

**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**

5 July 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**). It follows the pre-hearing conference (**PHC**) held on Thursday 22 June 2023, and the Court's Minute dated 27 June 2023.
2. In its Minute, the Court:
  - (a) directed all parties to "*file advice as to the number of witnesses they intend to call*" by 30 June 2023";
  - (b) indicated that the Horowhenua District Council chambers could be made available for a hearing beginning on 24 October 2023; and
  - (c) directed Waka Kotahi to provide a propose amended timetable, to work towards a hearing beginning on 24 October 2023.
3. Waka Kotahi and its Project Iwi Partners Muaūpoko Tribal Authority and the hapū of Ngāti Raukawa ki te Tonga filed their evidence in chief in respect of these proceedings yesterday. The evidence is available on the Court's website ([Ōtaki to North of Levin State Highway Project \(O2NL\) | Environment Court of New Zealand](#)).
4. As discussed at the PHC, in filing its evidence in chief at this early stage, Waka Kotahi is maximising the opportunities for direct discussion between parties and witnesses to resolve or narrow issues. Waka Kotahi will contact all s274 parties directly to discuss the relevant issues and to see if they can be resolved or narrowed and will update the Court on progress in due course.

## **Identified witnesses**

5. The Court has provided counsel with emails from the Councils and from s274 parties advising the Court in respect of witnesses.
6. For ease of reference for the Court and the parties, counsel have collated the emails into a table that sets out all identified witnesses (including Waka Kotahi and Project Iwi Partner witnesses) in **Appendix A**.

## **Expert conferencing**

7. Expert conferencing is undertaken in accordance with the Environment Court's Practice Note 2023. To assist in preparing for expert conferencing,

**Appendix B** sets out the Waka Kotahi proposed conference dates, times, topics and attendees (using the lists provided in **Appendix A**). Counsel will liaise with the parties and the Court to formalise those dates.

### **Updated proposed timetable**

8. Waka Kotahi has carefully considered:
  - (a) the discussions at the PHC in respect of timetabling;
  - (b) the comments provided by the Councils on the previously proposed timetable (and in particular have provided 2 clear weeks from the end of mediation to the date for filing section 274 party evidence and 2 weeks from the filing of the Waka Kotahi rebuttal evidence to the hearing);
  - (c) the number and nature of issues; and
  - (d) the number of witnesses proposed.
9. Bearing in mind those discussions, and working towards a hearing beginning on 24 October 2023 as directed by the Court, an updated proposed timetable is attached as **Appendix C**.
10. The timeframes for expert witness conferencing and mediation in the updated proposed timetable are based on the availability of Commissioner Buchanan, who counsel understand has been assigned to facilitate both conferencing and mediation. Counsel are considering how mediation might be most efficiently organised, and will report to the Court and the parties in due course.
11. Counsel note that the updated proposed timetable includes provision for mediation on cultural matters. Waka Kotahi:
  - (a) is hopeful that cultural mediation is not required but if it is notes that no other parties would need to participate in that mediation;
  - (b) considers it would be appropriate for any mediation to occur separate to the mediation on all other matters; and
  - (c) proposes that counsel report to the Court by Friday 21 July in respect of whether any mediation is required, and what form that might usefully take.

