

**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 (the Act)
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 BRYN HICKSON ROWDEN ON BEHALF OF
HOROWHENUA DISTRICT COUNCIL AND KĀPITI COAST DISTRICT COUNCIL**

FRESHWATER AND TERRESTRIAL ECOLOGY

Dated: 26 September 2023

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A. INTRODUCTION

- [1] My name is Bryn Cal Hickson Rowden. I am an Ecologist at Boffa Miskell. I have been employed in that role since 27 July 2021.
- [2] I prepared a report (required by section 198D of the Resource Management Act 1991) on the Notices of Requirement ("**NoRs**") lodged with Horowhenua District Council and the Kāpiti Coast District Council (the "**District Councils**") 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 and was dated 27 April 2023 ("**s198D Report**"). My s198D Report addressed the freshwater and terrestrial ecology effects of the NORs.
- [3] I confirm I have the qualifications and experience set out at paragraphs 7 - 10 of my s198D Report.
- [4] Since filing my s198D Report I have reviewed the evidence of Waka Kotahi and participated in expert conferencing on both freshwater and terrestrial ecology. The output of that conferencing was two joint witness statements dated 7 August 2023 (the "**Freshwater Ecology JWS**" and the "**Terrestrial Ecology JWS**"). I confirm the contents of both the Freshwater Ecology JWS and the Terrestrial Ecology JWS. I discuss any remaining issues and/or related conditions below.

B. CODE OF CONDUCT

- [5] 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

[6] 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) Conditions.

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

- (a) The Terrestrial Ecology Technical Assessment by Nicholas Goldwater attached as Technical Assessment J to the Assessment of Effects on the Environment for the Project.
- (b) The Freshwater Ecology Technical Assessment by Alexander James attached as Technical Assessment K to the Assessment of Effects on the Environment for the Project.
- (c) The following Drawing Sets which were included in the NoRs:
 - (i) Drawing Set 02 – General Arrangements;
 - (ii) Drawing Set 06 – Stormwater-Drainage;
 - (iii) Drawing Set 09 – Planting;
 - (iv) Drawing Set 11 – Ecology.
- (d) The s87F Water Quality and Aquatic Ecology Assessment of Logan Brown (for the Regional Councils) dated 28 April 2023.
- (e) The s87F Terrestrial Ecology Assessment of James Lambie (for the Regional Councils) dated 28 April 2023.
- (f) Section 92 Response dated 23 December 2023.

- (g) The statement of evidence of Nicholas Goldwater (Terrestrial and Freshwater Ecology) on behalf of Waka Kotahi NZ Transport Agency dated 4 July 2023.
- (h) The statement of evidence of Alexander James (Freshwater Ecology) on behalf of Waka Kotahi NZ Transport Agency dated 4 July 2023.
- (i) The statement of evidence of Siobhan Karaitiana (witness on behalf of Muaūpoko Tribal Authority) 4 July 2023.
- (j) The statement of evidence of Quentin Parr (witness on behalf of Ngāti Raukawa) dated 4 July 2023.
- (k) Joint Statement of Planning Experts dated 10, 11 and 14 August 2023.
- (l) The version of the draft conditions proposed by Waka Kotahi following mediation, as lodged with the Court and provided to the parties on 4 September 2023 (referred to in my evidence as the **“Final Draft Proposed Conditions”**).

D. OUTSTANDING ISSUES

- [8] There are no outstanding issues arising from my s198D Report following expert witness conferencing. These have all been resolved through the Freshwater Ecology JWS and Terrestrial Ecology JWS. In particular, I note condition RFE1¹ (fish removal or recovery), which has been amended to address issues I had raised in my s198D Report with regard to the recovery of aquatic life during construction.
- [9] However, I also note that several of the conditions agreed to and detailed in the Terrestrial JWS in order to ensure the stated ecological outcomes will be met have not been adopted in the Final Draft Proposed Conditions, and one of the previously proposed conditions (condition RTE7(b)(ii) (which relates

¹ Page 46 of Final Draft Proposed Conditions (Track Changes Version).

to indigenous buffer planting)² has been amended (which was not agreed in the JWS). I address these matters below.

