

**IN THE ENVIRONMENT COURT OF NEW ZEALAND  
WELLINGTON REGISTRY**

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

**ENV-2023-WLG-000005**

Under the **RESOURCE MANAGEMENT ACT 1991**

In the matter of 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

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**MEMORANDUM OF COUNSEL FOR THE APPLICANT**

16 June 2023

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**BUDDLE FINDLAY**

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## **MAY IT PLEASE THE COURT:**

1. This memorandum of counsel is filed on behalf of Waka Kotahi New Zealand Transport Agency (**Waka Kotahi**) in respect of the Ōtaki to North of Levin Project being progressed in partnership with Muaūpoko Tribal Authority and hapū of Ngāti Raukawa ki te Tonga (**Ō2NL** or the **Project**), and in advance of the pre-hearing conference (**PHC**) on Thursday 22 June 2023.
2. The purpose of this memorandum is to:
  - (a) set out a proposed agenda for the PHC; and
  - (b) address at a high level the matters provided for in that proposed agenda.

### **Proposed agenda for the pre-hearing conference**

3. The Notice sets out that the purpose of the PHC will be to ensure that proper preparations are made for the hearing and to address other matters as necessary.
4. Considering this guidance, Waka Kotahi proposes the following agenda:
  - (a) The section 274 parties, issues raised by those parties and experts to be called by those parties;
  - (b) Proposed process steps, including timetable, mediation, evidence deadlines, expert conferencing, the hearing (and providing for tikanga and kawa at the hearing); and
  - (c) Any other issues.

### **Section 274 parties**

5. The 39 submitters that filed Form 33 notices with the Court are noted in **Appendix A** to this memorandum, along with their positions on the Project and a high-level summary of their issues.
6. There are 39 section 274 parties, all of whom were submitters on the notices of requirement and / or resource consents.<sup>1</sup> Of the 39 section 274 Parties:

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<sup>1</sup> Two submitters, NZ Equestrian Advocacy Group and Kapiti Equestrian Advocacy Group provided one s274 notice but are listed separately in the Court's list of parties so we have identified them as separate parties.

- (a) Seven are affected property owners within the designation (this includes the three Prouse notices relating to the same property);
  - (b) Eight are property owners outside the designation who hold concern over the Project's effects on their property;
  - (c) 12 are iwi / hapū groups (10 of those are hapū of Ngāti Raukawa ki te Tonga);
  - (d) Four seek that the Project Shared Use Path provide bridleway facilities or otherwise be extended;
  - (e) Four are providers of existing infrastructure or housing facilities;
  - (f) One (Forest & Bird) raises ecology matters;
  - (g) One (John Bent) raises contamination from stormwater; and
  - (h) Two have joined in full support of the Project.
7. Waka Kotahi suggests the four section 274 parties that are focussed on the nature of the Shared Use Path be encouraged to act together to the extent possible in these proceedings to reduce duplication.
8. For the Court's assistance, in line with the Notice, Waka Kotahi provides a high-level summary of issues raised by the section 274 parties in **Appendix A**.
9. For completeness, the councils have raised issues in their section 87F Reports and section 198D Reports that will also need to be addressed through mediation and evidence (and ultimately, if needed, the hearing).

### **Process steps**

#### *Timetable*

10. Waka Kotahi respectfully requests that the timetable for these proceedings be as proposed in **Appendix B**. **Appendix B** has been revised since the version of the timetable put before the Court in the 16 February Memorandum and 5 April Memorandum. Additional comments relating to mediation, expert conferencing and the hearing are provided below.

### *Expert conferencing*

11. In the attached timetable expert conferencing is proposed prior to mediation. Waka Kotahi's indicative list of expert witnesses is set out in **Appendix C**.
12. Waka Kotahi anticipates all parties confirming their expert witnesses (if any) during the PHC. Counsel have contacted the section 274 parties to explain the nature of expert conferencing and to request that they confirm their expert witnesses at the PHC.
13. If that does not eventuate Waka Kotahi will at the PHC seek a direction from the Court that all parties inform it of their expert(s) (if any) by Monday 26 June 2023.
14. Thereafter Waka Kotahi will liaise with the parties and the registrar to set up Court assisted conferencing in line with the timeframes in Appendix B (or as otherwise confirmed by the Court).

### *Mediation*

15. Waka Kotahi will engage directly with parties as practicable before mediation to see if issues can be resolved. At this stage, counsel envisage that approximately six working days will be required for mediation.
16. Waka Kotahi suggests that it liaises with the parties and the Registry's Mediation Manager to arrange times and venues for mediation within the proposed mediation weeks. At a high level, Waka Kotahi proposes:
  - (a) closed sessions with affected property owners; and
  - (b) general sessions on topics with relevant parties / landowners as required.
17. Waka Kotahi proposes to then file a memorandum with the Registry's Mediation Manager on or before Monday 10 July 2023 (or as otherwise confirmed by the Court) setting out a proposed programme and agenda for the mediation as discussed with the parties.

