

**IN THE ENVIRONMENT COURT
WELLINGTON REGISTRY**

**I TE KŌTI TAIAO O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

ENV-2023-WLG-000005

UNDER the Resource Management Act 1991

IN THE MATTER the direct referral of applications for resource consents
and notices of requirement under sections 87G and 198E
of the Act for the Ōtaki to North of Levin Project

BY **WAKA KOTAHI NEW ZEALAND TRANSPORT AGENCY**

Applicant

**STATEMENT OF EVIDENCE OF JUSTINE ANN BENNETT ON BEHALF OF
HOROWHEUNA DISTRICT COUNCIL AND KĀPITI COAST DISTRICT COUNCIL**

WATER QUALITY

Dated: 26 September 2023

TABLE OF CONTENTS

A. INTRODUCTION 1

B. CODE OF CONDUCT 1

C. SCOPE OF EVIDENCE..... 2

D. OUTSTANDING ISSUES 3

Stormwater 3

 Construction Environmental Management Plan (“CEMP”) 3

 Stormwater Design 5

 Amendment to conditions 5

 Operations and Maintenance Plan 6

 Amendment to conditions 7

E. RESPONSE TO SECTION 274 PARTY EVIDENCE 7

 Amendment to conditions 8

F. CONDITIONS..... 8

A. INTRODUCTION

[1] My name is Justine Ann Bennett. I am a Technical Director Water and Environment at GHD Limited. I have been in that position since January 2018.

[2] I prepared a report on the Notices of Requirement (“**NoRs**”) lodged with Horowhenua District Council and the Kāpiti Coast District Council (the “**District Councils**”) for a designation relating to the Ōtaki to North of Levin Highway Project (the “**Ō2NL Project**” or “**Project**”). My report was prepared on behalf of the District Councils pursuant to section 198D of the Resource Management Act 1991 (“**RMA**”) and was dated 28 April 2023 (“**s198D Report**”).

[3] I confirm I have the qualifications and experience set out at paragraphs 8-12 of my s198D Report and that I have completed a site visit.

[4] Since filing my s198D Report I have reviewed the evidence of Waka Kotahi (particularly the statement of Keith Hamill), a ‘will say’ statement authored by Philip Jaggard (the stormwater witness for Kāinga Ora) and participated in expert conferencing on water quality.

[5] The expert conferencing on water quality produced two joint witness statements both dated 8 August 2023 - the “Joint Statement of Erosion and Sediment Control Experts” (“**Erosion and Sediment Control JWS**”), and the “Joint Statement of Stormwater Experts” (“**Stormwater JWS**”). I confirm the contents of these two joint witness statements and I discuss any remaining issues and/or related conditions below.

B. CODE OF CONDUCT

[6] I repeat the confirmation provided in my s198D Report that I have read and agree to comply with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023. This evidence has been prepared in accordance with that Code. Statements expressed in this evidence are within my area of expertise.

C. SCOPE OF EVIDENCE

[7] My evidence addresses the following:

- (a) The extent to which issues identified in my s198D Report have been resolved through Waka Kotahi evidence, expert conferencing and mediation;
- (b) A response to section 274 party evidence; and
- (c) Conditions.

[8] In preparing this evidence I have reviewed the following reports and documents:

- (a) Volume II - Assessment of Environmental Effects (“AEE”), November 2022.
- (b) AEE Appendix 4 - Design and Construction Report, July 2022.
- (c) AEE Appendix 4.2 - Stormwater Management Design.
- (d) AEE Appendix 4.3 - Erosion and Sediment Control.
- (e) Technical Assessment H – Water Quality.
- (f) Technical Assessment K – Freshwater Ecology.
- (g) The s87F reports by Logan Brown, Stu Farrant and Kerry Pearce for the Regional Councils.
- (h) Evidence of Gregor McClean (Erosion and Sediment Control) on behalf of Waka Kotahi dated 4 July 2023.
- (i) Evidence of Keith Hamill (Water Quality) on behalf of Waka Kotahi dated 4 July 2023.
- (j) Evidence of Nick Keenan (Stormwater Management) on behalf of Waka Kotahi dated 4 July 2023.

- (k) Evidence of Dr Alexander James (Freshwater Ecology) on behalf of Waka Kotahi dated 4 July 2023.
- (l) Evidence of Quentin Parr on behalf of Hikitunga dated 4 July 2023.
- (m) Joint Witness Statement of Planning Experts, dated 10, 11, and 14 August 2023.
- (n) The conditions circulated by Waka Kotahi (following mediation) on 4 September 2023 ("**Final Draft Proposed Conditions**").
- (o) Section 274 evidence of John Bent.

