IN THE SUMMARY COURT OF THE CAYMAN ISLANDS

REGINA

v

BAER DEVELOPMENT LTD
CASE NUMBERS
003017/2020 and 00251/2022

Before:	**Hon Magistrate McFarlane**
Appearances:	**Mr Paul Keeble for the Defendant** **Ms Sarah Lewis for the Prosecution**
Hearing Dates:	**6, 7 and 8 September 2022; 9 and 10 January 2023 and 2 May 2023**
Closing Submissions:	**2 May 2023**
Verdict Circulated:	**25 August 2023**

VERDICT JUDGMENT

BACKGROUND

1. The Defendant company, a developer of luxury waterfront condominiums in the Cayman Islands, came before me for trial in relation to four allegations brought contrary to the National Conservation Act, 2013 (the "**Act**"). The alleged offences arose from allegations that between 21 February 2020 and 17 December 2021 the Defendant carried out unlicenced[1] coastal works forming part of Block 22E Parcel 199 (the "**Allure site**") by their erection of two seawalls as part of their construction of waterfront condominiums at the end of Tropical Gardens Road ("**Allure**"). The prosecution allege that the Defendant's construction of the sea walls damaged or otherwise disturbed parts of the seabed and disturbed plant growth, and the Defendant thereafter failed to comply with a cease and desist order in relation to the unlicenced disturbance of the seabed.

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[1] The Defendant accepts that it did not have a Coastal Works Permit to carry out the construction of the seawalls.

2. Images of the charges are copied and pasted below.

STATEMENT OF OFFENCE

1) Injuring, mutilating, removing or displacing any underwater plant growth of formation in Cayman Waters without being authorized or permitted to do so: contrary to section 34(h) of the National Conservation Law, 2013

PARTICULARS OF OFFENCE

Baer Development LTD., between the 21st day of February, 2020 and the 28th day of October, 2020, at Block 22E, Parcel 199, Tropical Gardens, George Town, Grand Cayman, did injure, mutilate, remove or displace any underwater plant growth or formation in Cayman Waters without being authorized or permitted to do so by virtue of a permit issued under section 21 of the National Conservation Law 2013.

CRIMINAL PROCEDURE CODE

STATEMENT OF OFFENCE

DEC 23 2020

2) Extracting sand, gravel, pebbles, stone, coral or other such material or otherwise disturbing the seabed of Cayman Waters by mechanical means: contrary to section 34(i) of the National Conservation Law, 2013

PARTICULARS OF OFFENCE

Baer Development LTD., between the 21st day of February, 2020 and the 28th day of October, 2020, at Block 22E, Parcel 199, Tropical Gardens, George Town, Grand Cayman, did extract sand, gravel, pebbles, stone, coral or other such material or otherwise disturb the seabed of Cayman Waters by mechanical means, without being authorized or permitted to do so by virtue of a permit issued under s. 21 of the National Conservation Law (2013 Revision).

STATEMENT OF OFFENCE

3. Failing to comply with a Cease and Desist Order: contrary to section 30(4) of the National Conservation Law 2013.

PARTICULARS OF OFFENCE

Baer Development Ltd, between the 23rd day of June, 2020 and the 28th day of October, 2020, at Block 22E, Parcel 199, Tropical Gardens, George Town, Grand Cayman, did fail to comply with a cease and desist order issued by the Director of the Department of the Environment dated June 23rd, 2020 with respect to all work associated with the unlicensed disturbance of the crown owned seabed at the said location.

SUMMARY COURT CAYMAN ISLANDS

STATEMENT OF OFFENCE

FAILING TO COMPLY WITH A CEASE AND DESIST ORDER contrary to s.30(4) of the National Conservation Act 2013.

PARTICULARS OF OFFENCE

Baer Development Ltd, between the 23rd day of June 2020 and the 17th day of December 2021, at Block 22E, Parcel 199, Tropical Gardens, George Town, Grand Cayman, did fail to comply with a cease and desist order issued by the Director of the Department of the Environment dated the 23rd day of June 2020, by constructing sections of seawall on Crown owned seabed at or adjacent to the said location.

3. It was agreed that the Defendant's application for a Coastal Works Permit to build a reinforced "*precast block seawall with minimal seabed modification*" in relation to the Allure site was refused on 7 September 2020.

