

**ENVIRONMENT COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I MUA I TE KOOTI TAIAO O AOTEAROA
TE WHANGANUI-A-TARA**

ENV-

Under the Resource Management Act 1991

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

**AFFIRMATION OF LONNIE WILLIAM D'WAYNE DALZELL IN SUPPORT OF
DIRECT REFERRAL APPLICATION**

Affirmed at LEVIN the 27 day of APRIL 2023

BUDDLE FINDLAY

Barristers and Solicitors
Wellington

Solicitor Acting: **David Allen / Thaddeus Ryan**
Email: david.allen@buddlefindlay.com / thaddeus.ryan@buddlefindlay.com
Tel 64 4 044 620450 Fax 64 4 499 4141 PO Box 2694 DX SP20201 Wellington 6011

I, **LONNIE WILLIAM D'WAYNE DALZELL**, of Raumati, Project Director, affirm as follows:

INTRODUCTION

1. My full name is **Lonnie William D'Wayne Dalzell**.
2. I work at Waka Kotahi NZ Transport Agency (**Waka Kotahi**) and am the Project Director for the Ōtaki to North of Levin (**Ō2NL**) Project (the **Ō2NL Project** or the **Project**).
3. This affirmation is made in support of the notice of motion that the notices of requirement and applications for resource consents (together, the **Application**) for the Ō2NL Project be referred directly to the Environment Court under sections 87G and 198E of the Resource Management Act 1991 (**RMA**).

PROJECT BACKGROUND

4. The Ō2NL Project is being developed through a Project Partnership of Waka Kotahi, Muaūpoko Tribal Authority and the following hapū of Ngāti Raukawa ki te Tonga: Ngā Hapū o Ōtaki (on behalf of Ngāti Kapumanawawhiti), Ngāti Hikitanga, Ngāti Huia ki Poroutawhao, Ngāti Huia ki Mātau, Ngāti Kikopiri, Ngāti Ngarongo, Ngāti Pareraukawa, Ngāti Takihiku, Ngāti Tukorehe and Ngāti Wehiwehi (Ngāti Raukawa ki te Tonga). I thank our iwi partners for their extensive support in developing the Project to date.
5. The Ō2NL Project involves the construction, operation, use, maintenance and improvement of approximately 24 kilometres of new four-lane median divided state highway (two lanes in each direction) and a shared use path (**SUP**) between Taylors Road, Ōtaki (and the Peka Peka to Ōtaki expressway) and State Highway 1 (**SH1**) north of Levin.
6. The Project, which is located to the east of the existing SH1, will replace the existing SH1, and the existing State Highway 57 (**SH57**) along Kimberley Road and Arapaepae Road adjacent to the new highway.
7. Resource consents and designations are required for the construction and operation of the Project. Waka Kotahi has lodged notices of requirement to enable the land use elements of the Project, and has sought regional resource consents for:
 - (a) earthworks, land disturbance and vegetation clearance;
 - (b) discharges to land and water;

- (c) discharges to air;
 - (d) takes, uses, and diversions of water;
 - (e) activities in watercourses, beds of lakes and rivers and damming;
 - (f) construction of specified infrastructure in natural wetlands;
 - (g) reclamation of rivers; and
 - (h) culvert installation for fish passage.
8. In November 2022 Waka Kotahi lodged the resource consent applications with Greater Wellington Regional Council (**GWRC**) and Manawatū-Whanganui Regional (**Horizons**), and lodged the notices of requirement with Kāpiti Coast District Council (**KCDC**) and Horowhenua District Council (**HDC**) (together the **Councils**), along with the request that the Application be referred directly to the Environment Court.
9. That request was granted by Horizons and GWRC on 19 January 2023 and KCDC and HDC on 20 January 2023. The letters confirming the grants are annexed to this affirmation as **Exhibit LD1** and **Exhibit LD2** respectively.
10. At the time of lodgement, Waka Kotahi formally requested the Application be publicly notified. To avoid the submissions period extending over the Christmas holiday period, the Application was notified by the Councils in late January 2023.
11. At the request of the Councils, Waka Kotahi agreed to a 25 working day submission period and a 40 working day Council reporting period.
12. The Application was publicly notified on 23 January 2023, and the period for making submissions ended on 28 February 2023. A total of 90 submissions were received.

REASONS FOR SEEKING DIRECT REFERRAL

13. The reasons why Waka Kotahi seeks direct referral were set out in detail in the Application and the Councils' decisions (**Exhibits LD1 and LD2**) on direct referral and. In summary, the key reasons for progressing with direct referral are:
- (a) The need, as set out in more detail below, to get on with the construction of the Project in mid-2025 (with completion in 2030); and

- (b) The high likelihood of appeal delaying the proposed construction commencement date given:
 - (i) The significant scale of the Project (approximately 24km of new state highway at an estimated cost of \$1.5b);
 - (ii) The significant public interest in the Project, and the wide number of people affected (positively and negatively); and
 - (iii) There have been 90 submissions on the Application, raising a variety of issues for the Court to consider.

PRIORITY TRACK AND A PRIORITY HEARING

- 14. The Ō2NL Project is a top priority for Waka Kotahi in relation to safety, resilience, supporting regional growth and delivering a fit for purpose SH1. It is a part of the New Zealand Upgrade Programme's Wellington and Manawatū-Whanganui package, which is focussed on supporting growth under the Wellington Regional Growth Framework. The estimated cost of the Project is \$1.5b.
- 15. I understand that, under the Court's 2023 Practice Note, matters accepted for direct referral are generally allocated for the priority track. As indicated above, while I and Waka Kotahi are mindful of the various pressures on, and matters before, this Court, the Project does warrant both allocation to the priority track and also a priority hearing.
- 16. My reasons are set out below.
- 17. I consider that the Ō2NL Project should be heard as a priority over other matters given its significant district, regional and national benefits, including in relation to:
 - (a) **Safety:** The Ōtaki to north of Levin sections of SH1 and SH57 are among the most dangerous stretches of road in New Zealand, falling well below the standard expected of national state highways (it has a present KiwiRap safety rating of 2 out of 5 stars). Between 2011 to 2021 numbers of crashes in these sections have steadily increased, culminating in 72 deaths and serious injuries (**DSI**) in the last five years. This equates to more than one DSI per month.

While safety upgrade works on SH1 and SH57 within the Project area are underway, the extension of the Wellington roading projects to the southern end of the Project area further amplifies the deficiencies in the

existing road by providing a modern, safe (110km design) to the southern end of the Project area.

- (b) **Resilience:** The existing state highway network also has significant resilience concerns. SH1, in particular, is at high risk of closure from earthquakes, flooding and crashes. As the main arterial route through the centre of New Zealand, and a critical link between Wellington to the rest of the North Island (the only other alternative is State Highway 2 via the Remutaka Hill, which also carries resilience risks), when SH1 is closed it severely impacts freight, commuting and overall travel times. Currently, this section of SH1 closes, on average, four times a year because of crashes or natural hazards.

There are also five bridges on the current SH1 along the Project area that are vulnerable to earthquake failure. Two of those bridges would affect the North Island Main Trunk railway below them should they fail, in which case all access between Levin and Ōtaki would be severed.

- (c) **Regional and district growth:** The Horowhenua District has seen rapid population growth. The Project, along with the Wellington expressway projects that have advanced to north of Ōtaki, will enable the more efficient (and safer) movement of people. This helps to unlock growth, and especially support housing, in the Horowhenua District and the region. To enable the construction of the Project to integrate with anticipated potential housing development within the district requires the Project to commence construction on time in 2025.

