

IN THE MATTER OF The Resource Management Act 1991

And

An application to Wellington Regional Council lodged by Shelly Bay Taikuru Limited for land use consents (for earthworks, soil disturbance, and vegetation clearance and activities in the bed of a stream) and discharge permits (for stormwater and sediment-laden stormwater to land and for discharge from contaminated land) under sections 9, 13, 14 and 15 of the Act and the rules of following regional plans for the Wellington Region:

- **Operative Regional Soil Plan**
- **Operative Regional Coastal Plan**
- **Operative Regional Plan for Discharges to Land**
- **Operative Regional Freshwater Plan**
- **Proposed Natural Resources Plan**

Wellington Regional Council Reference WGN220066

NOTIFICATION DECISION

SUMMARY

The application does not require public notification (under section 95A of the Act) or limited notification (under section 95B of the Act) and is able to be determined as a non-notified application for the purposes of sections 95, 95A and 95B of the Act.

INTRODUCTION AND PROCEDURAL MATTERS

1. Wellington Regional Council ('GWRC') commissioned me, and delegated to me the authority to, determine whether the notification decision under section 95 of the Act (whether the application is to be publicly notified or limited notified) by delegated decision of the Chairman of GWRC dated 2 November 2021 (formalised by contract dated 22 November 2021).
2. I record that, in making this decision, I have read and considered:
 - (a) The application and Appendix I (GWRC forms), Appendix 3 (earthworks plans), Appendix 4 (stormwater report and plans), Appendix 5 (Earthworks Construction Management Plan and plans), Appendix 6 (ecological assessment of wetland), Appendix 9 (report on preliminary site inspection), Appendix 10 (freshwater ecology assessment focusing on the proposed modifications to a culvert), Appendix 11 (coastal ecology assessment focusing on the potential effects of stormwater from construction earthworks and on operational stormwater from the completed development), Appendix 12 (Preliminary Geotechnical

Assessment Report), Appendix 13 (Contaminated Soil Management Plan), Appendix 14 (draft soil sampling and analysis plan), Appendix 15 (September 2016 Cultural Impact Assessment) noting that some of the Appendices were redacted as supplied to me by GWRC;

- (b) GWRC's s. 92 request for further information dated 1 October 2021 (redacted version as supplied by GWRC);
- (c) The Cultural Impact Assessment dated October 2021 prepared by Raukura Consultants;
- (d) The report dated 16 September 2021 prepared by Nick Pearson (Senior Resource Advisor, GWRC) – '*Notification Recommendation under the Resource Management Act 1991*';
- (e) The Hail Environmental site contamination review dated 28 October 2021;
- (f) The memorandum from SouthernSkies Environmental Limited to GWRC dated 3 September 2021 evaluating the erosion and sediment control approach proposed in the application;
- (g) SouthernSkies Environmental Limited concluding comments on the efficacy of proposed erosion and sediment control measures (email dated 30 November 2021);
- (h) The URBAN Engineers Assessment Report on proposed stormwater management dated 12 November 2021;
- (i) The comments of GWRC's Senior Terrestrial Ecologist on potential effects on, and recommended measures to protect, Little Blue Penguin during earthworks (dated 14 July 2021).

3. I record that I am familiar with the provisions, including the objectives and policies, of the operative and proposed regional plans under which consent is required.

THE APPLICATION

4. The application dated September 2021 seeks consent for the following activities and discharges:
- (a) Land use consent for earthworks and soil disturbance;
 - (b) Land use consent for vegetation clearance, a replacement stormwater infill structure in the bed of an intermittent stream and associated water diversion and discharges;
 - (c) Discharge permit for the discharge of stormwater to land where it may enter water from land following redevelopment (described in the application as 'operational stormwater');
 - (d) Discharge permit for the discharge of sediment laden stormwater to land (including from construction earthworks and vegetation clearance) where it may enter water; and
 - (e) Discharge permits for the discharge of contaminants from Selected Land Use Registrar (SLUR) Category III (potentially contaminated) land.
5. The consents sought are also summarised on page 2 of Mr Pearson's report dated 16 September 2021 supplied to me by GWRC. The proposed activities are described in full in the applicant and summarised (accurately in my view) in sections 4.1 to 4.3 of Mr Pearson's report. In the interests of efficiency, I include Mr Pearson's summaries here by reference to Sections 4.1 to 4.3 of Mr Pearson's report.
6. The site where the activities and discharges are to occur is a 12.4 hectare parcel of land comprising former NZ Defence Force facilities located at Shelly Bay, Wellington, adjoining the coastal marine area of Evans Bay (being part of Te Whanganui-a-Tara Wellington Harbour). The legal description of the land is Lots 1 – 8 DP 515825, Lot 100 DP 515825, Section 3 – 6 SO 339948, Section 10 SO 339948 Section 100 SO 528811, Lot 906 DP 548924, Lots 13 – 24 DP 548924 and Section 1 SO 419545.