D. OUTSTANDING ISSUES

- [9] On review of my s198D Report, the Erosion and Sediment Control JWS and the Stormwater JWS, I am of the opinion that the following issues remain outstanding in relation to water quality.

Stormwater

Construction Environmental Management Plan ("CEMP**")**

- [10] Water quality is a matter for consideration by both regional and district councils under the requirements of the National Policy Statement for Freshwater Management 2020 ("**NPS-FM**"). Therefore, I consider that the District Councils should also be provided with a copy of the sub-plans relevant to water quality which form part of the CEMP.
- [11] As currently drafted, the regional consent conditions and Schedule 2 of the Final Draft Proposed Conditions do not appear to require that the District Councils be provided with a copy of the final versions of the Ecology Management Plan (including the Freshwater Monitoring Plan) or the Erosion and Sediment Control Plan (and its sub-plan, the Erosion and Sediment Control Monitoring Plan) which will include requirements related to water quality monitoring during construction. Further, condition DGA6¹ for the designations requires that only parts of the CEMP be provided to the District

¹ Page 19 of Final Draft Proposed Conditions (Track Changes Version).

Councils at the time of Outline Plan submission, and those do not include parts relating to water quality.

- [12] I consider that in order for the District Councils to address their obligations under the NPS-FM and communicate appropriate management of water quality with their communities and stakeholders, they should be provided with copies of relevant documentation. I suggest that Schedule 2 be amended to require provision of these plans, once final, to the District Councils and further that the District Councils also be provided with a copy of the associated monitoring reports produced.

Amendment to conditions

- [13] I suggest that Table SCH2-1 in Schedule 2² be amended to include an additional column that stipulates the management plans to be provided to District Councils, as follows:

Where the Construction Environmental Management Plan is provided as part of an outline plan to a District Council	<u>Where the Construction Environmental Management Plan is provided for information to a District Council (including a copy of certified sub-plans)</u>	Where the Construction Environmental Management Plan is provided for information to a Regional Council (with sub-plans being certified)
Construction Noise and Vibration Management Plan Construction Traffic Management Plan	<u>Erosion and Sediment Control Plan (certified) and including the Erosion and Sediment Control Monitoring Plan</u> <u>Ecology Management Plan (certified) (including the Freshwater Monitoring Plan)</u>	Ecology Management Plan (certified) Erosion and Sediment Control Plan (certified) Construction Air Quality Management Plan (certified)

- [14] In my opinion, Condition RGA3(d) should be amended to state: *“A copy of each annual report must be provided to the District Councils and Project Iwi”*

² Page 75 of Final Draft Proposed Conditions (Track Changes Version).

*Partners at the same time as the annual report is provided to the Regional Council”.*³

- [15] I further suggest that Condition RES9(c) should be amended to state: *“The records of the monitoring and maintenance required by clauses (a) to (d) must be made available to the Regional Council, District Councils and Project Iwi Partners upon request.”*⁴

Stormwater Design

- [16] At the expert conferencing I was made aware that a design review process would be required for the detailed design of stormwater assets, to ensure that the proposed design will achieve the desired water quality outcomes. This was not documented in the Stormwater JWS but advice was given at the meeting that it would be addressed as part of ongoing discussions about the Outline Plan of Works.
- [17] The current level of design supporting the Notices of Requirement and resource consent applications is presented at a very high conceptual level and hence does not enable any certainty that the proposed design will meet the required design standards and thus will treat stormwater to a best practice standard.
- [18] I consider that it is important that design certainty be achieved to Regional Council satisfaction. Currently, neither the current designation conditions nor the resource consent conditions provide for any involvement in this design review by the councils. I remain of the view that the Regional Councils’ involvement in this design review should be required as part of the conditions and understand that this matter may not be able to be adequately dealt with through the Outline Plan process.

Amendment to conditions

- [19] Condition RSW1(g) in the Final Draft Proposed Conditions states: *“Prior to the construction or installation of stormwater management devices,*

³ Page 36 of Final Draft Proposed Conditions (Track Changes Version).

⁴ Page 71 of Final Draft Proposed Conditions (Track Changes Version).

