

**ENVIRONMENT COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I MUA I TE KOOTI TAIAO O AOTEAROA
TE WHANGANUI-A-TARA**

ENV-2023-WLG-000005

Under the Resource Management Act 1991

In the matter of the direct referral of applications for resource consent and notices of requirement under sections 87G and 198E of the Act for the Ōtaki to North of Levin Project

By Waka Kotahi NZ Transport Agency

**STATEMENT OF REBUTTAL EVIDENCE OF ALEXANDER BRYAN WILFRIED
JAMES ON BEHALF OF WAKA KOTAHI NZ TRANSPORT AGENCY**

Dated 10 October 2023

BUDDLE FINDLAY

Barristers and Solicitors
Wellington

Solicitor Acting: **David Allen / Thaddeus Ryan**
Email: david.allen@buddlefindlay.com / thaddeus.ryan@buddlefindlay.com
Tel 64 4 044 620450 Fax 64 4 499 4141 PO Box 2694 DX SP20201 Wellington 6011

INTRODUCTION

1. My full name is **Alexander Bryan Wilfried James**.
2. I prepared a statement of evidence (**Evidence**) regarding freshwater ecology effects of the proposed Ōtaki to North of Levin Project (**Ō2NL Project** or **Project**), dated 4 July 2023.
3. My qualifications and experience are set out in my Evidence.
4. In this rebuttal evidence I use the same defined terms as in my Evidence.
5. I repeat the confirmation given in my Evidence that I have read the 'Code of Conduct' for expert witnesses and that my evidence has been prepared in compliance with that Code.
6. This rebuttal evidence responds to points made in evidence by Mr Logan Brown, on behalf of Manawatū-Whanganui Regional Council (**Horizons**) and Greater Wellington Regional Council (**GWRC**).
7. I attended expert conferencing on 7 August 2023 with:
 - (a) Mr Brown;
 - (b) Mr Hickson-Rowden (representing the District Councils);
 - (c) Ms Siobhan Karaitiana (representing Muaūpoko Tribal Authority); and
 - (d) Mr Quentin Parr (representing Ngā Hapū o Ngāti Raukawa ki te Tonga).

RESPONSE TO MR BROWN

Review of construction designs for fish passage

8. Mr Brown considers that the conditions of consent should specifically require Waka Kotahi to demonstrate that the culvert construction meets the stream simulation methodology.
9. Mr St Clair has in turn proposed an additional clause (b) to Condition RFE3, requiring that *“an assessment that each individual fish passage structure has been constructed to meet the stream simulation methods for fish passage through culverts must be undertaken and provided to the Regional Council”*.

10. I agree that the fish passage structures should align with the stream simulation method. That will be a key principle in the Freshwater Ecology Management Plan, as set out in Schedule 7 to the conditions proposed by Waka Kotahi.
11. In my view it is reasonable to ask Waka Kotahi to confirm to the Regional Councils that construction of the structures has been in accordance with the construction drawings. Ms McLeod comments in her rebuttal evidence on the need for additional condition wording to that effect.

Maintenance of offset locations

12. Mr Brown correctly states that the principles of offsetting require permanence of the offsetting activity to ensure certainty the positive effects of the offset will endure for at least as long as the adverse effects that are being offset.
13. The freshwater ecology offsetting proposed by the Project, involves the permanent fencing and planting to riparian vegetation to offset the adverse effects of permanent stream loss. The aim of these offsetting actions are to exclude stock via fencing, filter runoff from the surrounding landscape, provide channel shading, and provide woody debris inputs to streams via revegetating the fenced riparian zones with native vegetation. While stock exclusion is achieved quickly once fences are constructed, time is required for vegetation to establish to achieve channel shading. Tall woody vegetation will need to mature before it can provide substantial inputs of woody debris.
14. To achieve these offsetting aims it is crucial to manage the plantings during the establishment phase. Performance targets relating to this have been set in Table REM12 of the consent conditions while offsetting monitoring out to 15 years is described in condition REM19.
15. Mr Brown is concerned invasion of riparian plantings by pest plants may prevent the planted vegetation from ultimately achieving the desired offsetting aims. In my opinion, to achieve the offsetting aims it is not crucial to have absolutely no pest plants present. From a purely functional perspective certain pest plant species can contribute to stream shading and filtering of runoff, although it is true other species may be a threat to native plantings if they reach certain densities.
16. Put simply, the riparian planting offset regime does not rely on active / extensive pest plant management being carried out in perpetuity by Waka Kotahi (or the landowner).

17. That said, and as mentioned by Mr Brown, old man's beard and banana passionfruit are a particular threat as they can smother native plants. This is a valid concern as these pest plant species can invade established plantings. Mr Brown considers that to ensure permanence of riparian plantings undertaken for freshwater offsetting purposes, ongoing pest plant control is required.
18. However, in my view it is not necessary or reasonable for conditions of consent to require in perpetuity / continuing pest plant management in order to address this concern. I note that in the Horizons Region, the Horizons Regional Pest Management Plan 2017-2037¹ sets responsibilities for the control of various plant pests. Of those species specifically mentioned by Mr Brown as a potential threat to native plantings, Horizons is responsible for control of banana passionfruit and Horizons and/or the occupier is responsible for control of old man's beard. Hence, there is already a regional framework in place for the control of these pest plants species (and many others). This provides a greater degree of confidence that serious pest plant infestations will be controlled.
19. I note the Horizons Regional Pest Management Plan 2017-2037 will expire prior to the completion of the 15 years of management and monitoring required by the Project's consent conditions. It is assumed Horizons will continue to take pest control seriously after 2037 and future versions of the Horizons Regional Pest Management Plan will require management of key pest plant species.
20. Even though the offsetting outcomes of this Project do not rely on permanent pest plant management, in practice, pest plants in the ecological offsetting areas of the Project will be subject to ongoing control as a result of:
 - (a) management and monitoring through to Year 15 as described in the Project's consent conditions;
 - (b) the ongoing responsibilities of Horizons and landowners as set out in the Horizons Regional Pest Management Plan 2017-2037 (and presumably its successors).
21. As I understand, no resource consent conditions for previous roading projects have ever required the permanent management of pest plants in

¹ Horizons Regional Council (2017). Horizons Regional Council Regional Pest Management Plan 2017-2037. REPORT NO: 2017/EXT/1552. Horizons Regional Council, Palmerston North.

riparian planted areas. It is not a requirement for the freshwater offset planting for the recently consented (and currently under construction), Te Ahu a Turanga – Manawatū Tararua Highway in the Horizons region, nor on the recently completed Peka Peka to Ōtaki Expressway and Te Aranui o Te Rangihaeta – Transmission Gully motorway projects. Those projects did not rely on permanent management of plant pests to achieve the desired offsetting outcomes, and neither does this Project.

22. In my opinion the combination of active management and monitoring through to Year 15, supplemented by the ongoing requirements of the Horizons Regional Pest Management Plan 2017-2037 and its successors, will ensure pest plants do not adversely affect the anticipated freshwater offsetting outcomes.
23. Whilst not necessary, Waka Kotahi could usefully remind landowners who are to have offset plantings on their properties of their obligations to manage pest plants as described in the Horizons Regional Pest Management Plan 2017-2037. Likewise, Waka Kotahi will also need to fulfil their pest plant responsibilities for any offset plantings on any land they own.

Alexander Bryan Wilfried James

10 October 2023