7. The activities applied for are to facilitate the development of land in accordance with a 'Shelly Bay Masterplan'. It is relevant that the applicant has obtained resource consent from the Wellington City Council for the form of development proposed in the 'Shelly Bay Masterplan' (Wellington City Council reference SR368659 granted on 31 October 2019). I record that I have read the redacted version of the decision report on SR368659 supplied to me by GWRC. The decision report describes the proposal as a comprehensive redevelopment of the site, including multi-unit residential (a mixture of apartments, townhouses and single residential dwellings), mixed use and non-residential uses and buildings, including re-use of some existing buildings. The decision granted land use for a site redevelopment including multi-unit residential housing, mixed use and non-residential buildings and activities, and with associated earthworks on a contaminated or potentially contaminated site) and subdivision consent. As an indication of the scale of development authorised by the consents, Condition 2 of the land use consent requires that 300 residential units must be constructed within 13 years of the date of issue of the consent.

8. The following conditions of the land use consent are relevant to my determination of the notification status of the current application to GWRC:

Conditions 18 and 19 which require the preparation, certification and implementation of an Earthworks and Construction Management Plan;

Conditions 20 and 21 which require the preparation, certification and implementation of an Earthworks and Construction Traffic Management Plan;

Conditions 22, 23 and 24 which impose requirements relating to the management of sediment, debris and dust to prevent sediment, earth and debris from entering the municipal stormwater network or Wellington Harbour;

Conditions 31, 32 and 33 which require the preparation, certification and implementation of a Contaminated Soil Management Plan;

Condition 34 which requires a Soil Validation Report at the conclusion of each stage of earthworks to demonstrate how potential contaminated soil has been managed; and

Conditions 58, 63 and 64 which require detailed design of all proposed stormwater connections to the municipal stormwater network and require on-site treatment of stormwater from the developed site.

9. The relevance of the above-listed conditions is that they demonstrate that these aspects of the potential effects of the substantive development of the land have been considered and addressed and are not disputed. The application to GWRC is for activities that will facilitate the authorised (substantive) redevelopment of the site. Some of the activities applied for may be subject also to Wellington City Council conditions of consent already granted but other activities (for example, the discharges) involve effects not necessarily individually considered in the earlier land use and subdivision consents.

THE SITE

10. Mr Pearson's report describes the site as being *'defined by two bays ('the North Bay' and 'the South Bay') with steep vegetated coastal escarpments set back from the water's edge. These coastal escarpments form the dominant landform of the area. The escarpments are characterised by tracts of pine forest covered east-west orientated spurs. Within the exotic pine and macrocarpa forest, emergent regenerating native bush beneath the canopy is observable. The proposed works*

will generally occur within the flat land between the escarpment and the coast, noting also that a portion of the works will cut into the toe of the escarpment. The flat area between the escarpment and coast currently accommodates a variety of buildings and structures associated with the former Royal New Zealand Air Force (RNZAF) Shelly Bay Base. Until recently, these buildings have been used for a range of activities including art studios and galleries, traveller accommodation, a café, and workshops. The terrestrial environment between the buildings generally consists of Pohutukawas and exotic grasses.

The applicant has identified two intermittent streams within the footprint of the site. One of these streams is partially located within the development area and the other is in the southernmost portion of the site. The stream within the development area is approximately 25m in length, and is fed from a small catchment to the north-east of the site. The stream enters an existing inlet structure situated up-catchment of the existing development and piped beneath the site and discharges to the Coastal Marine Area (CMA). The second stream is located in the southernmost portion of the site and has a length of approximately 92 metres, and is wholly located outside of the works area, being upstream of the site’.