12. Counsel respectfully request that the Court adopts the updated proposed timetable set out in **Appendix C**.

**DATED** at Wellington this 5th day of July 2023.



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

## APPENDIX A: SECTION 274 WITNESSES

Party	Witnesses
<p><b>Waka Kotahi and Project Iwi Partners</b></p>	<ul style="list-style-type: none"> <li>- Lonnie Dalzell – Waka Kotahi Overview</li> <li>- Dianne Rump - Governance, Project and Overview for Muaūpoko</li> <li>- Dean Wilson - Tikanga and Mātauranga for Muaūpoko</li> <li>- Siobhan Karaitiana - Cultural Impact Assessment and Ecological Effects for Muaūpoko</li> <li>- Lindsay Poutama - Ngāti Tukorehe Perspective on the Ō2NL Project</li> <li>- Wayne Kiriona - Ngāti Huia Collective Perspective on the Ō2NL Project</li> <li>- Janelle Tamihana - Ngā Hapū ō Kererū Perspective on the Ō2NL Project</li> <li>- Quentin Parr - Ngāti Hikurangi Perspective on the Ō2NL Project</li> <li>- Kim Tahiri and Rawiri Rikihana - Ngāti Kapu Perspective on the Ō2NL Project</li> <li>- Te Kororangi Hakaraia - Ngāti Wehi Wehi Perspective on the Ō2NL Project</li> <li>- Jamie Povall – Design and Construction</li> <li>- Phil Peet – Transport</li> <li>- Jack McConchie – Hydrology, Flooding, Hydrogeology, Groundwater, and Water Abstraction</li> <li>- Gregor McLean – Erosion and Sediment Control</li> <li>- Keith Hamill – Water Quality</li> <li>- Nick Keenan – Stormwater Management Design</li> <li>- Alex James – Freshwater ecology</li> <li>- Nick Goldwater – Terrestrial and Wetland Ecology</li> <li>- Kathryn Halder – Contaminated Land</li> <li>- Michael Smith – Noise and Vibration</li> <li>- Andrew Curtis – Air Quality</li> <li>- Daniel Parker – Archaeology</li> </ul>

	<ul style="list-style-type: none"> <li>- Ian Bowman – Built Heritage</li> <li>- Gavin Lister – Landscape, Visual and Natural Character</li> <li>- Jo Healy – Social Impact</li> <li>- Doug Fairgray – Economics and Town Centre Impacts</li> <li>- Grant Eccles – Planning - Statutory Analysis</li> <li>- Ainsley McLeod – Planning - Conditions</li> </ul>
<b>Regional Councils</b>	<ul style="list-style-type: none"> <li>- Mark St Clair – Planning</li> <li>- James Lambie – Terrestrial Ecology</li> <li>- Logan Brown – Water Quality and Aquatic Ecology</li> <li>- Peter Kinley – Hydrology and Flooding</li> <li>- Jon Williamson – Hydrogeology and Groundwater</li> <li>- Kerry Pearce – Erosion and Sediment Control</li> <li>- Julia Williams – Natural Character</li> <li>- Stu Farrant – Stormwater</li> <li>- Mike Thompson – Water Takes (GWRC)</li> <li>- Michaela Stout – Water Takes (Horizons)</li> <li>- Peter Stacey – Air Quality (shared with the District Councils)</li> <li>- Sarah Newell – Contaminated Land (shared with the District Councils)</li> </ul>
<b>District Councils</b>	<ul style="list-style-type: none"> <li>- Helen Anderson – Planning</li> <li>- Bryn Hickson-Rowden – Terrestrial and Freshwater Ecology</li> <li>- Siiri Wilkening – Noise and Vibration</li> <li>- Michala Lander – Social Impact</li> <li>- Justine Bennett – Stormwater and Water Quality</li> <li>- John McArthur – Hydrology/ Flooding Natural Hazards</li> <li>- Mike Cullen – Economics</li> <li>- Graeme McIndoe – Urban Design</li> <li>- Julia Williams – Landscape and Visual</li> <li>- David Dunlop – Transport for KCDC</li> <li>- Tim Kelly – Transport for HDC</li> </ul>

<p><b>Prouse Trust Partnership / Karen and Stephen Prouse</b></p>	<ul style="list-style-type: none"> <li>- Planner</li> <li>- Ecologist</li> <li>- Noise</li> <li>- Vibration</li> <li>- Hydrologist</li> <li>- Traffic</li> <li>- Heritage</li> </ul>
<p><b>Kapiti Equestrian Advocacy group (KEAG) and New Zealand Equestrian Advocacy network (NZEAN)</b></p>	<ul style="list-style-type: none"> <li>- Janice Hill (or if she is unavailable appropriate staff member to replace or by affidavit), Kapiti Coast District Council (KCDC) staff member, trails design expert, and expert on the Cycleway, Walkway, Bridleway (CWB) network in Kapiti</li> <li>- Ruth Halliday, Equestrian rep to KCDC CWB for 9 years, Secretary of KEAG</li> <li>- Steve Lewis, Mountain bike track designer, off road cycling advocate</li> <li>- Debbie Dorne, Taylor Tarseal - road and pathway design expert</li> <li>- Shelly Warwick, Equestrian rep to KCDC CWB, Chair KEAG, Co-chair NZEAN</li> <li>- Arthur Yeo, Co-chair NZEAN</li> <li>- Rick Shimpf, Horowhenua Equestrian Advocacy group (HEAG)</li> </ul>
<p><b>Kāinga Ora</b></p>	<ul style="list-style-type: none"> <li>- Brendon Liggett (Kāinga Ora officer)</li> <li>- A mental health professional with experience at the facility that operates on the Kāinga Ora site</li> <li>- Possibly a stormwater expert, depending on the result of ongoing analysis of the material provided in support for the applicant and of the site conditions</li> <li>- Jon Styles (noise and vibration)</li> <li>- Kay Panther Knight (planning)</li> </ul>

