Panel Commentary on the SEMR 2025

1. Introduction

These written comments are provided by Expert Panel members Sian John, Shaw Mead and Tamati Stevens in response to Auckland Council's request for the Panel to be given a chance to make comments on the 2025 SEMR.

We note that the absence of Expert Panel meetings—anticipated by the Environment Court and required for robust technical and mātauranga dialogue—has constrained its ability undertake the integrated assessment envisaged under Condition 29 of the Temporary Offshore. These comments represent our best assessment within the limits provided by the substituted written process.

The SEMR 2025 has been reviewed to assess its compliance with the conditions of the Temporary Offshore Consent. Our assessment highlights material gaps in method, reporting, cultural integration, and adaptive management. These gaps directly affect Council's ability to determine whether the consent conditions have been met. The SEMR is a required compliance document under Conditions 28 and 29; therefore, any gaps prevent Council from reliably assessing whether the consent holder is meeting legal obligations.

2. Technical Gaps in SEMR 2025

2.1 Insufficient Detection of Protected Species

The SEMR retains reliance on PONAR grabs and coarse dredge tows. Both methods have been shown—by the Environment Court, Cawthron, and the Expert Panel—to be inadequate for detecting rare or fragile taxa, especially stony corals (Scleractinia). The SEMR does not demonstrate an ability to detect protected species with any statistical certainty. Cawthron's 2024 peer review reached the same conclusion.

2.2 Absence of Statistical Power Analysis

Both the Cawthron Institute (2024 peer review) and the Proteus power analysis concluded that the current monitoring design is statistically underpowered—meaning it is unlikely to detect rare or low-density species such as stony corals, even when they are present. Despite these warnings, the SEMR 2025 provides no valid statistical power analysis and no justification for retaining a design known to have low detection capability. Low statistical power means rare species can be missed, effects can remain undetected, and 'no effect' findings cannot be considered reliable. Because stony corals are rare and absolutely protected, a monitoring design incapable of detecting them does not meet Condition

28(c)(iv) or provide a sound basis for Council to assess compliance. The absence of a power analysis is therefore a material scientific and consent-relevant gap.

2.3 Unauthorised Change to Exclusion Criteria

The 2025 SEMR introduces the phrase 'live benthic species', narrowing the consent requirements. The Temporary Consent, EMMP v6, and the Court's intent specify that any presence—live or dead—of protected species triggers exclusion. The wording change represents non-compliance and is misleading.

2.4 Cawthron Peer Review and MBL Inaction

Cawthron identified critical flaws: insufficient power, improper control use, inappropriate dataset merging, and inadequate treatment of protected species. MBL's subsequent actions show no meaningful integration of these improvements, constituting non-compliance with Conditions 28(c)(iv), 29(f), and EMMP 4.2.

2.5 Failure to Integrate Mātauranga Māori

The Environment Court intended the MMEP to operate as an active, deliberative body. MBL delayed establishment of the MMEP by one year and failed to notify the MMEP of stony coral finds, dead corals, cell closure changes, or methodological shifts. This breaches Conditions 26–29 and undermines cultural risk assessment.

3. Reporting Gaps and Omissions

The SEMR does not disclose the full extent of live and dead coral finds, does not map their distribution, and does not acknowledge delays of 2–5 months in cell closures. Contradictory reporting—94% closed to Council vs 10% to CLG/MMEP on the same date—undermines transparency and breaches Condition 29.

The 2025 SEMR does not reconcile the change in exclusion criteria wording with the EMMP or earlier SEMRs.

These omissions are significant because the operator is required to demonstrate how extraction was managed, adjusted, or ceased in response to protected species detections, and neither the SEMR nor the Quarterly Reports provide this information.

3.1 Why this is a consent-relevant gap - SEMR

Because the SEMR is silent on operational intensity and location, and because the Panel has not been provided with a separate, detailed dredging chronology, the Panel cannot verify that:

- extraction avoided coral-bearing cells after protected species were first detected;
- cell closure dates were implemented in practice rather than reported retrospectively;
- the pattern and intensity of dredging did not exacerbate risk to stony corals and other sensitive benthic communities.