11. That description accords with my experience of this locality, having walked along the road through Shelly Bay and sailed on the adjoining harbour on numerous occasions.
12. Mr Pearson’s report also notes five notations in the proposed Natural Resources Plan that are relevant to this site:
 - (a) The SLUR notation of ‘potentially contaminated site’ attributable to the former use of the land for defence purposes, including as a paint and munitions store; and
 - (b) The inclusion of Te Whanganui-a-Tara (Wellington Harbour) in Schedule B as a Taonga Nui a Kiwa;
 - (c) The inclusion of Te Whanganui-a-Tara in Schedule F2 as a significant habitat for threatened or at risk indigenous birds (including penguins);
 - (d) The inclusion of Te Whanganui-a-Tara in Schedule D and I note that this is as an area holding particular values detailed in the Statutory Acknowledgement from the Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009; and
 - (e) The fact that Te Whanganui-a-Tara is part of the Hutt Valley aquifer zone which I note is described in Policy P136 and Chapter 8 of the proposed Plan.
13. I record that I have read and considered the objectives, policies and rules associated with the above-listed notations. I am satisfied the application raises no issues in terms of the Hutt Valley aquifer zone or Policy P136.

RELEVANT SECTIONS OF THE ACT

14. The provisions of the Act that are relevant to my decision are sections 95, 95A, 95B, 95C, 95D, 95E, 95F and 95G. I reproduce these sections below and comment as relevant:

SECTIONS 95 and 95A

95 Time limit for public notification or limited notification

(1) A consent authority must, within the time limit specified in subsection (2),—

- (a) decide, in accordance with sections 95A and 95B, whether to give public or limited notification of an application for a resource consent; and
 - (b) notify the application if it decides to do so.
- (2) The time limit is,—
- (a) in the case of a fast-track application, 10 working days after the day the application is first lodged; and
 - (b) in the case of any other application, 20 working days after the day the application is first lodged.

95A Public notification of consent applications

- (1) A consent authority must follow the steps set out in this section, in the order given, to determine whether to publicly notify an application for a resource consent.

Step 1: mandatory public notification in certain circumstances

- (2) Determine whether the application meets any of the criteria set out in subsection (3) and,—
- (a) if the answer is yes, publicly notify the application; and
- (b) if the answer is no, go to step 2.

(3) The criteria for step 1 are as follows:

- (a) the applicant has requested that the application be publicly notified;
- (b) public notification is required under section 95C;
- (c) the application is made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act 1977.

Step 2: if not required by step 1, public notification precluded in certain circumstances

- (4) Determine whether the application meets either of the criteria set out in subsection (5) and,—
- (a) if the answer is yes, go to step 4 (step 3 does not apply); and
- (b) if the answer is no, go to step 3.

(5) The criteria for step 2 are as follows:

- (a) the application is for a resource consent for 1 or more activities, and each activity is subject to a rule or national environmental standard that precludes public notification;
- (b) the application is for a resource consent for 1 or more of the following, but no other, activities:
 - (i) **a controlled activity;**
 - (ii) **[Repealed]**
 - (iii) **a restricted discretionary, discretionary, or non-complying activity, but only if the activity is a boundary activity.**

Step 3: if not precluded by step 2, public notification required in certain circumstances

- (7) ¹Determine whether the application meets either of the criteria set out in subsection (8) and,—
- (a) if the answer is yes, publicly notify the application; and

¹ Note that clause (6) has been repealed.

(b) if the answer is no, go to step 4.

(8) The criteria for step 3 are as follows:

(a) the application is for a resource consent for 1 or more activities, and any of those activities is subject to a rule or national environmental standard that requires public notification:

(b) the consent authority decides, in accordance with section 95D, that the activity will have or is likely to have adverse effects on the environment that are more than minor.

Step 4: public notification in special circumstances

(9) Determine whether special circumstances exist in relation to the application that warrant the application being publicly notified and,—

(a) if the answer is yes, publicly notify the application; and

(b) if the answer is no, do not publicly notify the application, but determine whether to give limited notification of the application under section 95B.