TRIABLE ISSUES

4. The issues for the trial were principally matters of fact. In relation to charges 1 and 2, this court was tasked with considering whether there is evidence that at the Allure site between 21 February 2020 and 28 October 2020:

Charge 1

(a) the water seaward of the high water mark located within 1 – 2 metres of the shoreline at the Allure site is Cayman waters as defined within the Act;

(b) whether there was underwater plant growth in Cayman waters ("**underwater plant growth**");

(c) the underwater plant growth was on Crown owned seabed in Cayman waters located at the Allure site;

(d) the Defendant constructed two reinforced concrete seawalls as part of their construction of Allure (the "**seawalls**");

(e) the seawalls injured, mutilated, removed, or displaced underwater plant growth in Cayman waters; and

(f) if I am satisfied that the underwater plant growth was injured, mutilated, removed, or displaced, whether this was caused or brought about by the Defendant.

Charge 2

(g) the Defendant, in Cayman waters, disturbed the seabed by extracting sand, gravel, pebbles, stone, coral or any such material by mechanical means from the Crown owned seabed.

5. In relation to charges 3 and 4, it is not disputed that a cease and desist order ("**CDO**") was issued by Mr Scott Slaybaugh of the Department of the Environment on 23 June 2020.[2]

6. The wording of the CDO provided, inter alia, that the Defendant should cease and desist from "*all works associated with the unlicensed disturbance of the Crown-owned seabed and construction of seawalls.*"

> In accordance with section 30 (1) (a) of the National Conservation Law, 2013 ('NCL'), you are hereby directed to cease and desist, with immediate effect, all works associated with the unlicensed disturbance of the Crown-owned seabed involving the filling of the seabed and construction of seawalls, from the above-referenced parcel which are in contravention of Section 34 (1) of the NCL.

[2] See paragraph 6 of the Agreed Facts.

7. In these circumstances, the prosecution allege that between 23 June 2020 and 17 December 2021, the CDO was breached by (i) the Defendant's removal of the previously constructed seawalls and fill material, (ii) the Defendant's removal of rockfill from the seabed and (iii) the Defendant's construction and backfill of two new seawalls identified in drone imagery taken on 17 December 2021.

8. Thus, the triable issues in respect of charges 3 and 4 are also mainly factual; whether I am satisfied that there is sufficient evidence that the Defendant carried on the activities alleged in the preceding paragraph, and if I am so satisfied, whether these actions constituted a breach of the CDO, which as I understand it, remained in effect from the time it was issued, and was certainly in force between 23 June 2020 and 17 December 2021.

9. In essence, the prosecution's case in relation to the four allegations against the Defendant is that "*the seawalls and fill were placed on the natural mud, seagrass, and algae bottom on the seabed, damaging the sea grass on the seabed by injuring, mutilating displacing or breaking it. And subsequently, when the seawalls and fill were removed, the seabed was further disturbed by the extraction*."[3]

10. As I understand it, the Defendant denied the charges on the bases that:

    (a) there was no plant growth between 21 February 2020 and 28 October 2020;

    (b) it is unclear whether the alleged offences occurred in "*Cayman waters*" as defined in the Act; and

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3 Taken from paragraph 19 of the Prosecution's Opening Note.

(c) there is any event a lack of clarity in the Act as to the definition of "*seabed*", which ultimately offends against the principle against doubtful penalization.

11. The part of the Defendant's case summarised in subparagraphs (b) and (c) above was made the subject of half-time submissions advanced by Mr Keeble which I rejected on 10 January 2023 for the reasons detailed in paragraphs 18 to 21 below.

12. Although several witnesses[4] were called during the trial, this document will in the interests of brevity focus on my findings of fact as it relates to the allegations.

13. For clarity and the avoidance of any doubt, although Allure was originally located on Block 22E Parcel 199, it was later amended to Block 22E Parcel 527 by Lands and Survey. Thus, any reference in the evidence to Block 22E Parcel 199 or Block 22E Parcel 527 relate to the same piece of land on which Allure was developed and built.

DIRECTIONS

14. I reminded myself of my responsibility to weigh up the evidence and to decide the facts of the case, and that it is entirely a matter for me as the tribunal of fact to decide what evidence is reliable and what evidence is not. In so doing, I may decide to reject some aspects of a witness' evidence and accept other aspects. In the event of conflicts in the evidence, I assessed and came to a decision about how reliable, honest, and accurate each witness is, and in doing so, applied the same standards to each witness called.

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[4] The prosecution called Mark Orr, Scott Slaybaugh, Nathan Dack, Jeremy Olynik, Marco Whittaker, Michael Whiteman, and Tim Allen. The defence called Colin Fawkes and Ray Hydes.