<b>James McDonnell Limited</b>	<ul style="list-style-type: none"> <li>- Planning</li> <li>- Noise</li> <li>- Transport</li> <li>- Civil Engineering</li> <li>- Corporate</li> </ul>
<b>KiwiRail</b>	<ul style="list-style-type: none"> <li>- Planner</li> <li>- Systems Engineer</li> </ul>
<b>Spark and Connexa</b>	<ul style="list-style-type: none"> <li>- Graeme McCarrison and Fiona Matthews – corporate evidence</li> <li>- Tom Anderson – planning evidence</li> </ul>



## APPENDIX B: PROPOSED EXPERT CONFERENCING SESSIONS

Topic	Date	Proposed attendees
<b>Transport</b>	<b>24 July (am)</b>	<ul style="list-style-type: none"> <li>- Phil Peet (Waka Kotahi)</li> <li>- Tim Kelly (HDC)</li> <li>- David Dunlop (KCDC)</li> <li>- Prouse Trust witness</li> <li>- JML witness</li> <li>- Muaūpoko witness</li> <li>- Ngāti Raukawa witness</li> </ul>
<b>Social impact</b>	<b>24 July (pm)</b>	<ul style="list-style-type: none"> <li>- Jo Healy (Waka Kotahi)</li> <li>- Michala Lander (District Councils)</li> <li>- Muaūpoko witness</li> <li>- Ngāti Raukawa witness</li> </ul>
<b>Water abstraction</b>	<b>24 July</b>	<ul style="list-style-type: none"> <li>- Jack McConchie</li> <li>- Mike Thompson (GWRC)</li> <li>- Michaela Stout (Horizons)</li> <li>- Muaūpoko witness</li> <li>- Ngāti Raukawa witness</li> </ul>
<b>Hydrology and flooding</b> <b>[to be preceded by Planning discussion as to relevant One Plan requirements.]</b>	<b>25 July</b>	<ul style="list-style-type: none"> <li>- Grant Eccles (Waka Kotahi)</li> <li>- Mark St Clair (Regional Councils)</li> <li>- Helen Anderson (District Councils)</li> <li>- Jack McConchie (Waka Kotahi)</li> <li>- Peter Kinley (Regional Councils)</li> <li>- John McArthur (District Councils)</li> <li>- Prouse Trust witness</li> <li>- Muaūpoko witness</li> <li>- Ngāti Raukawa witness</li> </ul>