15. I am satisfied that Mr Pearson has, in his report, applied the steps in section 95A correctly and I agree with his conclusions. In particular under Step 1:

(a) The applicant has not requested that the application be publicly notified;

(b) Public notification is not required under section 95C because the applicant did not fail to provide the information requested by GWRC under section 92 of the Act within the timeframe specified;

(c) The application does not involve any exchange of recreation reserve land under the Reserves Act 1977.

16. Under Step 2:

(a) None of the applicable rules preclude public notification;

(b) The application is not for a controlled activity consent;

(c) The application is not for a boundary activity;

(d) Accordingly public notification is not precluded.

17. Under Step 3:

(a) None of the applicable rules requires public notification;

(b) There is no applicable National Environmental Standard that requires public notification;

(c) The evidence available to me, in the documents earlier referenced, confirms that the proposed activities will individually and collectively have adverse effects that will be less than minor and in some cases will be negligible. I set out my reasons for this conclusion in the following sections:

18. **Sediment and Dust:** The expert advice of Mr McLean (SouthernSkies Environmental Limited email of 30 November 2021) is that, on the basis that the erosion and sediment controls are designed, implemented, operated and maintained in accordance with the GWRC Erosion and Sediment Control Guidelines, the environmental effects of sediment can be considered less than minor. SouthernSkies Environmental Limited have also advised (3 September 2021) that these matters can be incorporated into conditions of consent. The applicant has proposed measures and a plan for erosion and sediment control. These form part of the application, even if not imposed as

conditions of consent. I am satisfied, on the basis presented, that the potential effects on the environment of sediment and dust can be managed appropriately and will be less than minor.

19. **Potential Effects on Little Blue Penguins:** The expert advice of GWRC's Senior Terrestrial Ecologist (by email dated 14 July 2021) is that any potential adverse effects on Little Blue Penguins and their habitat can be addressed by the imposition of conditions of consent. The application proposes these measures as volunteered conditions². On this basis, I am satisfied that the potential adverse effects on Little Blue Penguins and their habitat will be less than minor.
20. **Potential Adverse Effects of Discharges From Potentially Contaminated Land:** The expert advice of Hail Environmental is that the potential adverse effects associated with discharges from potentially contaminated land can be managed through the imposition of conditions of consent. Specific recommendations have been made (in the applicant's supporting material and by Hail Environmental) and I am satisfied that these matters can be effectively captured in conditions of consent. On this basis, I am satisfied that the potential adverse effects of discharges of water and contaminants from potentially contaminated land within the site will be less than minor.
21. **Potential Impact of Sea Level Rise:** I accept Mr Pearson's advice that the proposed buildings and stormwater treatment devices will be located outside predicted maximum sea level rise for the year 2100. On this basis, I am satisfied that the potential for sea level rise does not alter my conclusions about the potential effects of the discharge of sediment, sediment-laden water and contaminants from the proposed activities.
22. **Potential Effects on Stream Ecological Values:** The expert assessment of Bioresearches (Appendix 10 of the application) is that modifying the culvert inlet structure would result in the loss of 3 linear metres of intermittent stream bed but that would result in a very low adverse effect³. Mr Pearson advises that GWRC's ecology expert (Dr Greer) has reviewed the Bioresearches assessment and concludes that, given the scale of the proposed works and the intermittent nature of the stream, there is almost no potential for adverse effects. I accept that conclusion.
23. **Potential Cultural Impact:** The 2016 and 2021 Cultural Impact Assessments provide an excellent description of the values and associations of mana whenua with Shelly Bay and the wider Te Motu Kairangi peninsula. The Assessment Reports also identify archaeological sites of potential significance in the local and wider area. The Raukura Consultants 2021 Cultural Impact Assessment confirms that the site is neither Māori Customary Land nor Māori Freehold Land as defined in Te Ture Whenua Māori Act 1993. The 2021 Assessment Report also notes that much of the flat land at Shelly Bay was reclaimed after about 1942. The 2021 Assessment Report also states that there are no recorded māori archaeological sites at Shelly Bay and that māori involvement with or use of the area known as Shelly Bay is probably very small, in comparison with other more intensely occupied sites in this part of Te Whanganui-a-Tara⁴. The 2021 Assessment Report concludes that the proposed activities (earthworks, stormwater discharges) would have less than minor cultural impact⁵.

