

**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 NZ TRANSPORT AGENCY**

Applicant

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**JOINT MEMORANDUM OF COUNSEL**

20 September 2023

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**BUDDLE FINDLAY**

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

1. This memorandum of counsel is filed jointly on behalf of Waka Kotahi NZ Transport Agency (**Waka Kotahi**), Manawatū-Whanganui Regional Council (**Horizons**), Greater Wellington Regional Council (**GWRC**), Horowhenua District Council (**HDC**) and Kāpiti Coast District Council (**KCDC**) (together the **Councils**) in respect of the Ōtaki to North of Levin Project (**Project**).
2. It responds to the minute of the Court issued on 29 August 2023; in particular, it addresses the following matters as directed at paragraph [2](e) of that minute:
  - (a) The issues in dispute to be resolved at the hearing (including those raised in any section 274 party evidence);
  - (b) The likely time required for the hearing (and a proposed hearing schedule); and
  - (c) Any other matters to enable the efficient delivery of the hearing.
3. While Muaūpoko Tribal Authority (**MTA**) and the hapū of Ngāti Raukawa are not signatories to this joint memorandum, Waka Kotahi acknowledges their important role as its Ō2NL Project Partners.
4. In addition to the section 274 parties who have outstanding concerns (addressed below in this memorandum), there are also section 274 parties in support of the Project; namely Horowhenua NZ Trust and Speldhurst Country Estate Residents. Horowhenua NZ Trust has indicated to the Project Team that it wishes to present at the hearing. Counsel for Waka Kotahi are unsure whether the Speldhurst Country Estate Residents wish to appear (at this stage they have been included in the proposed hearing timetable).

## **Outstanding issues**

5. Court-assisted mediation, expert conferencing and discussions between parties have been successful in significantly narrowing the scope of issues before the Court and reducing the number of parties involved in the proceeding.<sup>1</sup>
6. The outstanding issues are summarised below.

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<sup>1</sup> The following section 274 parties have formally withdrawn from the proceeding: Helen Naylor, KiwiRail, Maria Storey and Connexa and Spark, and at least five others are understood to be in the process of withdrawing.

### *Project Iwi Partners*

7. Court-assisted mediation was held on 29 August 2023 in Levin between Waka Kotahi and its two Project Iwi Partners: MTA and the hapū of Ngāti Raukawa. No formal agreement was reached during mediation, however there was a general agreement that the parties would continue working on conditions to try and find a mutually acceptable pathway forward.
8. At the time of drafting this memorandum the proposed tangata whenua conditions remain unresolved, however Waka Kotahi will keep the Court updated as discussions progress.

### *Other section 274 parties*

9. Aside from the Iwi Project Partners and the parties in support of the Project, there are 17 section 274 parties that remain in the proceeding.<sup>2</sup> Of those 17:
  - (a) The following four section 274 parties have filed and served evidence:
    - (i) John Bent (one witness);
    - (ii) Karen and Stephen Prouse and the Prouse Trust Partnerships (**Prouses**) (two witnesses);
    - (iii) Kāinga Ora (six witnesses); and
    - (iv) Royal Forest and Bird Protection Society of New Zealand Inc (**Forest and Bird**) (one witness).
  - (b) New Zealand Equestrian Advocacy Network (**NZEAN**), Horowhenua Equestrian Advocacy Group (**HEAG**) and Kāpiti Equestrian Advocacy Group (**KEAG**) (together the **Equestrian Parties**) have been granted an extension until 21 September 2023 to file evidence.
  - (c) The following seven parties have not filed evidence but have advised the Project Team they intend to present at the hearing:
    - (i) Kevin Daly;
    - (ii) Stephen Main;

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<sup>2</sup> This figure includes those that Waka Kotahi understands to be withdrawing (but who have not yet formally withdrawn) but excludes the four that have formally withdrawn (see above). For current purposes, New Zealand Equestrian Advocacy Network (**NZEAN**), Horowhenua Equestrian Advocacy Group (**HEAG**) and Kāpiti Equestrian Advocacy Group (**KEAG**) (together the **Equestrian Parties**) are counted as one section 274 party.

- (iii) John Brown;
  - (iv) Jan Windleburn;
  - (v) Rochelle Murray-Apatu;
  - (vi) Sarah Hodge (added here as awaiting a response); and
  - (vii) Te Ao Tūroa Environmental Centre (**Rangitāne o Manawatū**) whose issues will be covered by Siobhan Karaitiana).
- (d) Counsel for Waka Kotahi understand the following five parties do not intend to present at the hearing:
- (i) Gary Williams;
  - (ii) Christine Wallis;
  - (iii) Alan Jamieson;
  - (iv) Louise Miles; and
  - (v) JML.
10. From the evidence circulated or anticipated to be circulated (in the case of the Equestrian Parties), Waka Kotahi understands the section 274 parties' outstanding issues, in summary, relate to:
- (a) noise and vibration effects (both in the construction and operational phases of the Project) (Prouses)
  - (b) management of flood risks and effects (Kāinga Ora, Prouses);
  - (c) stormwater effects (including floating contaminants and screening of litter) (John Bent);
  - (d) planting (Forest and Bird, Prouses), including:
    - (i) landscape and natural character planting; and
    - (ii) site-specific mitigation planting; and
  - (e) provision for equestrian use of the proposed shared use path (**SUP**) (Equestrian Parties).
11. Aside from flood risks and effects (listed above), the outstanding issues raised by Kāinga Ora will be addressed in a separate memorandum.