### *Place of hearing*

18. As previously indicated Waka Kotahi's preference is that, if possible, the hearing be held in Levin. If that is not possible it seeks that the hearing be held in Palmerston North.

## **Other procedural matters**

### *Observing tikanga and kawa at the hearing*

19. Waka Kotahi is discussing this with Project iwi partners and will update the Court at the PHC and/or in due course.

### *Hearing – site visit*

20. Waka Kotahi is happy to work with the parties in identifying areas of interest for the Court to visit in a site visit and then liaise with the registrar to ensure the Court has a programme for a potential site visit.

### *Excusal of witnesses*

21. If the Court and parties do not have questions for a particular expert Waka Kotahi may request that witness to be excused from attending the hearing (and anticipates that the other parties would make similar requests).

### *Dedicated website and service of documents*

22. The Court's dedicated website for the proceedings is now live. Counsel understand that the website will be the repository for all pleadings, evidence and formal correspondence between the Court and parties.
23. Waka Kotahi reminds the parties of the waiver granted by the Court in its Minute of 23 March 2023 enabling service of documentation (including evidence) to be affected via the Court registry staff uploading those documents directly to the website.

**Other matters**

24. The parties are reminded that the Court has appointed Mr David Forrest to assist them in matters of process and procedure. Mr Forrest's contact details are:

(a) Email: FriendOfSubmitter@horizons.co.nz

(b) Phone: 021 2477 366

**DATED** at Wellington this 16th day of June 2023



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**David Allen / Thaddeus Ryan**  
**Counsel for Waka Kotahi**

## Appendix A – List of section 274 parties and high-level summary of issues raised

Section 274 party	Category	Position per Form 33	High-level summary of issues raised
Gary Williams	In designation landowner	Supports project	<ul style="list-style-type: none"> <li>- Construction methodology clarification.</li> <li>- Light pollution.</li> <li>- Concerned that the Project as delivered may be altered / stripped back and some benefits unrecognised.</li> </ul>
Christine Wallis	In designation landowner	Opposes project	<ul style="list-style-type: none"> <li>- Loss of whanau land for the Project</li> <li>- Noise, air and water quality effects.</li> </ul>
John and Jenny Brown	In designation landowner	Neutral	<ul style="list-style-type: none"> <li>- Project will dissect property and affect access to rear of property.</li> <li>- Flooding and water quality.</li> </ul>
Prouse Trust Partnership	In designation landowner	Opposes Project / conditional opposition	<ul style="list-style-type: none"> <li>- Contaminated shed (asbestos).</li> <li>- Queen St overbridge – noise and visual mitigation.</li> <li>- Landscape and visual effects</li> <li>- Terrestrial ecology – relocation of culturally significant species.</li> <li>- Flooding effects.</li> <li>- Noise, vibration, air quality (including dust) and amenity</li> </ul>
Stephen Prouse			
Karen Prouse			
JML	In designation landowner	Conditional support	<ul style="list-style-type: none"> <li>- Noise effects (operational and construction) on the future development of their land (Tara-Ika).</li> <li>- Infrastructure connections for the future development of their land (Tara-Ika) across the project related to transport and utilities</li> </ul>
Jan Windleburn	Out of designation landowner	Supports project	<ul style="list-style-type: none"> <li>- The current road network be maintained and the Project to pass over it.</li> </ul>

<b>Section 274 party</b>	<b>Category</b>	<b>Position per Form 33</b>	<b>High-level summary of issues raised</b>
Rochelle Murray-Apatu	Out of designation landowner	Neutral	<ul style="list-style-type: none"> <li>- Visual, noise and construction dust (including drinking water) effects.</li> </ul>
Sarah Hodge	Out of designation landowner	Opposes project	<ul style="list-style-type: none"> <li>- Noise and visual effects.</li> <li>- Bore water supply effects (commercial nursery business).</li> <li>- Flooding effects.</li> <li>- Loss of highly productive land.</li> <li>- Effects on Manakau Village from route S6 being selected.</li> <li>- Quality of construction being undermined by budgetary constraints.</li> </ul>
Stephen Main	Out of designation landowner	Supports Project	<ul style="list-style-type: none"> <li>- Safety and economic benefits.</li> <li>- Construction noise and vibration.</li> <li>- Construction dust effects on rainwater tank and air circulation. Visual and amenity effects.</li> </ul>
Louise Miles	Out of designation landowner	Opposes project	<ul style="list-style-type: none"> <li>- Noise and visual effects for the Manakau community.</li> <li>- Additional planting.</li> <li>- Flooding effects north of Manakau Village.</li> <li>- Loss of productive land.</li> <li>- Route S6 through Manakau (cost, Manga Huia Stream, impacts on residents)</li> </ul>
Helen Naylor	Out of designation landowner	Supports project	<ul style="list-style-type: none"> <li>- Construction dust effects on roof-sourced drinking water / water tanks.</li> </ul>
Maria Storey	Out of designation landowner	Conditional Support	<ul style="list-style-type: none"> <li>- Recourse for breaches of resource consents, and remediation.</li> </ul>