² Page 24 of the application

³ Page 8 of the Bioreaches Memorandum dated 9 July 2021 (Appendix 10 of the application)

⁴ Last paragraph, page 19, of the September 2021 Cultural Impact Assessment prepared by Raukura Consultants

⁵ Paragraph 68, page 31, of the September 2021 Cultural Impact Assessment prepared by Raukura Consultants

24. Notwithstanding that conclusion, the 2021 Assessment Report recommends that five matters be implemented in the development of the project. These are that:
- i. the Assessment Report be taken into account in assessing the effects;
 - ii. a condition is imposed requiring an accidental discovery protocol;
 - iii. a monitoring group be established;
 - iv. the applicant engages in on-going consultation with iwi mana whenua; and
 - v. appropriate māori cultural ceremonies be arranged when the project is due to start.
25. About point (i) above: Section 104 of the Act requires that effects be considered. It is reasonable to expect that (as assessments of effects) the Cultural Impact Assessment Reports will inform the section 104 consideration of effects.
26. About point (ii) above: the application proposes an accidental discovery protocol⁶.
27. About points (iii), (iv) and (v) above: None of these actions would alter or influence the actual and potential adverse effects assessed in the Cultural Impact Assessment Reports or the conclusion of less than minor impacts.
28. I am satisfied, on the basis of the information presented, that potential effects on the values and associations of mana whenua with the application site, freshwater resources and adjacent harbour will be less than minor.
29. For the purposes of section 95A (8) (b), I find that the proposed activities will have adverse effects on the environment that are less than minor.
30. Mr Pearson discusses section 95A (9) (special circumstances) on pages 15 to 17 of his report. I agree with his assessment. I am a resident of Wellington and am aware, from media reports, that the development of Shelly Bay is opposed by some people. However, expressions of opposition and concern are not evidence of actual or potential adverse environmental effects of the activities applied for. Acknowledging the known public interest in the development of Shelly Bay, I have carefully considered the scope of potential adverse effects and the assessments of effects. I consider that the application, further information and information provided by GWRC comprehensively addresses all of the potential effects of the activities proposed (remembering that these relate to earthworks, stream bed activities and discharges all of limited extent in the context of the receiving environments). I am satisfied that the applicant's assessments of effects have been evaluated with appropriate expert rigour by GWRC. The conclusions of the expert assessments are reasonable, in my view, given the nature and scale of the activities proposed and the mitigation measures proposed. I do not identify any special circumstances arising from the nature, intensity or scale of the potential effects of the proposed activities.
31. It is also the case that the 'in-principle' decision about the ultimate use and development of this site has already been made. The activities proposed, and their potential effects, are within the scope of effects that would usually be associated with development of the site of the nature and scale authorised by the Wellington City Council land use consent. The specialist assessments of the proposed activities have not highlighted any unforeseen 'surprises' in terms of environmental

⁶ Section 5.1.5 of the application

effects, beyond the typical scope of effects for the scale of stream bed, earthworks and discharge activities proposed (and foreshadowed in the Wellington City Council decision and consent conditions).

32. I do not identify any special circumstances that warrant public notification of the GWRC application.

SECTION 95B

33. The step-wise considerations of section 95B are:

95B Limited notification of consent applications

- (1) *A consent authority must follow the steps set out in this section, in the order given, to determine whether to give limited notification of an application for a resource consent, if the application is not publicly notified under section 95A.*

Step 1: certain affected groups and affected persons must be notified

- (2) *Determine whether there are any—*
- (a) *affected protected customary rights groups; or*
 - (b) *affected customary marine title groups (in the case of an application for a resource consent for an accommodated activity).*
- (3) *Determine—*
- (a) *whether the proposed activity is on or adjacent to, or may affect, land that is the subject of a statutory acknowledgement made in accordance with an Act specified in Schedule 11; and*
 - (b) *whether the person to whom the statutory acknowledgement is made is an affected person under section 95E.*
- (4) *Notify the application to each affected group identified under subsection (2) and each affected person identified under subsection (3).*

