellington, such as Tupua Horo Nuku (Eastern Bays Shared Pathway) and Te Ara Tupua (Ngauranga to Petone cycleway) and was discussed at the workshops with stakeholders.
80. Mana whenua were encouraged to promote the engagement through the Council's Māori newsletter and wider channels.

### **Financial implications**

81. The long-term plan has currently allocated \$2.4m CAPEX funding to deliver the roading options. Any additional funding required will need to be brought back for consideration and will be at the discretion of the Councillors.
82. Further upgrades to Shelly Bay Road that will enable the road to meet Waka Kotahi design guidance will have cost implications that have not currently been budgeted for under the LTP. Indicative cost estimates have been provided above.

### **Legal considerations**

83. There is significant community interest in the Shelly Bay development which to date has been the subject of two judicial reviews, and an appeal. One judicial review (in 2020) focused on the roading infrastructure and transportation effects. The High Court found that:
  - a) The Panel of independent commissioners had sufficient probative evidence before it to reach the conclusion that the transportation effects were no more than minor; and
  - b) The Panel also had sufficient evidence before it from which it could reasonably conclude that there would be sufficient and appropriate roading infrastructure to support the development.
84. While the High Court's decision did not involve a review of the merits of the Panel's decision itself, it does provide some independent confirmation that the Panel's decision making process was sufficiently robust on the totality of the then available evidence.
85. In making this decision Council will be exercising its powers as a road controlling authority. These statutory powers and duties are largely governed by the Local Government Act 1974 and involve a mixture of property rights, infrastructure implementation, and in some instances, regulatory powers. This includes a general provision (s353 ) requiring Councils to take all sufficient precautions for the general safety of the public, traffic and workmen employed on or near any road.

### **Risks and mitigations**

86. The overall risk for the road upgrade has been assessed as medium.

### **Disability and accessibility impact**

87. This project has been discussed with WCC's Senior Accessibility Advisor. Any upgrade to Shelly Bay Road will consider accessibility-related matters during the design stage.

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### **Climate Change impact and considerations**

88. The Coastal Assessment report prepared by Tonkin + Taylor outlines the impact on this coastline. Once Council has made a decision on the options available, Council's Climate Change team will be consulted on future impacts as part of any subsequent design process.

### **Communications Plan**

89. Following the Council meeting, an update will be posted on the Shelly Bay project page on the Council website, along with the information that was made publicly available during the engagement process.

### **Health and Safety Impact considered**

90. None at present

### **Ngā mahinga e whai ake nei | Next actions**

91. Subject to Council's decision regarding the long-term opportunities to upgrade Shelly Bay Road in such a way that will enable the road to meet Waka Kotahi design guidance, officers will either:
- a) Commence the required investigation works; or
  - b) Do no further investigation works.
92. If the recommendations regarding the localised roading upgrades are accepted, officers will inform the Developer of Council's decision, and work to progress the necessary design work. This will enable the Developer to commence construction of the consented design (subject to obtaining any outstanding approvals).

### **Attachments**

- |               |   |          |
|---------------|---|----------|
| Attachment 1. | Shelly Bay Road Upgrades: Options Assessment Report <a href="#">↓</a>  | Page 29  |
| Attachment 2. | Shelly Bay Road Engagement Feedback <a href="#">↓</a>                    | Page 217 |