15. I also reminded myself that I do not have to refer to or decide every disputed point that were raised in the trial; only those that are necessary for me to reach my judgment in this matter.

FINDINGS OF FACT

16. Having carefully reviewed the evidence adduced by the prosecution, my findings of fact in relation to each charge are detailed in the paragraphs which follow.

Charge 1

STATEMENT OF OFFENCE

1) Injuring, mutilating, removing or displacing any underwater plant growth of formation in Cayman Waters without being authorized or permitted to do so: contrary to section 34(h) of the National Conservation Law, 2013

PARTICULARS OF OFFENCE

Baer Development LTD., between the 21st day of February, 2020 and the 28th day of October, 2020, at Block 22E, Parcel 199, Tropical Gardens, George Town, Grand Cayman, did injure, mutilate, remove or displace any underwater plant growth or formation in Cayman Waters without being authorized or permitted to do so by virtue of a permit issued under section 21 of the National Conservation Law 2013.

CRIMINAL PROCEDURE CODE

17. Based primarily (but not exclusively) on the evidence of Mark Orr, Scott Slaybaugh and Timothy Austin, I am satisfied so that I am sure that:

(a) On 9 October 2019 the Defendant applied for a Coastal Works Permit ("**CWP**") to fill two areas of the Allure site "*where serious erosion of the marl has occurred* … [with the intention] …*to connect and fill the shoreline where the 2 sections of current Mangrove end, and thereby prevent further erosion by the sea.*"

(b) On 16 January 2020 the Defendant made a second application for a CWP to build a "*re-inforced precast block seawall with minimal seabed modification.*"

(c) On 23 June 2020 the Defendant was issued with a CDO in relation to the Allure site.

(d) The CWP applications were refused by Cabinet on 7 September 2020.

(e) Between 21 February 2020 and 28 October 2020 there existed underwater plant growth including, but not limited to, marine algae and seagrass ("*underwater plant growth*") in Cayman waters beyond the high water mark located within 1 – 2 metres off the shoreline located at Block 22E Parcel 199.

(f) The Allure site boundary did not extend beyond the high water mark ("*boundary between land and sea*"[5]) established by Lands and Survey, thus any seabed beyond this point is Crown property.

(g) The underwater plant growth identified by Mr Austin in his evidence was on Crown owned seabed in Cayman waters located beyond the high water mark at the Allure site.

(h) On a date or dates between 21 February 2020 and 28 October 2020 the Defendant constructed two seawalls and installed rock fill which covered the underwater plant growth on Crown owned seabed without permission.

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5 As explained by Michael Whiteman, Chief Surveyor of the Lands and Survey Development, during his evidence.

(i) On a date or dates between 21 February 2020 and 28 October 2020, the Defendant's construction of two seawalls and filling of Crown owned seabed located at Block 22E Parcel 199 with rock fill injured, mutilated, displaced, or removed the underwater plant growth.

18. As mentioned above in paragraph 11, the issue of whether there is ambiguity in the term "*Cayman waters*" was raised during half time submissions. At the close of the prosecution case, Mr Keeble invited me to dismiss the charges against the Defendant on the primary basis that the prosecution failed to adduce any (or any sufficient) evidence that the alleged offences occurred in "*Cayman waters*" as defined in the Act as the current definition was insufficiently clear. Mr Keeble further contended that with the lack of clarity in the Act as to the definition of "*seabed*", both failures ultimately offends against the principle against doubtful penalization, and as such, the charges against the Defendant should be dismissed.[6] The definition of Cayman waters provided for in section 2 of the Act is copied below.

> "**Cayman waters**" means the inland waters, territorial waters and all other waters in which the Islands has jurisdiction in respect of the protection and preservation of the marine environment under international law;

19. I found Mr Keeble's submissions almost entirely without merit and rejected his submissions on the following bases:

(a) The words "*...all other waters in which the Islands has jurisdiction in respect of the protection and preservation of the marine environment under international law*" should be read disjunctively from the first part of the definition. In other words, the coordinating conjunction in this definition which is "*and*", can be properly

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6 Mr Keeble submitted (which was as I understand it tentatively agreed by Ms Lewis) that if he was right that sections 34 (h) and 34 (i) fail to create penal offences due to ambiguity, the offences of failing to comply with a with a cease and desist order contrary to section 30 (4) of the Act would fall away.