<b>Hydrogeology and groundwater</b>	<b>26 July</b>	<ul style="list-style-type: none"> <li>- Jack McConchie (Waka Kotahi)</li> <li>- Jon Williamson (Regional Councils)</li> <li>- Muaūpoko witness</li> <li>- Ngāti Raukawa witness</li> </ul>
<b>Erosion and sediment control</b>	<b>26 July (am)</b>	<ul style="list-style-type: none"> <li>- Gregor McLean (Waka Kotahi)</li> <li>- Kerry Pearce (Regional Councils)</li> </ul>
<b>Stormwater</b>	<b>26 July (pm)</b>	<ul style="list-style-type: none"> <li>- Nick Keenan (Waka Kotahi)</li> <li>- Stu Farrant (Regional Councils)</li> <li>- Justine Bennett (District Councils)</li> <li>- Possibly a Kainga Ora witness</li> </ul>
<b>Water quality</b>	<b>27 July (am)</b>	<ul style="list-style-type: none"> <li>- Keith Hamill (Waka Kotahi)</li> <li>- Logan Brown (Regional Councils)</li> <li>- Justine Bennett (District Councils)</li> <li>- Muaūpoko witness</li> <li>- Ngāti Raukawa witness</li> </ul>
<b>Freshwater ecology</b>	<b>27 July (pm)</b>	<ul style="list-style-type: none"> <li>- Alex James (Waka Kotahi)</li> <li>- Logan Brown (Regional Councils)</li> <li>- Bryn Hickson-Rowden (District Councils)</li> <li>- Prouse Trust witness</li> <li>- Muaūpoko witness</li> <li>- Ngāti Raukawa witness</li> </ul>
<b>Terrestrial ecology</b>	<b>28 July (am)</b>	<ul style="list-style-type: none"> <li>- Nick Goldwater (Waka Kotahi)</li> <li>- James Lambie (Regional Councils)</li> <li>- Bryn Hickson-Rowden (District Councils)</li> <li>- Prouse Trust witness</li> <li>- Muaūpoko witness</li> <li>- Ngāti Raukawa witness</li> </ul>

<b>Landscape, visual, natural character</b>	<b>28 July (pm)</b>	<ul style="list-style-type: none"> <li>- Gavin Lister (Waka Kotahi)</li> <li>- Julia Williams (District Councils)</li> <li>- Muaūpoko witness</li> <li>- Ngāti Raukawa witness</li> </ul>
<b>Urban Design</b>		<ul style="list-style-type: none"> <li>- Gavin Lister (Waka Kotahi)</li> <li>- Graeme McIndoe (Regional Councils)</li> <li>- Muaūpoko witness</li> <li>- Ngāti Raukawa witness</li> </ul>
<b>Noise and vibration</b>	<b>7 August (am)</b>	<ul style="list-style-type: none"> <li>- Michael Smith (Waka Kotahi)</li> <li>- Siiri Wilkening (District Councils)</li> <li>- Prouse Trust witness / witnesses</li> <li>- Jon Styles (Kainga Ora)</li> <li>- JML witness</li> </ul>
<b>Air quality</b>	<b>7 August (pm)</b>	<ul style="list-style-type: none"> <li>- Andrew Curtis (Waka Kotahi)</li> <li>- Peter Stacey (Regional and District Councils)</li> </ul>
<b>Planning</b>	<b>8 and 9 August</b>	<ul style="list-style-type: none"> <li>- Grant Eccles (Waka Kotahi)</li> <li>- Ainsley McLeod (Waka Kotahi)</li> <li>- Mark St Clair (Regional Councils)</li> <li>- Helen Anderson (District Councils)</li> <li>- Kay Panther Knight (Kainga Ora)</li> <li>- Tom Anderson (Spark / Connexa)</li> <li>- JML witness</li> <li>- KiwiRail witness</li> <li>- Muaūpoko witness</li> <li>- Ngāti Raukawa witness</li> </ul>
<b>Overflow / reserve days</b>	<b>10, 11, 12 August</b>	

## APPENDIX C: UPDATED PROPOSED TIMETABLE

Process step	Date
Waka Kotahi evidence filed	Tuesday 3 July [ <i>complete</i> ]
Expert witness for s274 parties and councils 'will say statements' filed and served ahead of conferencing	Wednesday 19 July
Expert conferencing:	Weeks of 24 July (technical) and 7 August (any overflow technical and planning)
<i>Any specific mediation on cultural matters (Waka Kotahi and Project Iwi Partners to liaise and advise by Friday 20 July if required)</i>	<i>[As required: to occur before 21 August if Commissioner availability – otherwise is week of 21 August]</i>
Court-assisted mediation	Week of Monday 21 August (with 28 and to 29 August potential reserve days depending on Commissioner availability)
Section 274 Party evidence to be filed and served	Tuesday 12 September
Councils' evidence to be filed and served	Tuesday 26 September
Waka Kotahi reply evidence to be filed and served	Tuesday 10 October
Hearing <i>HDC Council Chambers, Levin</i>	From Tuesday 24 October 2023 for 9 days