Step 2: if not required by step 1, limited notification precluded in certain circumstances

- (5) *Determine whether the application meets either of the criteria set out in subsection (6) and,—*
- (a) *if the answer is yes, go to step 4 (step 3 does not apply); and*
 - (b) *if the answer is no, go to step 3.*
- (6) *The criteria for step 2 are as follows:*
- (a) *the application is for a resource consent for 1 or more activities, and each activity is subject to a rule or national environmental standard that precludes limited notification:*
 - (b) *the application is for a controlled activity (but no other activities) that requires a resource consent under a district plan (other than a subdivision of land).*

Step 3: if not precluded by step 2, certain other affected persons must be notified

- (7) *In the case of a boundary activity, determine in accordance with section 95E whether an owner of an allotment with an infringed boundary is an affected person.*
- (8) *In the case of any other activity, determine whether a person is an affected person in accordance with section 95E.*
- (9) *Notify each affected person identified under subsections (7) and (8) of the application.*

Step 4: further notification in special circumstances

(10) Determine whether special circumstances exist in relation to the application that warrant notification of the application to any other persons not already determined to be eligible for limited notification under this section (excluding persons assessed under section 95E as not being affected persons), and,—

- (a) if the answer is yes, notify those persons; and*
- (b) if the answer is no, do not notify anyone else.*

34. For the purposes of Step 1, Mr Pearson's advice is that :

- (a) There are no relevant protected customary rights groups;
- (b) There are no relevant customary marine title groups;
- (c) The land is adjacent to land (harbour bed and harbour margin) that is described in the Statutory Acknowledgement arising from the Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009;
- (d) It is notable that the 2021 Cultural Impact Assessment was prepared by Raukura Consultants in association with Port Nicholson Block Settlement Trust (i.e. the Settlement entity). Nowhere in the 2021 Cultural Impact Assessment Report is it asserted that the Settlement Trust or the person(s) to whom the Statutory Acknowledgement were made is potentially adversely affected by the proposed activities. The Assessment Report concludes that adverse effects, as determined in association with Port Nicholson Block Settlement Trust, will be less than minor;
- (e) For the purposes of section 95E (1) of the Act, it is reasonable to conclude that the person(s) to whom the Statutory Acknowledgement were made (the Port Nicholson Block Settlement Trust) is not an affected person because the proposed activities will have less than minor adverse effects on that person.

35. I do not identify any affected customary rights group, affected customary marine title group or person to whom a Statutory Acknowledgement has been made who is an affected person for the purposes of section 95B (2), (3) and (4).

36. For the purposes of Step 2 of section 95B:

- (a) The proposed activities are not subject to any rule or national environmental standard that precludes limited notification; and
- (b) The application is not for a controlled activity.

37. For the purposes of Step 3 of section 95B:

- (a) The proposed activities are not boundary activities; and
- (b) The relevant expert assessments' conclusions are that the actual and potential effects on the environment of the proposed activities will be less than minor. I agree with those assessments and do not consider that there is any person who could reasonably be considered to be adversely affected by those less-than-minor potential adverse effects.

38. I do not consider there is any person who is an affected person for the purposes of section 95B (8) and (9).

39. For the purposes of Step 4 of section 95B:

- (a) For the reasons already explained, I do not consider there are any special circumstances arising from the nature, scale and intensity of the proposed activities or the effects of the proposed activities;
- (b) Accordingly, I do not consider that there is any other person who is eligible for limited notification of the application on the grounds of special circumstances;
- (c) Where the answer to section 95B (10) Step 4 is 'no', the direction in section 95B (10) (b) is to not notify anyone else.

40. My conclusion is, having followed the required steps of sections 95A and 95B of the Act, there is no case for public notification of the application or for limited notification of the application to any person.

