

**BEFORE THE ENVIRONMENT COURT  
WELLINGTON REGISTRY**

**I TE KŌTI TAIAO  
TE WHANGANUI-Ā-TARA ROHE**

**ENV-WLC-2023-000005**

**IN THE MATTER OF** the Resource Management Act 1991

**AND IN THE MATTER** of the direct referral of applications for resource consent  
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**

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**MEMORANDUM OF COUNSEL ON BEHALF OF  
THE ROYAL FOREST AND BIRD PROTECTION SOCIETY INC**

21 September 2023

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Royal Forest and Bird Protection Society of New Zealand Inc.  
PO Box 631  
Wellington  
0212866992/021988315  
Solicitor acting: Peter Anderson/Erika Toleman

To: The Registrar  
Environment Court  
Wellington

**MAY IT PLEASE THE COURT**

1. This memorandum responds to the memorandum filed on 20 September 2023 on behalf of Waka Kotahi, Manawatū-Whanganui Regional Council, Greater Wellington Regional Council, Horowhenua District Council and Kāpiti Coast District Council ('the joint memorandum').

2. Counsel also notes the Court's direction of 29 August 2023:

Any section 274 party that considers that an issue has been missed, misidentified, or that additional time is required for the hearing, must inform the Court and all parties of the issue (or time required) and provide clear particulars as to their rationale by 4pm on 20 September 2023.

3. Given that the joint memorandum was delayed, Forest & Bird was not able to meet the timeframe directed by the Court.

**Outstanding issues**

4. The joint memorandum records Waka Kotahi's understanding of Forest & Bird's outstanding issues at paragraph 10(d). These are listed as landscape and natural character planting, and site specific planting. The evidence of Ms Geary addresses these.

5. Further outstanding issues to be addressed in legal submissions for Forest & Bird include some of the matters listed as still outstanding for the Regional and District Councils (at paragraphs 12 and 13 of the joint memorandum):

- a. Ecology/offsetting – condition framework as it relates to delivery of biodiversity net gain and EMP requirements; and
- b. Conditions – planning and legal matters (including amendments to conditions, for example around certification processes and ecology matters).

6. A further issue for Forest & Bird is whether the proposed requirements for legal arrangements for ecological offset sites are appropriate. This may be captured under the 'Ecology/offsetting' point above.

**Proposed timetable**

7. Forest & Bird is comfortable with the proposed timetable. However, in the event that changes are needed to the proposed timetable, Counsel notes that Forest & Bird is not available to present its case 30<sup>th</sup> October – 1 November.

Dated 21 September 2023

A handwritten signature in blue ink that reads "Erika Toleman". The signature is written in a cursive style and is centered on the page.

Erika Toleman  
Counsel for Forest and Bird