Palmerston North is the largest freight node in central New Zealand, it provides an important connection in the national and regional freight network. The Project enables improved movement of freight south to Wellington and the South Island.

- (d) **Uncertainty for landowners and the community:** The Project requires the acquisition of some 215 properties (seven of which are Māori Freehold land). Waka Kotahi has already acquired many properties. The construction of the Project will involve large scale earthworks and infrastructure that will change the existing environment and cause uncertainty, in the interim, to neighbouring properties and communities. The sooner a decision is made on the Project (and its conditions) the more certainty landowners and the community have.

18. In my opinion the public interest element of providing a priority fixture is also supported by the Project for the reasons above.
19. Given the significant Project cost not only does the funding need to be committed but a sufficient lead in time is required following consenting to procure the construction workforce and to complete detailed design. I need to know as soon as possible whether the Project has RMA approval to proceed (and if so under what conditions) so that the planning for construction commencement in 2025 can be ensured.

CONCLUSION

20. The direct referral and the allocation of a priority hearing of the Application will enable Waka Kotahi to meet the milestone dates necessary to complete the Project by 2030 thereby ensuring the numerous, and significant, benefits of the project can be delivered.

AFFIRMED at Levin this)
27th day of April 2023)



LWD DALZELL

before me:

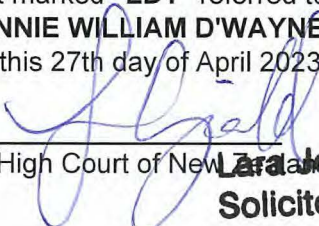


 A solicitor of the High Court of New Zealand
Joanna Goddard
Solicitor
Levin

This is the Exhibit marked "LD1" referred to in the affirmation of **LONNIE WILLIAM D'WAYNE DALZELL** affirmed at Levin this 27th day of April 2023 before me:

MWRC Consents: APP-2021203231.00
WRC Consents: WGN230122

A Solicitor of the High Court of New Zealand


Lara Joanna Goddard
Solicitor
Levin

REPORT

FILE: MWRC: APP-2021203231.00
WRC: WGN2300122

DATE: 19 January 2023

TO: Manawatū Whanganui Regional Council – Jasmine Mitchell, Team Leader Consents - MWRC
Greater Wellington Regional Council – Anna McLellan, Team Leader Consents and Compliance

FROM: Mark St.Clair – Consultant Planner

SUBJECT: RECOMMENDATION ON REQUEST FOR DIRECT REFERRAL TO THE ENVIRONMENT COURT FROM WAKA KOTAHI NZ TRANSPORT AGENCY FOR THE RESOURCE CONSENT APPLICATIONS FOR THE CONSTRUCTION, OPERATION, MAINTENANCE AND IMPROVEMENT OF ŌTAKI TO NORTH OF LEVIN (Ō2NL) HIGHWAY PROJECT

REASON FOR REPORT

1. Manawatū-Whanganui Regional Council (MWRC) and Wellington Regional Council (WRC) have received the following resource consent applications – APP-2021203231.00 and WGN230122 respectively. Horowhenua District Council and Kāpiti Coast District Council have received the following Notices of Requirement - 504/2022/22 and RM220254 respectively.
2. The resource consent applications and Notices of Requirement and have been received from Waka Kotahi NZ Transport Agency (Waka Kotahi) and relate to the construction, operation, maintenance and improvement of 24km of state highway and shared use path and associated infrastructure, between Taylors Road (to the north of Ōtaki) and State Highway 1 north of Levin known as the Ōtaki to North of Levin Highway Project (Ō2NL Project).
3. Pursuant to s 87D(1) of the Resource Management Act 1991 (**Act**), Waka Kotahi NZ Transport Agency (the **Applicant**) has requested that Manawatū Whanganui Regional Council and Wellington Regional Council allow the applications for resource to be determined by the Environment Court, rather than by MWRC and WRC. This is commonly known as a 'request for Direct Referral'.
4. The purpose of this report is to seek a decision on whether to grant or decline the Applicant's request for a Direct Referral process

BACKGROUND

5. On the 2nd November 2022 the Applicant filed a suite of resource consents with MWRC and WRC, which were formally lodged on the 9th November 2022 and accepted as complete pursuant to section 88 of the of the Resource Management Act 1991 (**RMA**) on the 28th November 2022. The purpose of the resource consent applications is to construct, operate and maintain a new state highway and shared use path and

associated infrastructure, between Taylors Road (to the north of Ōtaki) and State Highway 1 north of Levin known as the Ōtaki to North of Levin Highway Project (“Ō2NL Project”).

6. Concurrent notices of requirement to the Horowhenua District Council (**HDC**) and Kapiti Coast District Council (**KCDC**) have been lodged for the Ō2NL Project for proposed designations associated with the construction, operation and maintenance of the new State Highway. A separate direct referral decision is to be made by the District Councils.
7. At the time of lodgement MWRC and WRC also received the direct referral request pursuant to section 87D(1) of the RMA. Public notification was also formally requested at the same time.
8. Under section 87E(5) of the RMA, a consent authority is required to make a decision on such a request within 15 working days after the date of the decision on notification. A decision on notification (pursuant to ss.95A-95F RMA) was made on the 19 January 2023. A consent authority has the ability to grant or decline such a request. If the decision is to decline the request, it must be recorded in writing and include the reasons for that decision.

THE PROPOSAL

9. The Ō2NL Project is the northern most section of the Wellington Northern Corridor and is proposed to provide the final section a 4-lane expressway as an extension connecting to the Peka Peka to Ōtaki.
10. The applications relate to the construction, operation, and maintenance of 24km of state highway and shared use path and associated infrastructure, between Taylors Road (to the north of Ōtaki) and State Highway 1 north of Levin.
11. The new highway will be a median separated carriage way with two lanes in each direction over the majority of the route. The project also includes a shared use path for cyclists and pedestrians, as well as a number of new bridges, including one over the Manawatū River. To achieve this, a range of consents are required from MWRC and WRC associated with both the construction and operational phases of the project.
12. The consents and durations sought are summarised as follows:

Table 1: MWRC Consents Sought

Construction Phase Activity	Consent Type	Duration
A land use consent, a water permit and a discharge permit is sought pursuant to sections 9(2), 14 and 15 of the RMA and Rule 13-2 for large scale earthworks (including the ancillary diversion of water and the discharge of sediment to water) where the earthworks are not: - in a rare, at risk or threatened habitat; - within 5m of the bed of a permanently flowing river;	Controlled activity	10 years