Section 274 party	Category	Position per Form 33	High-level summary of issues raised
			<ul style="list-style-type: none"> <li>- Noxious weeds / pest management.</li> <li>- Flooding effects.</li> <li>- Effects on ability to sell her land.</li> </ul>
Kevin Daly	Out of designation landowner	Supports project / conditional support	<ul style="list-style-type: none"> <li>- Construction dust effects on roof-sourced drinking water / water tanks.</li> <li>- Amenity effects on Tara Ika (eg, construction and operational noise, visual, light).</li> <li>- Roading corridor to be minimised so housing yield can be maximised.</li> <li>- Landscaped bund required to screen Project effects on Tara Ika, and reduce impact on housing yield and development.</li> <li>- Connections across the Project (Liverpool Street and additional cycleways).</li> </ul>
Muaūpoko Tribal Authority	Iwi / hapū	Conditional opposition	<ul style="list-style-type: none"> <li>- Cultural values, input and matters of concern – conditions required and CEDF amendments.</li> </ul>
Ngāti Kapu / Nga Hapū o Ōtaki	Iwi / hapū	Support project	<ul style="list-style-type: none"> <li>- Cultural values, input and matters of concern – conditions required and CEDF amendments.</li> </ul>
Ngāti Kikopiri			
Ngāti Ngarongo			
Ngāti Pareraukawa			
Ngāti Takihiku			
Ngāti Tukorehe			

<b>Section 274 party</b>	<b>Category</b>	<b>Position per Form 33</b>	<b>High-level summary of issues raised</b>
Ngāti Wehiwehi			
Ngāti Hikitanga			
Ngāti Huia ki Matau			
Ngāti Huia ki Poroutawha o			
Te Ao Turoa Environmental Centre (Rangitāne o Manawatū)	Iwi / hapū	Conditional opposition	- Treaty Principles and settlements not accounted for by the Project;
Horowhenua Equestrian Advocacy Group	Shared Use Path	Opposes project	- Continuation of PP20 / M2PPs form of multi-use paths to create the ability for horse riding as an active mode of transport.
Kapiti Equestrian Advocacy Group	Shared Use Path	Opposes project	- Continuation of PP20 / M2PPs form of multi-use paths to create the ability for horse riding as an active mode of transport.
NZ Equestrian Advocacy Group	Shared Use Path	Opposes project	
Alan Jamieson	Shared Use Path	Opposes project	- Shared use path – extend to Foxton and Shannon, access amenity options like refreshments, accommodation and horse riding.

<b>Section 274 party</b>	<b>Category</b>	<b>Position per Form 33</b>	<b>High-level summary of issues raised</b>
Spark	Infrastructure / housing provider	Opposes project	- Consultation with network utility providers to enable network development should be required in conditions.
Connexa	Infrastructure / housing provider	Opposes project	- Consultation with network utility providers to enable network development should be required in conditions.
KiwiRail	Infrastructure / housing provider	Conditional support	- Consent conditions for the rail network and rail corridor or Kiwi rail assets.
Kāinga Ora	Infrastructure / housing provider	Opposes project	- Property effects - Operational and construction noise effects. - Security effects.
Forest and Bird	Ecology	Opposes project	- Conditions: pest management (in perpetuity); vegetation / canopy cover / vegetation transfer and timeframes; monitoring timeframes; and lizards and snails.
John Bent	Stormwater Contamination	Conditional support	- Stormwater effects (and contamination from vehicles and litter).
Speldhurst County Residents	Supports project	Supports project	- Safety and travel time benefits.
Anthony Young / Horowhenua New Zealand Trust	Supports project	Supports project	- Safety and economic benefits.

## Appendix B: Draft proposed timetable

Process step	Timeframe
Prehearing conference	Thurs 22 June 2023
Waka Kotahi evidence to be filed and served	Fri 30 June
Expert conferencing	Weds 12 July – Thurs 20 July
Court-assisted mediation	Mon 31 July – Weds 9 August
Section 274 Party evidence to be filed and served	Fri 18 August
Councils' evidence to be filed and served	Friday 1 September
Waka Kotahi reply evidence to be filed and served	Fri 15 September
Hearing	From Mon 25 September 2023

## Appendix C: List of Waka Kotahi expert witnesses

Expert	Subject matter
Phil Peet	Transport
Michael Smith	Noise and vibration
Andrew Curtis	Air quality
Gavin Lister	Landscape, visual and natural character
Doug Fairgray	Economics
Jo Healy	Social impacts
Dr Jack McConchie	Hydrology and flooding, hydrogeology and groundwater, and water takes.
Keith Hamill	Water quality
Kathryn Halder	Contaminated land
Nick Goldwater	Terrestrial ecology
Alex James	Freshwater ecology
Daniel Parker	Archaeology
Ian Bowman	Built Heritage
Jamie Povall	Design and construction
Gregor McLean	Erosion and sediment control
Nick Keenan	Stormwater
Ainsley McLeod	Conditions
Grant Eccles	Statutory Planning