*drawings demonstrating that the design of stormwater management devices achieves the requirements of clauses (a) to (f) must be provided to the Regional Council for information.*⁵ This requirement does not enable the design to be reviewed and changes made prior to construction. I suggest the wording of condition RSW1(g) be adjusted to say: *“Prior to the construction or installation of stormwater management devices, drawings demonstrating that the design of stormwater management devices achieves the requirements of clauses (a) to (f) must be provided to the Regional Council for ~~information~~ review.”*

Operations and Maintenance Plan

- [20] The Stormwater JWS stated that *“All agree that an Operations and Maintenance Plan condition is required in the Discharge Consent to provide certainty that the devices will continue to operate and perform as designed.”* This does not appear to have been accurately reflected in the set of draft consent conditions updated by the planners as part of their conferencing, nor in the Final Draft Proposed Conditions. Instead, edits have been made to condition RSW1(a)(ii)⁶ to require the operation and maintenance to be carried out in general accordance with Waka Kotahi’s *P46 Stormwater Specification* dated 2016.
- [21] Section 11.2 of P46 states that *“A ‘Stormwater Operational and Maintenance Plan’ shall be prepared and submitted for the constructed stormwater system during the detailed design phase for review and approval by NZTA and the network operator [specifier to add local Council if this is a requirement]. As a minimum, this document is to set out the monitoring and maintenance procedures for the stormwater infrastructure as required by the [relevant network maintenance organisations] and any Resource Consent conditions.”* Therefore an option exists in P46 to add the local council *“if this is a requirement”* (of any resource consent conditions).
- [22] The intention of the agreement described in the Stormwater JWS, as I understand it, is to require an Operations and Maintenance Plan that would

⁵ Page 71 of Final Draft Proposed Conditions (Track Changes Version).

⁶ Page 71 of Final Draft Proposed Conditions (Track Changes Version).

be certified by the Regional Council. This has not been reflected in the Final Draft Proposed Conditions.

- [23] Whilst design to industry best practice is proposed, this has only been addressed at a very high level (early-concept) at this point in time and hence design certainty is currently absent. Monitoring the quality of the discharges from the stormwater devices to demonstrate performance and discharge quality is not proposed either. Hence, it is my opinion that a robust operation and maintenance regime for the stormwater treatment devices is required to ensure that the performance of the device is maintained at the required standard throughout the asset's lifetime. General accordance with P46 does not, in my opinion, afford the required certainty.

Amendment to conditions

- [24] In my opinion condition RSW1 should be amended to include the requirement for an Operations and Maintenance Plan certified by the Regional Councils. This would confirm the "requirement" referred to in Section 11.2 of P46, as discussed in paragraph 21 of my evidence. This could be achieved by the addition of a new sub-clause (b) in condition RSW1:

Operational stormwater standards

- a) *Operational stormwater run-off from the Project must be treated in dedicated stormwater management devices before discharging to the receiving environment in general accordance with:*

...

- b) *A Stormwater Operational and Maintenance Plan shall be prepared and submitted for the constructed stormwater system during the detailed design phase for certification by the Regional Councils. As a minimum, this document is to set out the monitoring and maintenance procedures for the stormwater infrastructure as required by RSW1(a).*

E. RESPONSE TO SECTION 274 PARTY EVIDENCE

- [25] I have reviewed the section 274 party evidence of John Bent, dated 12 September 2023.

- [26] Mr Bent is concerned about the conveyance of litter through the stormwater management system and that litter subsequently being discharged into the receiving environment.
- [27] He seeks a change to condition RSW1(d)⁷ to read: *“Forebays must be designed to include standard inter-pond pipelines, baffles and screens to trap gross litter, and where practicable and necessary a submerged outlet to the treatment wetland to trap floating contaminants.”*
- [28] I concur with Mr Bent’s view that the discharge of litter to the receiving waters should be avoided, to the degree practicable, but note that there may be a number of ways to achieve this. In my opinion the currently proposed consent condition is somewhat prescriptive and may limit the range of potential solutions that could be implemented now and in the future. For example litter will likely also be captured in the swales and on route to the treatment wetlands. Mr Bent’s suggested edit renders the condition increasingly prescriptive by adding an additional design feature to those already listed in relation to Forebays. I suggest that rather than stipulate specific design features, it is more appropriate to reword the condition to reflect a more outcomes based requirement.

Amendment to conditions

- [29] I recommend that the current wording in condition RSW1(d) be replaced with the following wording: *“Stormwater treatment systems shall be designed and operated such that they avoid, as far as practicable, the discharge of litter to the receiving environment”*.

F. CONDITIONS

- [30] I have discussed above the amendments that I consider necessary to the Final Draft Proposed Conditions circulated by Waka Kotahi on 4 September 2023, following mediation.

Justine Bennett

26 September 2023

⁷ Page 71 of Final Draft Proposed Conditions (Track Changes Version).