<ul style="list-style-type: none"> - within 5m of the bed of a river that is not permanently flowing and has a width greater than 1m; or - within 10m of a wetland identified in Schedule F. 		
<p>A land use consent, a water permit and a discharge permit is sought pursuant to sections 9(2), 13, 14 and 15 of the RMA and Rule 13-7 for land disturbance and vegetation clearance (including any ancillary disturbance of the bed of a river division of water and discharge of sediment or slash) that is not in a 'rare', 'at-risk' or 'threatened' habitat and is:</p> <ul style="list-style-type: none"> - within 5m of the bed of a permanently flowing river; - within 5m of the bed of a river that is not permanently flowing and has a width greater than 1m; or - within 10m of a wetland identified in Schedule F but outside of a rare, at risk or threatened habitat. 	Discretionary activity	10 years
<p>A land use consent is sought pursuant to sections 9(2) and 13 of the RMA and Rule 13-8 for large scale earthworks and vegetation clearance within an at-risk habitat.</p>	Discretionary activity	10 years
<p>A water permit is sought pursuant to section 14 of the RMA and Rule 13-8 for the diversion of water within an at-risk habitat.</p>	Discretionary activity	10 years
<p>A discharge permit is sought pursuant to section 15 of the RMA and Rule 13-8 for the discharge of water or contaminants to water or land within an at-risk habitat.</p>	Discretionary activity	10 years
<p>A land use consent is sought pursuant to sections 9(2) and 13 of the RMA and Rule 13-9 for large scale earthworks and vegetation clearance within a 'rare' or 'threatened' habitat.</p>	Non-complying activity	10 years
<p>A discharge permit is sought pursuant to section 15 of the RMA and Rule 13-9 for the discharge of water or contaminants to water or land within a 'rare' or 'threatened' habitat.</p>	Non-complying activity	10 years
<p>A discharge permit is sought pursuant to section 15 of the RMA and Rule 14-30 for the discharge or placement of cleanfill.</p>	Discretionary activity	10 years
<p>A discharge permit is sought pursuant to section 15 of the RMA and Rule 15-17 of the One Plan for the discharge of contaminants to air.</p>	Discretionary activity	10 years
<p>A water permit is sought pursuant to section 14 of the RMA and Rule 16-9 for the taking of surface water.</p>	Discretionary activity	10 years
<p>A water permit is sought pursuant to section 14 of the RMA and Rule 16-9 for the taking of water for construction related dewatering outside of an 'at-risk', 'rare' or 'threatened' habitat.</p>	Discretionary activity	10 years

A land use consent, a water permit and a discharge permit is sought pursuant to sections 9(2), 13, 14 and 15 of the RMA and Rule 17-3 of the One Plan as a discretionary activity for the placement of a bridge over the Ohau River and Waikawa Stream (and associated disturbance, diversion, deposition and discharges).	Discretionary activity	10 years
A land use consent, a water permit and a discharge permit is sought pursuant to sections 9(2), 13, 14 and 15 of the RMA and Rule 17-15 of the One Plan for the placement of a bridge over the Waiauti, Manakau and Kuku Streams (and associated disturbance, diversion, deposition and discharges).	Discretionary activity	10 years
A land use consent is sought pursuant to sections 9(1) of the RMA and Regulation 45 of the NES-F for vegetation clearance, earthworks and land disturbance within or near natural wetlands for the purpose of constructing specified infrastructure.	Discretionary activity	10 years

Construction and Operational Phase Activity	Consent Type	Duration
A construction and operational water permit is sought pursuant to section 14 of the RMA and Rule 13-8 as a discretionary activity for the diversion of water within an at-risk habitat	Discretionary activity	35 years
A construction and operational discharge permit is sought pursuant to section 15 of the RMA and Rule 13-8 as a discretionary activity for the discharge of water within an at-risk habitat.	Discretionary activity	35 years
A construction and operational water permit is sought pursuant to section 14 of the RMA and Rule 13-9 as a non-complying activity for the diversion of water within a 'rare' or 'threatened' habitat.	Non-complying activity	35 years
A construction and operational discharge permit is sought pursuant to section 15 of the RMA and Rule 13-9 as a non-complying activity for the discharge of water within a 'rare' or 'threatened' habitat.	Non-complying activity	35 years
An operational discharge permit is sought pursuant to section 15 of the RMA and Rule 14-25 of the One Plan as a discretionary activity for the discharge of treated stormwater to a reach of a surface water body or its bed within a Schedule B Value of Sites of Significance – Aquatic.	Discretionary activity	35 years
An operational water permit is sought pursuant to section 14 and Rule 16-9 of the One Plan as a discretionary activity for the taking of water for operational related dewatering outside of an 'at-risk', 'rare' or 'threatened' habitat.	Discretionary activity	35 years

A construction and operational water permit is sought pursuant to section 14 of the RMA and Rule 16-13 of the One Plan as a discretionary activity for the diversion of water outside of an 'at-risk', 'rare' or 'threatened' habitat.	Discretionary activity	35 years
A construction and operational land use consent is sought pursuant to section 13 of the RMA and Rule 17-23 of the One Plan as a discretionary activity for the placement of culverts (and associated disturbance, diversion, deposition and discharges)	Discretionary activity	35 years
A construction and operational water permit and a discharge permit is sought pursuant to sections 14 and 15 of the RMA and Regulation 45 of the NES-F as a discretionary activity the taking, use, damming, diversion, or discharge of water within or near natural wetlands for the purposes of constructing specified infrastructure.	Discretionary activity	35 years
A construction and operational land use consent is sought pursuant to section 13 and Regulation 57 of the NES-F as a discretionary activity for the reclamation of stream beds.	Discretionary activity	Unlimited
A construction and operational land use consent is sought pursuant to section 13 of the RMA and Regulation 71 of the NES-F as a discretionary activity for the placement, use, alteration, extension, or reconstruction of a culvert in, on, over, or under the bed of a river.	Discretionary activity	35 years

Table 2: WRC Consents Sought

Construction and Operational Phase Activity	Consent Type	Duration
A discharge permit is sought pursuant to section 15 and Rule R42 for a discharge to air from the Ō2NL Project works during the construction phase.	Discretionary activity	10 years
A discharge permit is sought pursuant to section 15 of the RMA and Rule R94 for the discharge of cleanfill to land and water.	Discretionary activity	10 years
A water permit is sought pursuant to section 14 and Rule K.R1 for the taking of surface water in the Kāpiti Whaitua.	Restricted discretionary activity	10 years
A land use consent is sought pursuant to sections 9(1) of the RMA and Regulation 45 of the NES-F for vegetation clearance, earthworks and land disturbance within or near natural wetlands for the purpose of constructing specified infrastructure.	Discretionary activity	10 years

A land use consent and a discharge permit is sought pursuant to sections 9(2) and 15 of the RMA and Rule R107 for earthworks and the associated discharge of sediment.	Discretionary activity	10 years
A land use consent and a discharge permit is sought pursuant to sections 13 and 15 of the RMA and Rule R145 of the PNRP as a discretionary activity for the placement of culverts (but not reclamation or diversion of water)	Discretionary activity	10 years

Operational Phase Activity	Consent Type	Duration
A discharge permit is sought pursuant to section 15 of the RMA and Rule R50 of the PNRP as a discretionary activity for the discharge of treated stormwater from the Ō2NL Project.	Restricted discretionary activity	35 years
A land use consent, a water permit and a discharge consent is sought pursuant to sections 9(2), 14 and 15 of the RMA and Rule R118 of the PNRP as a non-complying activity for the works within, and reclamation of, a wetland.	Non-complying activity	10 years (water permit and discharge permit) Unlimited (land use consent)
A land use consent is sought pursuant to sections 13 of the RMA and Rule R143 of the PNRP the reclamation of streams associated with the piping of the streams.	Non-complying activity	Unlimited
A water permit is sought pursuant to section 14 of the RMA and Rule R147 of the PNRP for diversion of streams.	Discretionary activity	35 years
A water permit is sought pursuant to section 14 of the RMA and Rule R160 of the PNRP for dewatering.	Discretionary activity	35 years
A discharge permit is sought pursuant to section 15 of the RMA and Rule R160 of the PNRP for dewatering.	Discretionary activity	35 years
A water permit and a discharge permit is sought pursuant to sections 14 and 15 of the RMA and Regulation 45 of the NES-F the taking, use, damming, diversion, or discharge of water within or near natural wetlands for the purposes of constructing specified infrastructure.	Discretionary activity	35 years
A land use consent is sought pursuant to section 13 and Regulation 57 of the NES-F of the reclamation of stream beds.	Discretionary activity	Unlimited