SECTION 95C

95C Public notification of consent application after request for further information or report

- (1) *A consent authority must publicly notify an application for a resource consent (see section 95A(2) and (3)) if—*
 - (a) *it has not already decided whether to give public or limited notification of the application; and*
 - (b) *subsection (2) or (3) applies.*
- (2) *This subsection applies if the consent authority requests further information on the application under section 92(1), but the applicant—*
 - (a) *does not provide the information before the deadline concerned; or*
 - (b) *refuses to provide the information.*
- (3) *This subsection applies if the consent authority notifies the applicant under section 92(2)(b) that it wants to commission a report, but the applicant—*
 - (a) *does not respond before the deadline concerned; or*
 - (b) *refuses to agree to the commissioning of the report.*
- (4) *This section applies despite any rule or national environmental standard that precludes public or limited notification of the application.*

41. For completeness, I record Mr Pearson's advice that the applicant provided the requested further information in the timeframe specified in the request.

SECTION 95D

95D Consent authority decides if adverse effects likely to be more than minor

A consent authority that is deciding, for the purpose of section 95A(8)(b), whether an activity will have or is likely to have adverse effects on the environment that are more than minor—

- (a) *must disregard any effects on persons who own or occupy—*
 - (i) *the land in, on, or over which the activity will occur; or*
 - (ii) *any land adjacent to that land; and*

- (b) may disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect; and*
- (c) in the case of a restricted discretionary activity, must disregard an adverse effect of the activity that does not relate to a matter for which a rule or national environmental standard restricts discretion; and*
- (d) must disregard trade competition and the effects of trade competition; and*
- (e) must disregard any effect on a person who has given written approval to the relevant application.*

42. For completeness, for the purposes of section 95D, I record that:

- (a) I have not considered potential effects on persons who own or occupy the land on which the activities are proposed or land adjacent to that land;*
- (b) All of the activities require consents and there are no relevant rules that permit the effects of the activities applied for;*
- (c) No effects of trade competition were identified as being relevant for this application;*
- (d) One written approval was obtained by the applicant (that of Wellington Water Limited as owner of water infrastructure) and I have not considered potential effects on Wellington Water Limited.*

SECTION 95E

95E Consent authority decides if person is affected person

- (1) For the purpose of giving limited notification of an application for a resource consent for an activity to a person under section 95B(4) and (9) (as applicable), a person is an **affected person** if the consent authority decides that the activity's adverse effects on the person are minor or more than minor (but are not less than minor).*
- (2) The consent authority, in assessing an activity's adverse effects on a person for the purpose of this section,—*
 - (a) may disregard an adverse effect of the activity on the person if a rule or a national environmental standard permits an activity with that effect; and*
 - (b) must, if the activity is a controlled activity or a restricted discretionary activity, disregard an adverse effect of the activity on the person if the effect does not relate to a matter for which a rule or a national environmental standard reserves control or restricts discretion; and*
 - (c) must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11.*
- (3) A person is not an affected person in relation to an application for a resource consent for an activity if—*
 - (a) the person has given, and not withdrawn, approval for the proposed activity in a written notice received by the consent authority before the authority has decided whether there are any affected persons; or*
 - (b) the consent authority is satisfied that it is unreasonable in the circumstances for the applicant to seek the person's written approval.*

(4) Subsection (3) prevails over subsection (1).

43. For the purposes of section 95E, I record that:
- (a) For the reasons earlier explained, I do not identify any person who is an affected person (because the assessed effects of the proposed activities will be less than minor and not minor or more than minor);
 - (b) There are no rules or national environmental standards that permit the effects of the activities applied for;
 - (c) The application is not for a controlled activity;
 - (d) One of the consents applied for is a restricted discretionary (the discharge of potentially contaminated water). I have not considered effects, in relation to this activity, beyond the scope of matters to which the relevant regional plan rule restricts discretion;
 - (e) I have had regard to the Statutory Acknowledgement earlier referenced (I have read the text of that Acknowledgement as contained in the proposed Natural Resources Plan);
 - (f) I have not given consideration to effects on the party that provided its written approval.

DECISION

44. **Pursuant to the authority delegated to me by GWRC, and in accordance with sections 95A and 95B of the Act, my decision is that application for resource consent number WGN220066 is not to be given public notification or limited notification. My reasons for this decision are explained in the foregoing sections of this decision report.**



Christine Foster (Independent Commissioner)

Decision Dated: 6 December 2021