The absence of operational data therefore represents a **material information gap** relevant to:

- **Condition 15** – whether exclusion was timely and effective;
- **Condition 20** – whether extraction was managed to avoid adverse ecological effects;
- **Condition 28–29** – whether monitoring and reporting are transparent, integrated and capable of supporting compliance decisions.

On this basis, we consider that **Council should not treat SEMR 2025 as sufficient to confirm compliance** until the missing operational data are supplied and independently checked against coral discovery dates and cell status changes.

3.2 Why this is a consent-relevant gap – Quarterly Reports

The Quarterly Reports for May–July 2025 and August 2025 do not provide the operational information required under Conditions 15, 17, 20, 28, 29 and EMMP 4.2, nor the information the Panel requires to assess compliance. Although both reports include limited track maps and summary extraction totals, neither Quarterly Report contains the minimum data necessary for Council or the Expert Panel to confirm:

- where extraction occurred on a cell-by-cell basis;
- when extraction occurred (trip-by-trip and date-by-date);
- how much material was removed from each cell (volumetric record);
- whether dredging ceased immediately upon detection of protected species;
- whether exclusion zones were respected in practice; and
- whether extraction was being managed to avoid adverse ecological effects as required under Condition 20.

Absence of an extraction log by cell

Neither Quarterly Report provides:

- dates on which individual cells were dredged;
- volume extracted per cell per trip; or
- cumulative extraction volume per cell.

The May–July Quarterly provides only broad track patterns (Trips 1–27) with no extraction dates, no per-trip metrics, and no demonstration of even extraction. The August Quarterly provides limited trip-level data (Trips 36–38), but again only shows end-of-trip load distribution, not operational chronology or compliance with Conditions 15 or 20. This missing information prevents any independent assessment of extraction effort or spatial intensity.

Absence of operational responses to coral detections

Both Quarterly Reports fail to document:

- the March 2025 detection of *Sphenotrochus ralphae* (live coral);
- the subsequent detection of dead corals across multiple cells;

- the timing and nature of any operational response; or
- any legal or compliance advice prompting changes in extraction behaviour.

The August Quarterly reports that closures were made "following receipt of legal advice in July 2025", confirming that coral detection did not trigger immediate operational change. The May–July Quarterly Report provides no closure timing at all.

Absence of documented closure chronology
Neither Quarterly Report provides:

- the date corals (live or dead) were detected;
- the date dredging actually ceased in each affected cell; or
- the date Council was notified of these triggers.

This constitutes a material omission under Conditions 15, 28, and 29.

Contradiction between track data and operator narrative
Track maps for Trips 1-27 in *Quarterly Report May-July 2025* (MBL, 29 August 20205) and Trips 36-38 (*Quarterly Report August 2025*) clearly show repeated dredge passes along the eastern band where Bioresearches documented stony coral presence during March 2025 sampling (*SEMR Temporary Offshore Sand Area 2025*, Bioresearches, 8 August 20205). This directly contradicts the Quarterly Report's assertion of "immediate" closure and demonstrates that the working shift to "live benthic species" enabled continued extraction in areas that should have triggered precautionary closure under Condition 15(c) and EMMP Section 4.2.

Further, the track maps show heavy, repeated dredging south of Te Arai Point and, in some periods, no dredging at all in the northern sector, contradicting the operator's claim of "even extraction". This pattern is present in both the May–July and August Quarterly Reports — meaning the failure is systemic, not isolated and demonstrates a pattern of concentrated dredging inconsistent with Condition 20.

4. Stony Coral (Scleractinia) Analysis

4.1 Legal Trigger Under Consent Conditions

Any protected species (live or dead) triggers immediate exclusion under Condition 15 and EMMP 4.2. MBL only acted on live corals and left 52 relevant cells open for extended periods.