A land use consent is sought pursuant to section 13 of the RMA and Regulation 71 of the NES-F for the placement, use, alteration, extension, or reconstruction of a culvert in, on, over, or under the bed of a river.	Discretionary activity	35 years
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DETAIL OF THE REQUEST

13. The Applicant has requested direct referral of the resource consent applications to the Environment Court. The Applicant outlines a number of reasons for this request including:

- *The applications relate to the delivery of significant infrastructure (with an overall cost of approximately \$1.5bn) with a wide range of public benefits. In particular, the Ō2NL Project enhances the safety of travel on the state highway network, improves the resilience of the state highway network, enables mode choice for travel between local communities and supports inter-regional and intra-regional growth and productivity through improved movement of people and freight on the state highway network.*
- *A direct referral will reduce duplication and be more efficient in terms of time and costs for all parties. This is because:*
 - *as the Ō2NL Project has developed it has been the subject of comprehensive public engagement over many years, which has given key potential submitters and the community a sound understanding of the Project and the matters that are likely to be issues in respect of the applications; and*
 - *a decision made by the territorial authorities would likely come to the Environment Court on appeal because there is significant local and regional interest in the Project and there are a number of potentially affected parties such that the likelihood of an appeal is high.*
- *The Ō2NL Project is complex, because it includes substantial physical works over a 24km length; is located in four council jurisdictions; and includes two notices of requirement and applications for numerous of resource consents. For this reason, it is expected that evidence would be provided by numerous expert witnesses and it is appropriate for the Environment Court to consider evidence on the Project given the Environment Court's:*
 - *extensive experience with large complex infrastructure project that are technical in nature;*
 - *ability to direct mediation and expert witness conferencing to narrow issues of contention (including access to commissioners with particular expertise in managing these processes); and*
 - *ability to test evidence through cross-examination.*
- *The streamlined decision-making delivered by the application being determined directly by the Environment Court, and that decision being final subject to any appeals on points of law, better enables commencement by mid-2024 (should the Environment Court grant the consents and confirm the associated notices of requirement for a designation).*

- *The direct referral process enables effective participation by submitters and no parties will be unduly prejudiced by granting this request.*

14. These matters are addressed further below.

STATUTORY PROVISIONS RELATING TO REQUEST

15. The direct referral request is an 'eligible' request under s 87D of the Act. It is consistent with statutory requirements and made within the relevant timeframes.
16. Without limiting or precluding any requests of the Applicant for further information (under s 92 of the Act or otherwise) to enable MWRC and WRC to undertake a full substantive assessment of the resource consent applications, the consent authorities are able to make a fully informed decision on the Applicant's request for direct referral.

CONSIDERATION OF DIRECT REFERRAL REQUEST

17. There are no criteria within the Act to guide MWRC and WRC when considering whether to grant or decline a direct referral request. There are also no regulations setting a direct referral threshold, which would trigger requirements under s 87E(6A).
18. MWRC and WRC do not have any policy framework for consideration for direct referrals. The Ministry for Environment guidance material for applicants suggests that applications that are likely to be contentious and/or likely to end up in the Environment Court due to appeals are reasons for consideration.
19. The recommendation as to whether or not this request for direct referral should be granted has been assessed against the criteria (developed by Environment Canterbury for direct referral applications) attached as **Attachment 1**.
20. The following is an assessment against these guidelines:

Necessity

21. Necessity of a hearing: The Applicant has requested public notification of the resource. There are a large number of potentially affected parties and there are likely to be a number of submitters and therefore a hearing is therefore highly likely to be required in this instance.
22. National significance: The Ō2NL Project is considered important at a local and regional level, with it being important to the Horowhenua and Kapiti communities, as well as the wider Manawatu and Wellington regions. The Horizons Regional Council Land Transport Plan 2021-2031 identifies the Ō2NL Project as a priority investment area and as one of the 'Significant Inter-Regional Activities between the Manawatū-Whanganui Region and Greater Wellington Region. The Ō2NL Project is also identified in the Horowhenua District Council's Integrated Transport Strategy as a key development Priority.
23. Likelihood of appeal: The scale of the Ō2NL Project, the number of potentially affected parties and likelihood of a significant number of submissions, suggests that an appeal to the Environment Court is highly likely.

Providing an enabling process

24. Reasons provided by the Applicant: The Applicant has supplied a number of reasons for requesting direct referral of these applications. It is considered by Council officers that these reasons are valid.
25. Effect of decision on other applications: Referring these applications for resource consent will not have any effect on other applications being processed by MWRC and WRC, nor will it affect any other applications being processed within the same catchment.
26. Effect on submitters and/or affected parties: The possible impacts on submitters and/or public are likely to be:
 - The process is more formal and therefore more intimidating which may limit the amount of public involvement.
 - Potentially higher costs of being part of a Court process.
 - Pressure to engage experts/advocates to strengthen their case.
27. It is considered that any decision should be sympathetic to recognising pressures a court process can impose on lay persons. The process is formal, potentially intimidating, can generate costs and require people to take time out of their day to attend any hearing and speak to their submission. However, due to Ministry for the Environment commissioner accreditations and best practice, in reality a Court process is not too dissimilar to a Council hearing. Both will have some degree of formality (and the potential for intimidation) for lay persons.
28. The Environment Court is also well practiced in hearing submissions and evidence of lay submitters, with the direct referral process having been designed in a manner which recognises that the Court process/hearing will be the first chance for parties to put their views formally. As is the case with any first instance Council hearing, submitters will be able to determine whether they wish to participate at the hearing personally. There is also no expectation that they would have to engage experts.
29. Of further note is that regardless of whether a submitter wishes to be heard before the Court, every written submission must still be considered by the Court in making its decision.
30. Concerns about participation in Environment Court proceedings should also be balanced with the need for efficiency in decision making processes and the need to avoid duplication, costs and delays¹ – particularly where there is risk of appeal.
31. The direct referral process would avoid the duplication of processes involved with a first instance hearing and then a hearing by the Environment Court. Court assisted mediation can also assist in dealing with complex matters (see below).
32. As the resource consent applications contain significant information and address a number of complex matters across a number of disciplines, which are likely to generate

¹ A focus of the changes to the Act introduced through the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

debate, there is a reasonably high likelihood of the application being appealed by interested parties.

33. Therefore, it is considered that bypassing the first instance council hearing would be the most time and cost-efficient method for reaching a conclusion on the application and will ultimately benefit the majority of parties involved procedurally.

Cost and timeliness

34. Timeframe effects: A direct referral to the Environment Court would almost certainly be more time efficient for all parties than a Council hearing followed by an appeal. The Applicant has also indicated there are specific timeframes in relation to delivery of the Ō2NL Project and its design, consenting, and construction timeline. It is understood that this is a driver for the direct referral process.
35. Implications on Council resource: MWRC and WRC have engaged a number of external consultants to work alongside internal staff working on the Ō2NL Project, so as to minimise the implications of the resource consent applications on other Council resourcing requirements.
36. Cost to Council: There will still be costs for MWRC and WRC under the direct referral route, however it is considered that the need for only one hearing process should bring about benefits for all parties involved, including Council's. Any costs are able to be recovered under the Act (initially under s 36, and then by way of order of the Court under s 285 of the Act). An agreement with the Applicant is also being sought by MWRC and WRC to ensure additional costs incurred by the Council's will be recovered.

Technical resolution

37. Regard should also be had to the technical nature of the application. There are a number of technical experts required to provide input into the consenting process, and the Environment Court process is experienced in (and well equipped for) managing expert witnesses, including conferencing and mediation for narrowing of issues.