substituted with "*or*". Put another way, I agree with the prosecution's submission that the words "*in which the Islands has jurisdiction in respect of the protection and preservation of the marine environment under international law*" should be read only in conjunction with the preceding words "*all other waters*." Support for this proposition is found in Bennion Bailey and Norbury on Statutory Interpretation ("**Bennion**"), which confirms not only that "*and*" may be used disjunctively as well as conjunctively, but that I am entitled to use common sense when considering which opposing construction of a statutory provision would give proper effect to Parliament's intention.[7]

(b) Reading "*...all other waters in which the Islands has jurisdiction in respect of the protection and preservation of the marine environment under international law*" disjunctively is further supported in the Act's preamble, which provides, *inter alia*, that the Act is intended to give effect to various Conventions including (but not limited to) SPAW and the Climate Change Convention.[8] This expresses Parliament's clear intention that the Cayman Islands has jurisdiction (by virtue of it being a party to or having ratified the relevant international laws) over waters beyond the natural "territory" of Cayman Islands.

(c) It seems to me that reading the definition of Cayman waters conjunctively would not only result in an illogical or absurd interpretation, but it would also bring about an interpretation of that provision which is inconsistent with Parliament's intention.

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7 See [11.7] and [17.11] in the 8th Edition of Bennion.

8 See the definition of "*Conventions*" in the Act: "means the Climate Change Convention, Ramsar, the Migratory Species Convention, the Global Convention, the Regional Convention and SPAW and any amendments and successors to those Conventions."

(d) I also reminded myself of Chief Magistrate Foldats' judgment in *R* v *Feriozzi and Ors* (August 2019) wherein the learned Magistrate made reference to a number of authorities on the issue of statutory interpretation including, but not limited to, *R (On the Application of Quintaville)* v *Secretary of State for Health* [2003] 2 AC 687 and *BDO Cayman Ltd and Ors* v *Governor In Cabinet* [2018 (1) CILR 457], which makes clear that a court should not limit or constrain itself at the first sign of ambiguous or unclear statutory provisions.

(e) However, it is also accepted that where statutory provisions are intended to have penal consequences in the event of breach, these provisions must be clear and free of ambiguity. Any lack of clarity should be given a lenient interpretation and ultimately resolved in the accused's favour.[9] This principle was acknowledged and applied by Smellie CJ (as he then was) in the leading Cayman Islands authority of *Re Hutchinson-Green* [2015 (2) CILR 75].[10]

(f) Ultimately, I was satisfied that there is no ambiguity in the Act as it concerns the definition of Cayman waters or given the lack of a definition of seabed. Whilst it is accepted that the terms "*inland waters*", "*territorial waters*", "*all other waters*", or "*seabed*" are not defined under the Act, it seems to me that I am entitled to apply the plain meaning rule of statutory interpretation, which allows me to read the Act in its entirety in order to conclude, having heard evidence that the affected area was seaward of the high water mark located within 1 – 2 metres of the shoreline at the Allure site, that the material location is plainly inland and/or territorial waters of the Cayman Islands.

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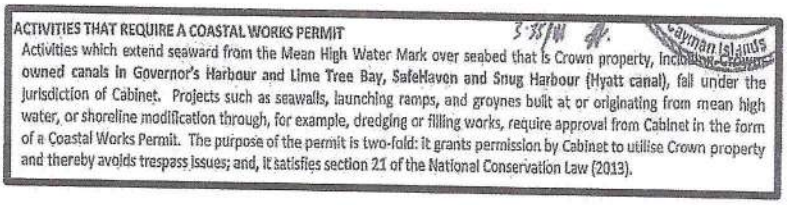
9 First recognised in the English case of *Tuck and Sons* v *Priester* (1887) 19 QBD 629 and affirmed by the House of Lords in *R* v *Z (Attorney General for Northern Ireland's Reference)* [2005] UKHL 35.

10 See [82] and [83] of the judgment. Although *Re Hutchinson-Green* was a judicial review of a decision of the Immigration Appeals Tribunal, the point made by Smellie CJ was that the principle applies to any statutory provision "*requiring infliction of a detriment of any kind.*"

Having conducted a visit to the Allure site on 7 September 2022 during which I was able to make my own observations, it would seem to me to fly in the face of common sense to suggest otherwise. As Ms Lewis pointed out, it is difficult to conceive what alternative interpretation Parliament could have intended, bearing in mind the purpose of the Act as detailed in the preamble.