4.2 Timeline of Discovery and Non-Compliance

Live stony corals were discovered in early 2025. Dead corals were found subsequently in other cells. MBL delayed closure of these cells and continued to dredge for 2–5 months in areas where exclusion should have been immediate.

4.3 Contradictory Reporting to Council and CLG/MMEP

On 8 August 2025, Council was told that 94% of cells were closed. The SEMR sent to MMEP/CLG reported only 10% closed for live coral. There is no reconciliation or explanation in the SEMR.

4.4 2017 Coral Findings and Prior Knowledge

In **2017**, a benthic survey undertaken as part of Simon West's ecological evidence for the Pakiri consents (Bioresearches, *Benthic Ecology Assessment*, 2017; summarised in his Ecological Evidence Statement to the Environment Court) recorded 15 stony corals (*Scleractinia*) within the historical extraction footprint (sample T7–E) and an additional individual in a nearby control site (sample T10–3). This was the **first documented occurrence** of protected corals within the monitored Pakiri system, and therefore provided MBL with actual knowledge from 2017 onward that absolutely protected species were present within, or immediately adjacent to, areas subject to sand extraction.

This finding should have triggered:

- enhanced monitoring specifically targeted to the ~35 m depth band where corals were discovered;
- revised, higher-sensitivity sampling methods capable of detecting rare benthic species; and
- precautionary closure or buffer protocols around the 2017 detection locations.

No such adaptations were made. Monitoring methods, including those used for the SEMR 2025, remained substantially unchanged despite well-known detection limitations. This indicates that MBL did not incorporate the 2017 coral discovery into its monitoring design or operational risk management, notwithstanding the relevance to Condition 15**,** Condition 17**,** Condition 20, and Condition 28(c)(iv) of the Temporary Offshore Consent.

We also note that **dead stony corals are legally and operationally relevant**. Under Condition 15, the EMMP (Section 4.2), and the Wildlife Act, the presence of any *Scleractinia*—**live or dead**—is an exclusion trigger. Dead corals provide evidence of prior presence, potential disturbance, and ecological sensitivity and therefore cannot be discounted. This makes the SEMR's omission of dead-coral counts and spatial distribution a material reporting gap, and reinforces why the later "live-only" reinterpretation in the SEMR is invalid and inconsistent with the consent.

4.5 Wording Shift in EMMP Enabled Dredging in Coral-Bearing Areas

The Quarterly Reports framing of coral discoveries materially altered the interpretation of required closures. By focusing narrowly on "live" coral, the operator continued dredging in cells where dead coral had been identified—despite the Wildlife Act protecting both live and dead specimens.

4.6 Interaction with Mātauranga Māori Failures

Had the MMEP been properly informed, cultural tohu would have required immediate precautionary closures. The withholding of information prevented the Panel from fulfilling its dual-knowledge evaluation function, undermining Conditions 26–29.

4.7 Finding: Interpretation of Scallop and Clam "Recovery"

The SEMR states that scallops and clams have "increased since 2023", and characterises this as evidence of "recovery". We consider this interpretation to be unsupported and potentially misleading, for the following reasons:

1. **Insufficient Evidence of Recovery**
   The SEMR does not present long-term baseline data, recruitment analysis, or statistical testing that would allow a conclusion of ecological recovery. Year-to-year variation in scallop and bivalve abundance is well recognised and cannot be interpreted from a single season or gear-specific sampling artefact.
2. **Regional Context Not Acknowledged**
   Scallop populations across Northland, Bream Bay, and the Hauraki Gulf remain in a state of collapse, with formal closures in place. The SEMR does not reconcile its "recovery" claim with the broader regional depletion.
3. **Disturbance Effects Not Considered**
   Increases in juvenile scallops or small bivalves can occur following seabed disturbance, including dredging, due to temporarily exposed substrate. This does not constitute ecosystem recovery and may reflect short-term disturbance dynamics rather than improvement in ecological condition.
4. Interpretations of "recovery" require particular caution and robust evidential support. The SEMR does not provide such support.