Conclusion

38. Having assessed the request using the criteria attached in Attachment 1, and the relevant statutory provisions of the Act (including its emphasis on streamlined decision making), it is considered that there is nothing preventing these applications for resource consent from being referred directly to the Environment Court. Furthermore, there is good reason for accepting the request when considering the likely reduction of costs, duplication and delays for all parties in circumstances where there are critical drivers for the highway as recorded in the Applicant's request.

RECOMMENDATIONS

39. It is recommended that the Applicant's request for direct referral to the Environment Court under s 87E of the Act be **accepted** for the following reasons:
- There is a strong likelihood that any decisions made at a Council hearing will be appealed to the Environment Court;

- The direct referral process will avoid the duplication of the process via a Council hearing and then Environment Court Hearing.
- The direct referral will still allow for the participation of submitters and any impact on submitters and/or affected parties should be minimal, when compared with a slightly more formal process;
- There will be no significant increase of Council costs, with cost recovery able to be managed through agreement and statutory processes.

Recommended by:



Mark St.Clair
CONSULTANT PLANNER
18 January 2023

DECISIONS

Manawatū-Whanganui Regional Council

Based on the above recommendations and pursuant to delegated authority, I **grant** the request by the Waka Kotahi NZ Transport Agency for direct referral of these resource consent applications to the Environment Court.

Signed

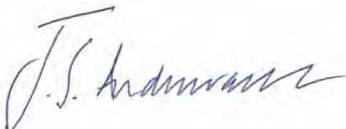


Nic Peet
GROUP MANAGER – STRATEGY AND REGULATION
20 January 2023

Wellington Regional Council

Based on the above recommendations and pursuant to delegated authority, I **grant** the request by the Waka Kotahi NZ Transport Agency for direct referral of these resource consent applications to the Environment Court.

Signed



Shaun Andrewartha
MANAGER ENVIRONMENTAL REGULATION
19 January 2023

Attachment 1: Environment Canterbury suggested criteria for making a decision on a direct referral request

Criteria	Guide notes
1. Necessity	
Consider if a hearing would otherwise be necessary.	Are there or are there likely to be any submitters?
Consider whether there are alternative decision making bodies that could better determine the application	Is this a matter of national significance that could be referred to the Environmental Protection Authority
Consider whether if in the normal course of events the decision will likely result in an Environment Court appeal and/or court case.	Are the likely matters of appeal substantive, or will they be matters of a minor nature that will most likely be resolved through mediation?
2. Providing an Enabling Process	
Consider the reasons the applicant has provided in making the application to go to the Environment Court.	What reasons has the applicant supplied with their application? Are these valid?
Consider how the decision will affect other applications in process.	Will other applicants be advantaged or disadvantaged by a referral? Will matters of processing priority or resource allocation priority be affected?
Consider the effect on submitters and/or affected parties	Will the referral benefit submitters through their sharing of resources and/or focusing the matters they are submitting on? Will submitters be deterred by the cost and formality of a court process and therefore put the quality of the consent decision in jeopardy?
Consider the effects on other Consent Authorities	What effect will there be on any other consent authority involved in this proposed activity or project?
3. Cost and Timeliness	
Consider whether the overall cost will be more or less than the normal process	Will there be a cost advantage or disadvantage for the applicant? Will there be a cost advantage or disadvantage for any other party?
Consider the timeframe effects	Will the Environment Court be a faster or slower option than a council hearing and possible appeal? Will the court process delay or speed up decision making on other consent applications?
Consider the implications on available resource within the Council	Will the referral free up council resource or require greater resource?
Consider the available funding to support the Council's costs in carrying out their duties at the Environment Court	Is funding available to cover the costs of acting as a witness at the Court? Has the applicant offered to pay for any additional costs that will be incurred by the Council?
4. Technical Resolution	

Consider whether there is a matter that will be best determined through cross examination and presentation of sworn evidence	Will the Environment Court assist the resolution of matters or a scientific or technical nature? Will the Environment Court decision provide precedence that will assist decision making for other applications/future applications?
5. Any other relevant matter	

This is the Exhibit marked "LD2"
referred to in the affirmation of **LONNIE
WILLIAM D'WAYNE DALZELL** affirmed
at Levin this 27th day of April 2023
before me:

HDC: 504/2022/22
KCDC: RM220254

REPORT

FILE: HDC:
KCDC: RM220254

504/2022/22

DATE: 20 January 2023

A Solicitor of the High Court of New Zealand

Lara Joanna Goddard
Solicitor
Levin

TO: Horowhenua District Council – Councillor David Allan, Monique Davidson, CEO
Kapiti Coast District Council – Eloise Carstens, Resource Consents and
Compliance Manager

FROM: Helen Anderson – Consultant Planner

**SUBJECT: RECOMMENDATION ON REQUEST FOR DIRECT REFERRAL TO THE
ENVIRONMENT COURT FROM WAKA KOTAHI NZ TRANSPORT AGENCY
FOR THE NOTICES OF REQUIREMENT FOR THE CONSTRUCTION,
OPERATION, MAINTENANCE AND IMPROVEMENT OF ŌTAKI TO NORTH
OF LEVIN (Ō2NL) HIGHWAY PROJECT**

1. REASON FOR REPORT

- 1.1. Pursuant to s 87D(1) of the Resource Management Act 1991 (**Act**), Waka Kotahi NZ Transport Agency (the **Requiring Authority**) has requested that Horowhenua District Council (**HDC**) and Kāpiti Coast District Council (**KCDC**) allow the proposed designation to construct, operate, maintain and improve a new state highway and shared use path and associated infrastructure, between Taylors Road (to the north of Ōtaki) and State Highway 1 north of Levin known as the Ōtaki to North of Levin Highway Project ("Ō2NL Project") to be determined by the Environment Court, rather than by HDC and KCDC. This is commonly known as a 'request for Direct Referral'.
- 1.2. The purpose of this report is to seek a decision on whether to grant or decline the Requiring Authority's request for Direct Referral.

2. BACKGROUND

- 2.1. On the 2nd November 2022 the Requiring Authority submitted Notices of Requirement with HDC and KCDC, which were formally lodged on the 11th November 2022¹ The purpose of the proposed designations is to construct, operate, maintain and improve a new state highway and shared use path and associated infrastructure, between Taylors Road (to the north of Ōtaki) and State Highway 1 north of Levin known as the Ōtaki to North of Levin Highway Project ("Ō2NL Project"). The Ō2NL Project is the northern most section of the Wellington Northern Corridor, connecting to the Peka Peka to Ōtaki expressway. Once Ō2NL

¹ The lodgement date for the NoR is the date the Council's (HDC and KCDC) received payment of the lodgement fees, as per s.36AAB RMA. Therefore the 'lodgement date' and the date on which the working days start is the 11th November 2022, being the date the deposit fee for the NoR was received by HDC and KCDC (noting that payment was received by KCDC on the 10th November, therefore the Council's lodgement date is considered to be 11th November 2022).

is completed, a minimum 4-lane expressway from central Wellington CBD to north of Levin will be provided.

- 2.2. Concurrent resource consent applications to the Manawatu Whanganui Regional Council and Greater Wellington Regional Council have been lodged for the Ō2NL Project for a suite of resource consents associated with the construction, operation and maintenance of the new State Highway. A separate direct referral decision is to be made by the Regional Councils.
- 2.3. At the time of lodgement HDC and KCDC also received the direct referral request pursuant to section 87D(1) of the RMA. Public notification was also formally requested at the same time. A copy of these requests are attached as **Appendix One**.
- 2.4. Under section 87E(5) of the RMA, a territorial authority is required to make a decision on such a request within 15 working days after the date of the decision on notification. A decision on notification (pursuant to s.169(1) RMA) was made on the 20 January 2023. A territorial authority has the ability to grant or decline such a request. If the decision is to decline the request, it must be recorded in writing and include the reasons for that decision.