E. CONDITIONS

Suitably qualified person (“SQP”)

- [10] During expert conferencing it was agreed that certain conditions should refer to the *particular* expertise of the persons undertaking ecological work. For example, an avifauna specialist for condition RTE2, and a herpetologist in relation to RTE5.
- [11] I now understand that the proposal is to refer to ‘suitably qualified person(s)’, a defined term, and am broadly comfortable with that. For the pre-construction survey work this is addressed in condition RGA6 which requires that pre-construction surveys under conditions RTE2, RTE3, RTE5, RTE6 and RTE8 are by a suitably qualified person(s). Suitably qualified persons are also referred to within the conditions in some other places, for example in conditions RTE2(e) and RTE3(d) there is a requirement that a suitably qualified person be used to determine whether or not works can continue in the presence of active nesting sites.
- [12] On my review of the conditions it has become apparent to me that some of the conditions refer to activities that also should be undertaken by suitably qualified persons.
- [13] I note that the definition of suitably qualified person is someone “who is not an employee of the requiring authority/consent holder and is competent and experienced in the field of expertise that is relevant to a particular task or action directed by a Condition”. Competency and experience are the requirements, rather than formal qualifications.
- [14] There are several other activities within the conditions of relevance to my expertise which ought, in my opinion, to be undertaken by a suitably qualified person. This includes:

² Page 45 of Final Draft Proposed Conditions (Track Changes Version).

- (a) the establishment of exclusion zones, placement of nest deterrents and the monthly and repeat surveys referred to in conditions RTE2 RTE3 and RTE4;
- (b) the salvage, capture and relocation of lizards and indigenous invertebrates addressed in conditions RTE5 and RTE6.

[15] It is my recommendation that condition RGA6(ii)³ therefore be amended to read (additions underlined):

ii. the pre-construction, monthly and repeat surveys; establishment of exclusion zones; placement of nest deterrents; and salvage, capture and relocation of lizards and indigenous invertebrates required by Conditions RTE2, RTE3, RTE4, RTE5, RTE6, and RTE8;

Condition RTE7(b)(ii)

[16] Condition RTE7⁴ relates to indigenous buffer planting, where the Project is adjacent to various identified habitats. In the Final Proposed Draft Conditions, condition RTE7(b)(ii) (which previously required that buffer planting be “*undertaken prior to the commencement of construction activities where it is practicable to do so*”) has been altered to include “*or before the end of the first planting season following the Project being open to the public*”.

[17] I addressed this issue in my section 92 request for information, noting that if buffer planting is identified as a mitigation measure for construction it must obviously be in place prior to construction commencing (pg 2⁵). The section 92 response from Waka Kotahi agreed that condition RTE7 would be modified to require buffer planting to be undertaken in advance of construction occurring where practicable, and noted that in some instances buffer planting may not be able to be undertaken in advance due to lack of

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

⁴ Page 45 of Final Draft Proposed Conditions (Track Changes Version).

⁵ Section 92 Review: Ecology, O2NL Project HDC & KCDC Technical Team Review of Lodged NoR (23/11/22).

access to property, or due to construction phasing requirements, noting that planting should not occur during summer.

[18] Notwithstanding the issues raised in the section 92 response, I consider that, given its purpose, the indigenous buffer planting should be completed sooner than before the end of the first season following the Project being open to the public.

[19] I therefore recommend that condition RTE7(b)(ii)⁶ is amended as follows (additions underlined, deletions ~~struck through~~):

The indigenous buffer planting required by clause (a) must:

...

ii. be undertaken prior to the commencement of construction activities where it is practicable to do so or, at the latest before the end of the last planting season during the construction period~~before the end of the first planting season following the Project being open to the public;~~

F. CONCLUSION

[20] All of the issues identified in my s198D Report have been resolved through Waka Kotahi evidence, expert conferencing and mediation.

[21] I consider that, consistent with the views expressed in the JWSs relevant to my area of expertise, there are some tidy ups needed to the conditions, which I have addressed above. I am otherwise comfortable with the Final Draft Proposed Conditions as they relate to freshwater and terrestrial ecology.

Bryn Cal Hickson Rowden

26 September 2023

⁶ Page 45 of Final Draft Proposed Conditions (Track Changes Version).