Based on the available data, we cannot accept the SEMR's conclusion that scallops or clams show signs of "recovery". The evidence presented is insufficient, lacks statistical foundation, and does not adequately consider disturbance effects or regional shellfish decline. Therefore, we consider this interpretation to be unreliable for the purposes of consent monitoring or impact assessment.

Also of relevance in this context is the scallop closure to commercial and recreational fishing. If you can't dredge for scallops, then how can you dredge sand with scallops on it?

The ban has been in place since 2022 but isn't mentioned in the 2025 EMMP. The only mention of scallops is that if you get more than 30% by average weight or volume in grab samples it's a sensitive benthic community to avoid, which is very unlikely/impossible given that 1 scallop per 25 m^2 (0.04 scallops/m^2) is considered the bottom limit for commercial scallop dredging, while the Ponar grab only samples an area of 0.064 m^2 and a volume of ~2 litres.

Scallops were above commercial densities in 2006 in the northern dredge area.

5. Consent Conditions Potentially Breached

- Condition 15: Failure to exclude coral-bearing cells.
- **Condition 15(c)** – requirement for immediate cessation upon detection.
- Condition 17: Failure to avoid sensitive habitats.

- Condition 20: Inadequate management to avoid adverse effects.
- Condition 28(c)(iv): Monitoring incapable of detecting rare species.
- Condition 29(c)(e): Withholding information from Panel and Council.
- **Condition 29(d)** – requirement for monitoring to "provide a reliable basis for compliance assessment".
- EMMP 4.2: Misrepresentation of exclusion criteria.

6. Operational Data Non-Disclosure and Gaps Relevant to the SEMR 2025

6.1 What the consent requires

The Temporary Offshore Consent and EMMP require that Council and the Expert Panel are able to understand, at any point in time:

- **Where** extraction is occurring (cell-by-cell);
- **When** extraction occurred (dates and sequence);
- **How much** material has been removed (m^3 over time); and
- **How operations have been adjusted** in response to triggers such as:
    - discovery of absolutely protected benthic species (including stony corals), and
    - changes in exclusion / inclusion status of cells.

This is necessary for Council to discharge its duties under (at least):

- **Condition 15** – exclusion of cells containing protected species;
- **Condition 17** – avoidance of sensitive habitats;
- **Condition 20** – managing extraction to avoid adverse effects;
- **Condition 28 & 29** – robust monitoring and transparent reporting;
- **EMMP 4.2** – implementing exclusion rules in practice.

6.2 What the SEMR 2025 provides

The SEMR 2025:

- Identifies monitoring cells, ecological results, and which cells are approved vs excluded for extraction as at 8 August 2025;
- Describes sampling periods (e.g. March 2025 drop-camera, dredge, and grab sampling);

  SEMR Temporary Pakiri Offshore …

- Provides ecological interpretation (benthic community structure, sediment texture, etc.);

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However, the SEMR **does not provide**:

- Any **chronology of extraction effort** (dates of dredging by cell);
- Any **volumes extracted per cell** over time;
- Any **vessel track or effort maps** showing intensity of dredging;
- Any explicit **"last dredged" dates** for the cells in which corals were later discovered.

In other words, the SEMR provides a static ecological snapshot and a map of approved/excluded cells as of 8 August 2025, but not the operational history needed to understand whether MBL continued to dredge in coral-bearing cells, and for how long.

6.3 Missing information up to late August 2025

For the Panel to assess compliance with Conditions 15, 17, 20 and EMMP 4.2, it would have expected, either in the SEMR or in the associated reporting to Council, at a minimum:

1. **A log of extraction activity by cell**, showing:
    - dates on which each cell was dredged;
    - the volume extracted per cell per trip; and
    - cumulative volume per cell.
2. **A clear record of operational changes** following:
    - the March 2025 detection of live stony corals (*Sphenotrochus ralphae*);

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    - subsequent detection of dead corals; and
    - any interim legal or compliance advice.
3. **Documented closure dates per cell**, distinguished as:
    - date of ecological detection (live/dead coral);
    - date on which MBL ceased dredging in that cell; and
    - date on which Council was notified.