(g) Further or alternatively, if I am wrong in my analysis, it seems to me as pointed out by Ms Lewis at paragraph 34 of her submissions in response to Mr Keeble's no case submissions that the Defendant in any event tacitly accepted by their applications for CWPs on 19 October 2019 and 20 January 2020 that the area in which they intended to fill and place seawalls was plainly on Crown owned seabed within *Cayman waters* governed by the laws of the Cayman Islands. This is demonstrated by the guidance accompanying the CWP application form copied below.



ACTIVITIES THAT REQUIRE A COASTAL WORKS PERMIT

Activities which extend seaward from the Mean High Water Mark over seabed that is Crown property, including Crown owned canals in Governor's Harbour and Lime Tree Bay, SafeHaven and Snug Harbour (Hyatt canal), fall under the jurisdiction of Cabinet. Projects such as seawalls, launching ramps, and groynes built at or originating from mean high water, or shoreline modification through, for example, dredging or filling works, require approval from Cabinet in the form of a Coastal Works Permit. The purpose of the permit is two-fold: it grants permission by Cabinet to utilise Crown property and thereby avoids trespass issues; and, it satisfies section 21 of the National Conservation Law (2013).

(h) Further, I can see no other reason why the Defendant, plainly in anticipation of starting construction of Allure, would seek to persuade the Chief Surveyor of the Lands and Survey Department on or around February 2019 to extend Allure's property boundary beyond the high water mark if it was not accepted by the Defendant the relevant area was on Crown owned seabed in Cayman waters. It seems to me that there is sufficient evidence detailed in the Defendant's completion of the CWP applications from which I can reasonably infer that the Defendant was aware and tacitly accepted that the proposed seawalls and fill would be occurring on Crown owned seabed.

20. It was not in my view necessary to refer to the United Nations Convention on the Law of the Sea ("**UNCLOS**") to resolve this issue although it is accepted that it utilises some definitions which have may have a bearing on the Act.

21. At the close of the prosecution's case, having reminded myself of the *Galbraith* test (as codified by section 70 of the Criminal Procedure Code),[11] I was satisfied that there was sufficient evidence upon which I could convict the Defendant of the alleged offences. Thus, for the reasons detailed in the foregoing paragraphs, I am satisfied not only that there was underwater plant growth in Cayman waters at the Allure site between 21 February 2020 and 28 October 2020, but also that contrary to section 34 (h) of the Act, the Defendant by its installation of two seawalls and fill in the absence of Coastal Works Permit injured, mutilated, removed or displaced the aforesaid underwater plant growth.[12]

Charge 2

STATEMENT OF OFFENCE

DEC 23 2020

2) Extracting sand, gravel, pebbles, stone, coral or other such material or otherwise disturbing the seabed of Cayman Waters by mechanical means: contrary to section 34(i) of the National Conservation Law, 2013

PARTICULARS OF OFFENCE

Baer Development LTD., between the 21st day of February, 2020 and the 28th day of October, 2020, at Block 22E, Parcel 199, Tropical Gardens, George Town, Grand Cayman, did extract sand, gravel, pebbles, stone, coral or other such material or otherwise disturb the seabed of Cayman Waters by mechanical means, without being authorized or permitted to do so by virtue of a permit issued under s. 21 of the National Conservation Law (2013 Revision).

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11 *R* v *Galbraith* [1981] 73 Cr. App. R. 124: a court does not have to find, at this stage of the case, that the prosecution has established the ingredients or elements of the offence beyond a reasonable doubt, only whether a reasonably directed tribunal could convict on the evidence adduced by the prosecution at the close of their case.

12 Having satisfied myself that there was a case to answer in respect of charges 1 and 2, it would follow that there was also sufficient evidence at the close of the prosecution's case that the Defendant failed to comply with the CDO between 23 June 2020 and 17 February 2021.

22. Again, based primarily (but not exclusively) on the evidence of Mark Orr, Scott Slaybaugh, and Timothy Austin, I am satisfied so that I am sure that:

    (a) On 23 June 2020 the Defendant was issued with a CDO in relation to the Allure site.

    (b) On 7 September 2020 the CWP applications detailed above in paragraphs 17(a) and 17(b) made by the Defendant were refused by Cabinet.

    (c) There is sufficient evidence upon which I can reasonably conclude that on a date or dates between 21 February 2020 and 28 October 2020, the Defendant extracted by mechanical means sand, gravel, pebbles and stones through their removal of rockfill and the two previously constructed seawalls which disturbed or otherwise "*impacted*" Crown owned seabed located within 1 – 2 metres off the shoreline located on the Allure site.