3. NOTICES OF REQUIREMENT

- 3.1. This direct referral request relates to two Notices of Requirement which have been lodged with HDC and KCDC for the construction, operation, use, maintenance and improvement² of the Ō2NL Project.
- 3.2. There are two Notices of Requirement. The first Notice of Requirement applies to an area of land within the Kāpiti Coast District of approximately 101.92 hectares located generally between the northern boundary of the Kāpiti Coast District immediately to the east of existing State Highway 1 (SH1) and the northern extent of the Peka Peka to Ōtaki Expressway (PP2Ō) near Taylors Road on SH1.
- 3.3. The second Notice of Requirement applies to an area of land within the Horowhenua District of approximately 516.517 hectares located generally between Heatherlea East Road and the boundary of the Kāpiti Coast District to the east of existing State Highway 1 (SH1).
- 3.4. The Requiring Authority is proposing to construct 24km of new state highway between Taylors Road (to the north of Ōtaki) and State Highway 1 north of Levin, including a shared use path and associated infrastructure. The project is referred as the Ōtaki to North of Levin Highway Project (Ō2NL Project). The Ō2NL Project is the northern most section of the Wellington Northern Corridor, and is proposed to provide the final section of the 4-lane expressway, connecting to the Peka Peka to Ōtaki expressway which opened late December 2022.
- 3.5. The Ō2NL Project comprises the following key features:

² Improvement in the context of the designation relates to potential improvements that may be needed to be undertaken to enable the continued efficient, effective and safe operation of the land transport system. Such improvement activities may for example include new improved barriers, pavement, lane control or lighting technology.

- a grade separated diamond interchange at Tararua Road, providing access into Levin;
- two dual lane roundabouts located where Ō2NL crosses the existing Arapaepae Road/State Highway 57 (SH57) and where it connects with the current SH1 at Heatherlea East Road, north of Levin;
- four lane bridges over the Waiauti, Waikawa and Kuku Streams, the Ohau River and the North Island Main Trunk (NIMT) rail line north of Levin;
- a half interchange with southbound ramps near Taylors Road and the new PP2Ō expressway to provide access from the current SH1 for traffic heading south from Manakau or heading north from Wellington, as well as providing an alternate access to Ōtaki;
- local road underpasses at South Manakau Road and Sorensens Road to retain local connections;
- local road overpasses to provide continued local road connectivity at Manakau Heights Drive, North Manakau Road, Kuku East Road, Muhunoa East Road, Tararua Road (as part of the interchange), and Queen Street East;
- new local roads at Kuku East Road and Manakau Heights Road to provide access to properties located to the east of the Ō2NL Project.
- local road reconnections connecting:
 - McLeavey Road to Arapaepae South Road on the west side of the Ō2NL Project;
 - Arapaepae South Road, Kimberley Road and Tararua Road on the east side of the Ō2NL Project;
 - Waihou Road to McDonald Road to Arapaepae Road/SH57;
 - Koputaroa Road to Heatherlea East Road and providing access to the new northern roundabout;
- the relocation, and improvement, of the Tararua Road and current SH1 intersection, including the introduction of traffic signals and a crossing of the NIMT;
- road lighting at intersections on the new state highway, that is, where traffic can enter or exit the highway;
- signs, including gantries, as required;
- median and edge barriers that are typically wire rope safety barriers with alternative barrier types used in some locations, such as bridges;
- stormwater treatment wetlands and ponds, stormwater swales, drains and sediment traps;
- culverts to reconnect streams crossed by the Ō2NL Project and stream diversions to recreate and reconnect streams;
- a separated (typically) three-metre-wide SUP, for walking and cycling along the entire length of the new highway that will link into shared path facilities that are part of the PP2Ō expressway;
- spoil sites at various locations along the length of the Project; and
- five sites for the supply of bulk fill/earth material located near Waikawa Stream, the Ohau River and south of Heatherlea East Road.

- 3.6. The Ō2NL Project will become the new SH1 and will replace the existing SH1 and that part of the existing SH57 along Arapaepae Road. Once the Ō2NL Project has been constructed and opened, it is likely these existing sections of state highways (then bypassed by the Project) will function as local roads providing access for communities to various local amenities and uses in the district, including as access

to the new highway. These existing sections will also provide an alternative strategic route for resilience.

4. DETAIL OF THE REQUEST

4.1. The Requiring Authority has requested direct referral of the Notices of Requirement to the Environment Court. The Requiring Authority outlines a number of reasons for this request including:

- *A direct referral will reduce duplication and be more efficient in terms of time and costs for all parties. This is because:*
 - *as the Ō2NL Project has developed it has been the subject of comprehensive public engagement over many years, which has given key potential submitters and the community a sound understanding of the Project and the matters that are likely to be issues in respect of the applications; and*
 - *a decision made by the territorial authorities would likely come to the Environment Court on appeal because there is significant local and regional interest in the Project and there are a number of potentially affected parties such that the likelihood of an appeal is high.*
- *The Ō2NL Project is complex, because it includes substantial physical works over a 24km length; is located in four council jurisdictions; and includes two notices of requirement and applications for numerous of resource consents. For this reason, it is expected that evidence would be provided by numerous expert witnesses, and it is appropriate for the Environment Court to consider evidence on the Project given the Environment Court's:*
 - *extensive experience with large complex infrastructure project that are technical in nature;*
 - *ability to direct mediation and expert witness conferencing to narrow issues of contention (including access to commissioners with particular expertise in managing these processes); and*
 - *ability to test evidence through cross-examination.*
- *The streamlined decision-making delivered by the application being determined directly by the Environment Court, and that decision being final subject to any appeals on points of law, better enables commencement by mid-2024 (should the Environment Court grant the consents and confirm the associated notices of requirement for a designation).*
- *The direct referral process enables effective participation by submitters and no parties will be unduly prejudiced by granting this request.*

4.2. These matters are addressed further below.

5. STATUTORY PROVISIONS RELATING TO REQUEST

5.1. The direct referral request is an 'eligible' request under s 87D of the Act. It is consistent with statutory requirements and made within the relevant timeframes.

- 5.2. Without limiting or precluding any requests of the Requiring Authority for further information (under s 92 of the Act or otherwise) to enable HDC and KCDC to undertake a full substantive assessment of the Notices of Requirement, the territorial authorities are able to make a fully informed decision on the Applicant's request for direct referral.

6. CONSIDERATION OF DIRECT REFERRAL REQUEST

- 6.1. There are no criteria within the Act to guide HDC and KCDC when considering whether to grant or decline a direct referral request. There are also no regulations setting a direct referral threshold, which would trigger requirements under s.87E(6A).
- 6.2. HDC and KCDC do not have any policy framework for consideration for direct referrals. The Ministry for Environment guidance material for applicants suggests that applications that are likely to be contentious and/or likely to end up in the Environment Court due to appeals are reasons for consideration.
- 6.3. The recommendation as to whether or not this request for direct referral should be granted has been assessed against the criteria (developed by Environment Canterbury for direct referral applications) attached as **Appendix Two**.
- 6.4. The following is an assessment against these guidelines:

Necessity

- 6.5. Necessity of a hearing: The Requiring Authority has requested public notification of the Notices of Requirement. There are likely to be a number of submitters and therefore a hearing is therefore highly likely to be required in this instance.
- 6.6. National significance: The Ō2NL Project is considered important at a local and regional level, with it being important to the Horowhenua and Kapiti communities, as well as the wider Manawatu and surrounding regions. The Horizons Regional Council Land Transport Plan 2021-2031 identifies the Ō2NL Project as a priority investment area and as one of the 'Significant Inter-Regional Activities between the Manawatū-Whanganui Region and Greater Wellington Region. The Ō2NL Project is also identified in the Horowhenua District Council's Integrated Transport Strategy as a key development Priority.
- 6.7. Likelihood of appeal: The scale of the Ō2NL Project, the number of potentially affected parties and likelihood of a significant number of submissions, suggests that an appeal to the Environment Court is highly likely.