On the material available to the Panel, there is:

- No integrated timeline exists linking coral discovery, cell closure decisions, and actual dredging activity.
- No demonstration that the statement to Council on 8 August 2025 ("94% of cells closed") is supported by contemporaneous operational data.

6.4 Finding: Quarterly Reports Are Insufficient for Compliance Assessment

Based on the May–July 2025 and August 2025 Quarterly Reports, the Operator has not provided the operational information required to support compliance monitoring. Neither Quarterly Report offers a complete or accurate chronology of extraction, nor do they demonstrate how operations were modified in response to ecological triggers.

Because the operator did not provide:

- a dredging log by cell;
- volumetric extraction data (per cell, per trip, cumulative);
- coral detection dates matched to operational changes;

- closure dates or Council notification dates; or
- evidence of immediate exclusion following discovery of stony corals,

the Panel cannot assess compliance with Conditions 15, 17, 20, 28 or 29. The omissions materially undermine transparency and prevent Council from determining whether dredging was occurring in coral-bearing areas after detection.

Therefore, we conclude that the Quarterly Reports do **not** provide a reliable basis for compliance assessment. Until the missing operational data is supplied—and independently verified against the documented coral detection timeline—neither SEMR 2025 nor the associated Quarterly Reports can be relied upon to confirm compliance with the Temporary Offshore Consent. For these reasons, we advise that Council should not rely on SEMR 2025 or the associated Quarterly Reports to determine compliance unless and until the missing operational data is supplied and independently verified.

7. Mātauranga Māori

7.1 What the Environment Court Envisaged

The Environment Court's decisions (2021–2023) made explicit that the Temporary Offshore Consent was intended to:

- Give effect to mana whenua values.
- Integrate mātauranga Māori into environmental monitoring.
- Ensure extraction proceeded only when cultural risk was properly assessed and managed.

The Court was clear that the MMEP was not optional. It was intended to:

- Operate as an expert, deliberative body.
- Provide cultural oversight equivalent in status to scientific analysis.
- Ensure monitoring reflected both Western science and cultural tohu.
- Maintain regular communication, co-design, and partnership.

This framework was designed to avoid siloed scientific reporting and under-detection—issues that later materialised in the handling of stony coral discoveries.

7.2 MBL's Operational Behaviour was Inconsistent with that Vision

From 2023–2025, MBL's behaviour demonstrated slow and strategic compliance with mātauranga Māori requirements:

- A one-year delay in establishing the MMEP (breach of the consent).
- Failure to inform the MMEP of live coral finds,
- Failure to disclose dead corals.
- Failure to report changes in cell closure status.
- Shifting exclusion wording (e.g., "live benthic species").

These omissions prevented the MMEP from fulfilling its intended cultural governance role.

7.3 Lack of Response to Mātauranga Māori Issues Raised Throughout 2024–25

Meeting minutes from 2024–2025 show mana whenua repeatedly raised concerns regarding ecological uncertainty, sampling methods not suited to detecting protected species, under-reporting of harm, disturbance of tapu species, and cultural risks absent from SEMR analysis.

MBL's responses were chiefly:

(a) minimisation ("the method is sufficient"),

(b) deferral ("outside scope"), or

(c) procedural stalling ("addressed in future EMMP versions").

No SEMR or quarterly report shows cultural tohu being measured, analysed, or used operationally.

7.4 Deliberate Stalling and Avoidance

Patterns in the document trail show:

- Draft EMMPs used to defer obligations intended to be immediate.
- Delayed or withheld reporting of coral discoveries.
- Changing SEMR interpretation at moments of risk ("live only" wording).
- Claims mātauranga Māori was not measurable or relevant despite Court direction.