### *Regional Council issues*

12. The Regional Councils consider the following issues, in summary, to be unresolved:
- (a) Hydrology and flooding – management of effects.
  - (b) Water abstraction – Waikawa Stream take, monitoring conditions, and duration of consent.
  - (c) Operational Stormwater – review of design and ongoing management.
  - (d) Groundwater – borrow sites, management of effects, and ongoing monitoring.
  - (e) Ecology/offsetting – condition framework as it relates to delivery of biodiversity net gain and EMP requirements.
  - (f) Fish passage – monitoring of design and reporting requirements.
  - (g) Air Quality – conditions relating to dust deposition effects on roof collected water.
  - (h) Conditions – planning and legal matters (including amendments to conditions, for example around certification processes).

### *District Council issues*

13. The District Councils consider the following issues, in summary, to be unresolved:
- (a) Hydrology and flooding – management of effects.
  - (b) Conditions relating to the CEDF (Cultural and Environmental Design Framework) and Design Review Audits.
  - (c) For KCDC, the lack of a suitable alternative arterial connection in the vicinity of the southern interchange and enabling such a connection at detailed design stage through conditions.
  - (d) For HDC, the designation provisions regarding the East West Arterial and other connections into Tara-Ika.
  - (e) Conditions – planning and legal matters (including amendments to conditions, for example around noise, water quality, ecology, traffic and transportation matters).

### **Likely time required and proposed hearing schedule**

14. In light of the narrowed scope of outstanding issues, Waka Kotahi and the Councils consider five days will likely be required to address the outstanding issues, structured broadly as follows:
  - (a) Day 1/2 / Tuesday 24/Wednesday 25 October: Project Partners;
  - (b) Day 2/3 / Wednesday 25/Thursday 26 October: Section 274 parties;
  - (c) Day 3/5 / Thursday 26/Monday 30 October: District and Regional Councils; and
  - (d) Day 4 Friday 27 October: Kāinga Ora (closed session).
15. **Appendix A** sets out a hearing schedule proposed by Waka Kotahi and the Councils for the Court's and other parties' consideration. Although (given how discussions with parties are trending) counsel consider five days will likely be sufficient for addressing the outstanding issues, **Appendix A** provides for one additional 'reserve' day on Tuesday 31 October 2023.

### **Other matters to enable efficient delivery of the hearing**

16. Several expert witnesses for Waka Kotahi and the Councils have either not had their evidence challenged by contradictory expert evidence or all issues among the parties relating to their area of expertise have now been resolved.
17. As flagged in earlier memoranda, in the interests of an efficient and focussed hearing, and unless the Court or any other party wishes to ask questions, counsel will be seeking a direction from the Court that such witnesses do not need to attend the hearing (and **Appendix A** has been prepared on that basis). With that in mind, counsel respectfully seek directions that:
  - (a) all parties advise counsel for Waka Kotahi of the witnesses, for all parties, that they wish to cross-examine by 4pm on Tuesday 17 October 2023; and
  - (b) counsel for Waka Kotahi collate that information and advise the Court by 4pm on Wednesday 18 October 2023.
18. In addition, counsel are of the view that it would assist the parties if proceedings were able to be viewed remotely via livestream. While witnesses would attend in person to present evidence, it would enable them (and parties) to hear the proceedings, and the evidence being given, without

attending in Levin for the full duration of the hearing. If the Court agrees, counsel are available to assist with arrangements, as may be required.

19. Finally, counsel request that section 274 parties are provided with additional time, to **4pm Friday 22 September**, to respond to the Court with any issues that have been missed / updates on positions in relation to this memorandum.

**DATED** this 20<sup>th</sup> day of September 2023.



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



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**Shannon Johnston**  
**Counsel for Horizons and GWRC**



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**Catherine Somerville-Frost**  
**Counsel for HDC**



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**Monique Thomas**  
**Counsel for KCDC**

## APPENDIX A – Proposed hearing schedule

<p><b>Venue: HDC Council Chambers, Levin</b></p> <p><b>Proposed hearing length: Five days (with one reserve day)</b></p>
<p><b>TUESDAY 24 OCTOBER 2023 (DAY 1)</b></p>
<p>Iwi Project Partners</p> <p>Waka Kotahi</p>
<p><b>WEDNESDAY 25 OCTOBER 2023 (DAY 2)</b></p>
<p>Continuation of Project Partners (as required)</p> <p>Section 274 parties</p> <ul style="list-style-type: none"><li>• Horowhenua NZ Trust</li><li>• Speldhurst Country Residents' Association (TBC)</li><li>• Forest and Bird: (<i>Amelia Geary</i>). Counsel for Forest and Bird have advised they will likely require two hours.</li><li>• John Bent</li><li>• John Brown</li><li>• Kevin Daly</li><li>• Sarah Hodge</li><li>• Equestrian parties</li><li>• Stephen Main</li><li>• Rochelle Murray-Apatu</li><li>• Mr and Mrs Prouse (<i>represented by Ian Gordon</i>), <i>Anna Carter (planning evidence)</i></li><li>• Jan Windleburn</li><li>• Kāinga Ora (Phil Jaggard / hydrology matters only)</li></ul>
<p><b>THURSDAY 26 OCTOBER 2023 (DAY 3)</b></p>
<p>Continuation of Section 274 parties (as required)</p>



District Councils Regional Councils
<b>FRIDAY 27 OCTOBER 2023 (DAY 4)</b>
Hearing on Kāinga Ora matters subject to confidentiality orders (legal submissions and relevant evidence of Waka Kotahi, Kāinga Ora and HDC).
<b>MONDAY 30 OCTOBER 2023 (DAY 5)</b>
Continuation of the Councils as required
<b>TUESDAY 31 OCTOBER 2023 (DAY 6)</b>
Reserve day