    (d) On a date or dates between 21 February 2020 and 28 October 2020, the seabed of Cayman waters located within 1 – 2 metres off the shoreline located at Block 22E Parcel 199 was "*impacted*" or otherwise disturbed by the Defendant's use of mechanical means to extract sand, gravel, pebbles, stones and other material from the seabed.

23. Mr Orr's evidence was particularly compelling in relation to this charge. He gave clear and cogent evidence of his observations in relation to the seabed that "*it appeared ... that an excavator or a backhoe had been used to drag rock towards shore.*" He confirmed that more damage can in fact be caused to the seabed by the removal of seawalls and fill, as opposed to leaving them there, which is what he contends ought to have been done given the issue of the CDO on 23 June 2020.

Charges 3 and 4

STATEMENT OF OFFENCE

3. Failing to comply with a Cease and Desist Order: contrary to section 30(4) of the National Conservation Law 2013.

PARTICULARS OF OFFENCE

Baer Development Ltd, between the 23rd day of June, 2020 and the 28th day of October, 2020, at Block 22E, Parcel 199, Tropical Gardens, George Town, Grand Cayman, did fail to comply with a cease and desist order issued by the Director of the Department of the Environment dated June 23rd, 2020 with respect to all work associated with the unlicensed disturbance of the crown owned seabed at the said location.

STATEMENT OF OFFENCE

FAILING TO COMPLY WITH A CEASE AND DESIST ORDER contrary to s.30(4) of the National Conservation Act 2013.

PARTICULARS OF OFFENCE

Baer Development Ltd, between the 23rd day of June 2020 and the 17th day of December 2021, at Block 22E, Parcel 199, Tropical Gardens, George Town, Grand Cayman, did fail to comply with a cease and desist order issued by the Director of the Department of the Environment dated the 23rd day of June 2020, by constructing sections of seawall on Crown owned seabed at or adjacent to the said location.

24. Having already made a findings of fact in relation to the issue of the CDO and Cabinet's refusal of the CWP applications (which were in any event agreed between the parties) and the disturbance of the Crown owned seabed located at the Allure site, I am also satisfied so that I am sure that on a date or dates between 23 June 2020 and 17 December 2021, the Defendant failed to comply with the CDO by failing to stop all works associated with the unlicensed disturbance of the Crown owned seabed by removing the two seawalls and fill; and the construction of two new seawalls in locations identified in the exhibits as Area 1 and Area 2.

VERDICT

25. Notwithstanding the technical nature of the evidence adduced during the trial, it was clear, cogent, and well presented. I had no concerns or doubt about the credibility or memory of the prosecution witnesses which caused me to doubt the veracity of their evidence, nor was there any significant contradiction in the evidence which had any real bearing on my findings of fact.[13]

26. I was left with no doubt in my mind that the Defendant proceeded in taking certain actions, perhaps in misguided anticipation that the CWP applications would be granted (or perhaps in hopes that they would successfully convince Mr Whiteman to extend the property boundary). These actions included the construction and installation of two seawalls and rockfill on Crown owned seabed located on the Allure site, which caused damage to the plant marine life and the seabed. Matters were undoubtedly made worse when the Defendant, in direct contravention of the CDO issued on 23 June 2020 failed to "*down tools*" by removing the seawalls and fill, which left gouge marks on the seabed as witnessed by Mr Orr and Mr Austin. As noted in the Environmental Resources Impact Assessment dated 30 October 2020, it was estimated that a total of 1,706 square feet of "*living marine plant growth was impacted directly by smothering of rock*," and that the site was "*further impacted by fill and subsequent removal by mechanical means.*"[14] Further, the absence of silt screens exacerbated the "*smothering effects*" on the marine environment, which would have been caused by the "*harmful sediments disturbed by the machinery and fill.*"

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13 For example, in [19(h)] where I made reference to Mr Fawkes' meeting with Michael Whiteman, although both witnesses give contradicting dates of when the meeting took place, I tended to prefer Mr Fawkes' evidence that it was in or around February 2019, as opposed to Mr Whiteman's evidence that the meeting took place in January 2021 given the overall timeline of events. Even so, this did not in my judgment affect the overall veracity or cogency of Mr Whiteman's evidence, as it is essentially accepted that the meeting took place and the purpose of the meeting.

14 Pages 66 and 67 of the Exhibit Bundle, which was entered into evidence as Trial Exhibit 1.

27. For the reasons detailed above, I am satisfied beyond any reasonable doubt that the Defendant is guilty of all four allegations.

Hon Magistrate P McFarlane
25 August 2023