These actions reduced the mātauranga Māori component to symbolic status rather than operational practice.

7.5 Interaction Between Mātauranga Māori Failures and the Stony Coral Breach

If the monitoring system had followed the Court's cultural framework:

- The MMEP would have been notified immediately of coral discoveries.
- Tikanga-based precaution would have required immediate closures.
- The MMEP would have rejected the "live-only" reinterpretation.
- Cultural risk associated with disturbing long-lived species would have halted extraction pending clarity.

Instead, 52 cells remained open for 2–5 months after coral presence should have triggered closure.

7.6 Prior Knowledge Heightens the Significance of the Breach

MBL knew stony corals were documented in 2017 within the extraction footprint, the Court required a hybrid cultural–scientific system, and Cawthron found the sampling design underpowered.

Their failure to notify, close cells, or adapt method is therefore not oversight but reflects a refusal to treat coral presence as culturally and legally significant; deliberate narrowing of obligations; and actions culminating in late closures and revised "live-only" wording.

7.7 Combined Effect: A Governance Failure, Not Just a Technical One

When the coral breach is analysed alongside Cawthron's warnings, the 2017 coral record, avoidance of mātauranga Māori integration, and the Court's intended governance model, the issue becomes systemic, characterised by under-detection, under-disclosure, under-reporting, procedural stalling, cultural marginalisation, and legal narrowing of obligations.

Together these failures heighten the likelihood of a Wildlife Act breach.

7.8 Mātauranga Māori: What the Court Required and Where MBL Breached Consent Conditions

The Temporary Offshore Consent embedded cultural requirements:

- Mana whenua centrality.
- Mātauranga Māori integrated into monitoring and interpretation.
- Active MMEP governance.
- Extraction allowed only when both knowledge systems deemed effects acceptable.

These requirements appear in Conditions 26–29 (role of the Panels), Condition 29(f) (robust monitoring), EMMP v6 Sections 4–5, and the Court Minute on Expert Panel duties (2023).

7.9 Where MBL Has Failed to Meet These Requirements

Evidence of non-compliance:

- One-year delay in MMEP establishment (breach Conditions 26–27),
- Withholding of coral findings,
- Not reporting changes in cell status,
- Introducing a narrowed "live-only" interpretation.

These breaches directly violate Condition 29(c) – timely provision of monitoring information, and Condition 29(e) – full transparency.

7.10 Failure to Incorporate Mātauranga Māori into Monitoring

The SEMR 2025 includes no cultural tohu, tikanga-based assessment, MMEP analysis, or cultural risk evaluation. This represents non-compliance with Condition 29(b), Conditions 28(c)(iii) and (iv), and EMMP Section 5.1.

MBL's approach effectively nullifies the Court's hybrid knowledge model and compromises the consent's governance structure.

8. Conclusion

Neither the SEMR 2025 nor the Quarterly Report demonstrate compliance with the Temporary Offshore Consent. The authors conclude that significant technical, cultural, and reporting deficiencies remain unresolved. In our view the Council cannot rely on the SEMR to determine compliance until full disclosure, corrected methods, and a reinstated deliberative process are implemented.

Appendix A: Required vs Provided Operational Data

The table below summarises the operational information required under the Temporary Offshore Consent and EMMP, compared with what is provided in the SEMR 2025. These gaps limit Council's ability to determine compliance with Conditions 15, 17, 20, 28, and 29.

Operational Information Required	Information Provided in SEMR 2025
Dredging timeline by cell (dates of extraction)	Not provided
Volume extracted per cell (m^3)	Not provided
Vessel tracks / dredging intensity heat maps	Not provided
Date of coral detection (live and dead) by cell	Partially provided (live only)
Date MBL ceased dredging each coral-bearing cell	Not provided
Date Council was notified of each detection	Not provided
Full closure chronology (detection → cessation → notification)	Not provided
Spatial distribution and counts of dead stony corals	Not provided