

**Before the Hearings Panel
At Wellington**

Under the Resource Management Act 1991
In the matter of Proposed Natural Resources Plan for the Wellington Region
(Hearing Stream 4)

Memorandum of counsel regarding NZTA Stormwater Document

Date: 25 May 2018



50-64 Customhouse Quay, Wellington 6011
PO Box 2791, Wellington 6140
DX SP20002, Wellington
Tel +64 4 472 6289
Fax +64 4 472 7429

Solicitor on the record
Contact solicitor

Kerry Anderson
Kate Rogers

kerry.anderson@dlapiper.com
kate.rogers@dlapiper.com

Tel +64 4 474 3255
Tel +64 4 474 3050

MAY IT PLEASE THE PANEL:

INTRODUCTION

- 1 The Panel has directed that it be provided with additional information around the statutory basis (if any) of the New Zealand Transport Agency's (NZTA) Stormwater Treatment Standard for State Highway Infrastructure - May 2010 (**Stormwater Treatment Standard**)
- 2 In addition, the Panel asked whether the Stormwater Treatment Standard will implement the policies and objectives of the proposed Plan.
- 3 To address this query, Legal Counsel have prepared this memorandum , which addresses:
 - 3.1 NZTA's Submission.
 - 3.2 The statutory basis of the Stormwater Treatment Standard.
 - 3.3 Contents of the Stormwater Treatment Standard.
 - 3.4 Reliance that can be placed on the Stormwater Treatment Standard.
- 4 Council's section 42A Reporting Officer on stormwater (Amber Carter) has also prepared a supplementary right of reply to address this issue from a policy perspective.

NZTA SUBMISSION

- 5 Under Rule 52 of the proposed Plan, the discharge of stormwater from a state highway, into water, or onto or into land where it may enter a surface water body or coastal water is a restricted discretionary activity.

- 6 There is no permitted activity standard for the discharge of stormwater from a state highway.
- 7 Rule 48 of the proposed Plan allows for the discharge of stormwater from individual sites as a permitted activity, subject to standards. However, R48 specifically excludes a discharge from a state highway.
- 8 NZTA provided a submission seeking that R48 be amended, to allow for the discharge from the state highway to be a permitted activity. No amendments to the permitted activity standards in R48 were proposed. As set out in Ms Carter's right of reply for HS4, NZTA stated (in Dr McConchie's evidence) that NZTA imposes high standards on itself, which in some case requires treatment solutions beyond that required to meet permitted activity thresholds in regional plans and this is an approach driven by the Land Transport Management Act 2003 (**LTMA**).
- 9 It was this that prompted the Panel to ask whether the Stormwater Treatment Standard had a statutory basis and could be relied on to implement the objectives and policies of the proposed Plan.

Submission 146 at page 52

Carter, ROR for HS4, para 246

STORMWATER TREATMENT STANDARD

Statutory basis

- 10 We have considered NZTA's guiding statutes to assess what status the Stormwater Treatment Standard has under those Acts.
- 11 The objective of NZTA is set out in the LTMA. Its objective is to *'undertake its functions in a way that contributes to an effective, efficient, and safe land transport system in the public interest'*. One of its

Section 94 LTMA

functions is *'to contribute to an effective, efficient and safe land transport system in the public interest'*. In meeting its objective and undertaking its functions, section 96 of the LTMA set out NZTA's operating principles and this requires that NZTA *'must exhibit a sense of social and environmental responsibility'*.

Section 95 LTMA

- 12 In addition, under section 61 of the Government Rounding Powers Act 1989 (**GRPA**), NZTA has certain powers and duties. Of relevance, it has the:

... power to do all things necessary to construct and maintain in good repair any State highway ...

Section 61(4) GRPA

- 13 While these objectives and operating principles set a goal of environmental responsibility, our review of the legislation shows there is no direction in the LTMA or the GRPA requiring NZTA to prepare standards on how it will achieve those goals in relation to stormwater. While NZTA has chosen to develop documents to assist it in achieving its statutory functions and objectives, those documents do not have a statutory basis.

CONTENTS OF THE STORMWATER TREATMENT STANDARD

- 14 This is supported by Stormwater Treatment Standard itself. The introduction states:

There are numerous guidance manuals available that discuss stormwater management for roading.

Standard at [1]

These guidance manuals assist roading practitioners with the selection and design of roading stormwater management practices. In many situations, site conditions dictate what practices can be used and this document identifies roading stormwater management practices, hydrologic design methods and design calculations for those practices. In addition, worked examples provide guidance on specific situations where a stormwater

management practice is appropriate and how to size it.

- 15 In addition, the scope of the Stormwater Treatment Standard is described as:

This document provides detailed design guidance for stormwater management practices for state highways

Standard at [1.2]

- 16 It also recognises that the GRPA functions and powers are '*exercised subject to the requirements of the RMA and its associated resource management plans*'.

Standard at [1.3]

- 17 The Standard provides wide-ranging discussion on the background issues involved in stormwater, and the various receiving environments, along with a discussion of the various stormwater management concepts and treatment concepts. It sets out a process for developing a treatment approach, depending on a range of factors such as site considerations, and other constraints. From the guidance in the document, appropriate controls for the particular project can be developed.

- 18 We also note that despite its title, the Stormwater Treatment Standard is not a New Zealand Standard. It is submitted that it is a guidance document, to be referred to by contractors when developing a project. There are no statutory consequences for non-compliance with these documents. In addition, it is an NZTA document, which can be changed by NZTA, as and when it sees fit.

RELIANCE THAT CAN BE PLACED ON THE STANDARD

- 19 The Panel raised the option of using the Stormwater Treatment Standard as a method to provide for stormwater control from state highways, if it would implement the policies and objectives of the proposed Plan.

- 20 It is submitted that the Stormwater Treatment Standard is not an appropriate alternative for ensuring that the policies and objectives are implemented. As stated above, it is a guidance document rather than a document setting out specific requirements. It does not provide sufficient certainty, and it would be challenging to determine compliance of an activity on the basis of assessment against the Standard.
- 21 In addition, as it has not been prepared under a statutory process, or on a statutory basis, there is no formal process for changing the document. NZTA could chose to amend or withdraw the Stormwater Treatment Standard at any time and Council would have no control or involvement over any change in these documents.
- 22 In addition, if this Stormwater Treatment Standard was included as a method and the Standard was amended to allow for stormwater management in a different way than that required by the proposed Plan, the Council would have few options available to ensure that the stormwater objectives and policies are met.
- 23 We have discussed the issue of whether the Stormwater Treatment Standard has a statutory basis with NZTA's legal counsel. Counsel have confirmed that the Stormwater Treatment Standard has no direct statutory basis (in the sense of a plan or national environmental standard prepared under the RMA). NZTA's legal counsel agrees that, as set out above, the Stormwater Treatment Standard is a mechanism by which the NZTA meets its statutory obligations to manage and mitigate the effects of its activities on the environment, under the LTMA and GRPA.

PLANNING POSITION (MS CARTER)

24 Ms Carter has set out her views on the question of whether the Stormwater Treatment Standard will implement the objectives and policies of the proposed Plan in her supplementary right of reply response.

Date: 25 May 2018

A handwritten signature in black ink, appearing to be 'Kerry Anderson' or 'Kate Rogers'.

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Kerry Anderson/Kate Rogers
Counsel for Wellington Regional
Council