Providing an enabling process

- 6.8. Reasons provided by the Requiring Authority: The Requiring Authority has supplied a number of reasons for requesting direct referral of these applications. It is considered by Council officers that these reasons are valid.
- 6.9. Effect of decision on other applications: Referring these Notices of Requirement will not have any effect on other applications being processed by the Council. The

Notices of Requirement have interim effect under s.178 RMA from the time the Requiring Authority gives notice of a requirement to Council for a designation, therefore all unimplemented resource consents/ building consents or any new activity on land, located on land within the designation requires Waka Kotahi's written consent.

- 6.10. Effect on submitters and/or affected parties: The possible impacts on submitters and/or public are likely to be:
- The process is more formal and therefore more intimidating which may limit the amount of public involvement.
 - Potentially higher costs of being part of a Court process.
 - Pressure to engage experts/advocates to strengthen their case.
- 6.11. It is considered that any decision should be sympathetic to recognising pressures a court process can impose on lay persons. The process is formal, potentially intimidating, can generate costs and require people to take time out of their day to attend any hearing and speak to their submission. However, due to Ministry for the Environment commissioner accreditations and best practice, in reality a Court process is not too dissimilar to a Council hearing. Both will have some degree of formality (and the potential for intimidation) for lay persons.
- 6.12. The Environment Court is also well practiced in hearing submissions and evidence of lay submitters, with the direct referral process having been designed in a manner which recognises that the Court process/hearing will be the first chance for parties to put their views formally. As is the case with any first instance Council hearing, submitters will be able to determine whether they wish to participate at the hearing personally. There is also no expectation that they would have to engage experts.
- 6.13. Of further note is that regardless of whether a submitter wishes to be heard before the Court, every written submission must still be considered by the Court in making its decision.
- 6.14. Concerns about participation in Environment Court proceedings should also be balanced with the need for efficiency in decision making processes and the need to avoid duplication, costs and delays³ – particularly where there is risk of appeal.
- 6.15. The direct referral process would avoid the duplication of processes involved with a first instance hearing and then a hearing by the Environment Court. Court assisted mediation can also assist in dealing with complex matters (see below).
- 6.16. As the Notices of requirement contain significant information and address a number of complex matters across a number of disciplines, which are likely to generate debate, there is a reasonably high likelihood of the application being appealed by interested parties.

³ A focus of the changes to the Act Introduced through the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

- 6.17. Therefore, it is considered that bypassing the first instance council hearing would be the most time and cost-efficient method for reaching a conclusion on the application and will ultimately benefit the majority of parties involved procedurally.

Cost and timeliness

- 6.18. Timeframe effects: A direct referral to the Environment Court would almost certainly be more time efficient for all parties than a Council hearing followed by an appeal. The Requiring Authority has also indicated there are specific timeframes in relation to delivery of the Ō2NL Project and its design, consenting, and construction timeline. It is understood that this is a driver for the direct referral process.
- 6.19. Implications on Council resource: HDC and KCDC have engaged a number of external consultants to work alongside internal staff working on the Ō2NL Project, so as to minimise the implications of the Notices of Requirement on other Council resourcing requirements.
- 6.20. Cost to Council: There will still be costs for HDC and KCDC under the direct referral route, however it is considered that the need for only one hearing process should bring about benefits for all parties involved, including Council's. Any costs are able to be recovered under the Act (initially under s 36, and then by way of order of the Court under s 285 of the Act). An agreement with the Requiring Authority is also being sought by HDC and KCDC to ensure additional costs incurred by the Council's will be recovered.

Technical resolution

- 6.21. Regard should also be had to the technical nature of the application. There are a number of technical experts required to provide input into the consenting process, and the Environment Court process is experienced in (and well equipped for) managing expert witnesses, including conferencing and mediation for narrowing of issues.

Conclusion

- 6.22. Having assessed the request using the criteria attached in **Appendix Two**, and the relevant statutory provisions of the Act (including its emphasis on streamlined decision making), it is considered that there is nothing preventing these Notices of Requirement from being referred directly to the Environment Court. Furthermore, there is good reason for accepting the request when considering the likely reduction of costs, duplication and delays for all parties in circumstances where there are critical drivers for the highway as recorded in the Requiring Authority's request.

7. RECOMMENDATIONS

- 7.1. It is recommended that the Requiring Authority's request for direct referral to the Environment Court under s 87E of the Act be **accepted** for the following reasons:

- 7.1.1. There is a strong likelihood that any decisions made at a Council hearing will be appealed to the Environment Court;
- 7.1.2. The direct referral process will avoid the duplication of the process via a Council hearing and then Environment Court Hearing.
- 7.1.3. The direct referral will still allow for the participation of submitters and any impact on submitters and/or affected parties should be minimal, when compared with a slightly more formal process;
- 7.1.4. There will be no significant increase of Council costs, with cost recovery able to be managed through agreement and statutory processes.

Recommended by:

Helen Anderson

Helen Anderson
CONSULTANT PLANNER
20 January 2023

DECISION

Based on the above recommendations and pursuant to delegated authority, I **grant** the request by the Waka Kotahi NZ Transport Agency for direct referral of these Notices of Requirement to the Environment Court.

Signed:

Monique Davidson

Monique Davidson
CEO, HOROWHENUA DISTRICT COUNCIL
20 January 2023

Signed:

David Allan

Councillor David Allan
CHAIRPERSON OF HEARINGS COMMITTEE, HOROWHENUA DISTRICT COUNCIL
20 January 2023

Signed:

Eloise Carstens

Eloise Carstens
RESOURCE CONSENTS AND COMPLIANCE MANAGER
20 January 2023



HDC: 504/2022/22
KCDC: RM220254

Appendix One: Requiring Authority request for direct referral to HDC and KCDC

01 November 2022

Horowhenua District Council
126/148 Oxford Street
Levin 5510

Level 5, The Majestic Centre
100 Willis Street
PO Box 5084
Wellington 6011
New Zealand
T 64 4 894 5200
F 64 4 894 3305
www.nzta.govt.nz

Ōtaki to north of Levin Highway Project - Notice of Requirement for a Designation

Kia ora koutou

Please find enclosed notices of requirement for a designation made by Waka Kotahi NZ Transport Agency ("Waka Kotahi") to enable the construction, operation, maintenance and improvement of new state highway, shared use path and associated infrastructure, between Taylors Road (to the north of Ōtaki) and State Highway 1 north of Levin known as the Ōtaki to North of Levin Highway Project ("Ō2NL Project").

Details of the nature of the designations sought are provided in the Forms (Form 18 (and the associated Ō2NL Project resource consent Forms 9)) in 'Volume I: Notices of Requirement for Designation, Applications for Resource Consents and Request for Determination by the Environment Court', and as detailed in the supporting documentation.

The documentation provided in support of the NoRs is structured as follows:

- Volume I: Notices of requirement for designation, applications for resource consents; and request for determination by the Environment Court
- Volume II: Supporting documentation and assessment of effects on the environment
- Volume III: Drawings and plans
- Volume IV: Technical assessments
- Volume V: Cultural impact assessments.

As set out in the attached Form 7A, Waka Kotahi requests (under section 87D of the Resource Management Act) that Horowhenua District Council, together with Greater Wellington Regional Council, Horizons Regional Council and Kāpiti Coast District Council, allows the NoRs and applications for resource consent to be determined by the Environment Court instead of by Horowhenua District Council.

Waka Kotahi also requests that the applications be publicly notified. With regard to the deposit for lodgement, as agreed, please provide an invoice to apinvoices@nzta.govt.nz and refer to WBS 60060322.

If you have any queries regarding the NoRs and applications for resource consent, please contact Caitlin Kelly at Caitlin.Kelly@nzta.govt.nz in the first instance.

Ngā mihi nui



Lonnie Dalzell
Project Director - Ōtaki to North of Levin
Transport Services

Form 7A

Request for application relating to resource consent to be determined by Environment Court

Sections 87D, Resource Management Act 1991

To: Horowhenua District Council ("HDC")

1. Waka Kotahi NZ Transport Agency ("Waka Kotahi") requests that you allow the following notices of requirement lodged by Waka Kotahi to be determined by the Environment Court instead of by HDC:
 - Notice of a requirement for a designation for a Project (public work) pursuant to section 168 of the Resource Management Act 1991 (RMA) which is to construct, operate, maintain, and improve a state highway, shared use path and associated infrastructure, located generally between Heatherlea East Road and the boundary of the Kāpiti Coast District to the east of existing State Highway 1 and State Highway 57.

For full details of consents sought please refer to Form 9 (in Volume I) and Part D of Volume II: Supporting Information and Assessment of Effects on the Environment.

2. Concurrent applications for resource consents and notices of requirement are lodged with Greater Wellington Regional Council, Kāpiti Coast District Council and Manawatū-Whanganui Regional Council as detailed in Volume I of the accompanying documentation.
3. The overall applications relate to the construction, operation, maintenance and improvement of new state highway and shared use path and associated infrastructure, between Taylors Road (to the north of Ōtaki) and State Highway 1 north of Levin known as the Ōtaki to North of Levin Highway Project ("Ō2NL Project"). The Ō2NL Project is the northern most section of the Wellington Northern Corridor, connecting to the Peka Peka to Ōtaki expressway, which is due to be completed in late 2022. Once PP2Ō is complete, a minimum 4-lane expressway from central Wellington CBD to north of Ōtaki (Taylors Road) will be provided. The Ō2NL Project is described in further detail in Volume II, Part C of the accompanying documentation.
4. The reasons for the request are as follows:
 - The applications relate to the delivery of significant infrastructure (with an overall cost of approximately \$1.5bn) with a wide range of public benefits. In particular, the Ō2NL Project enhances the safety of travel on the state highway network, improves the resilience of the state highway network, enables mode choice for travel between local communities and supports inter-regional and intra-regional growth and productivity through improved movement of people and freight on the state highway network.
 - A direct referral will reduce duplication and be more efficient in terms of time and costs for all parties. This is because:
 - as the Ō2NL Project has developed it has been the subject of comprehensive public engagement over many years, which has given key potential submitters and the community a sound understanding of the Project and the matters that are likely to be issues in respect of the applications; and
 - a decision made by GW would likely come to the Environment Court on appeal because there is significant local and regional interest in the Project and there are a number of potentially affected parties such that the likelihood of an appeal is high.
 - The Ō2NL Project is complex, because it includes substantial physical works over a 24km length; is located in four council jurisdictions; and includes two notices of requirement and applications for a numerous of resource consents. For this reason, it is expected that evidence would be provided by numerous expert witnesses and it is appropriate for the Environment Court to consider evidence on the Project given the Environment Court's:
 - extensive experience with large complex infrastructure project that are technical in nature;

- ability to direct mediation and expert witness conferencing to narrow issues of contention (including access to commissioners with particular expertise in managing these processes); and
- ability to test evidence through cross-examination.
- The streamlined decision-making delivered by the application being determined directly by the Environment Court, and that decision being final subject to any appeals on points of law, better enables commencement by mid-2024 (should the Environment Court grant the consents and confirm the associated notices of requirement for a designation).
- The direct referral process enables effective participation by submitters and no parties will be unduly prejudiced by granting this request.

Waka Kotahi has also requested that Greater Wellington Regional Council, Manawatū-Whanganui Regional Council and Kāpiti Coast District Council allow the applications for resource consent and notices of requirement lodged with those councils for the Project to be determined by the Environment Court instead the respective councils.



.....

Signature of person authorised to sign on behalf of the Waka Kotahi NZ Transport Agency

Date: 1 November 2022

Contact details: Waka Kotahi NZ Transport Agency (Ō2NL Project)
Electronic address for service: environmentalplanning@nzta.govt.nz
Postal address: PO Box 5084
Wellington 6140
Contact person: Caitlin Kelly
Telephone: +64 4 830 6844
Email: Caitlin.kelly@nzta.govt.nz

01 November 2022

Kāpiti Coast District Council
175 Rimu Road
Paraparaumu 5032

Level 5, The Majestic Centre
100 Willis Street
PO Box 5084
Wellington 6011
New Zealand
T 64 4 894 5200
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www.nzta.govt.nz

Ōtaki to north of Levin Highway Project - Notice of Requirement for a Designation

Kia ora koutou

Please find enclosed notices of requirement for a designation made by Waka Kotahi NZ Transport Agency ("Waka Kotahi") to enable the construction, operation, maintenance and improvement of new state highway, shared use path and associated infrastructure, between Taylors Road (to the north of Ōtaki) and State Highway 1 north of Levin known as the Ōtaki to North of Levin Highway Project ("Ō2NL Project").

Details of the nature of the designations sought are provided in the Forms (Form 18 (and the associated Ō2NL Project resource consent Forms 9)) in *Volume I: Notices of Requirement for Designation, Applications for Resource Consents and Request for Determination by the Environment Court*, and as detailed in the supporting documentation.

The documentation provided in support of the NoRs is structured as follows:

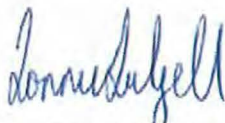
- Volume I: Notices of requirement for designation, applications for resource consents; and request for determination by the Environment Court
- Volume II: Supporting documentation and assessment of effects on the environment
- Volume III: Drawings and plans
- Volume IV: Technical assessments
- Volume V: Cultural impact assessments.

As set out in the attached Form 7A, Waka Kotahi requests (under section 87D of the Resource Management Act) that Kāpiti Coast District Council, together with Greater Wellington Regional Council, Horizons Regional Council and Horowhenua District Council, allows the NoRs and applications for resource consent to be determined by the Environment Court instead of by Kāpiti Coast District Council.

Waka Kotahi also requests that the applications be publicly notified. With regard to the deposit for lodgement, as agreed, please provide an invoice to apinvoices@nzta.govt.nz and refer to WBS 60060322.

If you have any queries regarding the NoRs and applications for resource consent, please contact Caitlin Kelly at Caitlin.Kelly@nzta.govt.nz in the first instance.

Ngā mihi nui



Lonnie Dalzell
Project Director - Ōtaki to North of Levin
Transport Services

Form 7A

Request for application relating to resource consent to be determined by Environment Court
Sections 87D, Resource Management Act 1991

To: Kāpiti Coast District Council ("KCDC")

1. Waka Kotahi NZ Transport Agency ("Waka Kotahi") requests that you allow the following applications for resource consent and notices of requirement lodged by Waka Kotahi to be determined by the Environment Court instead of by KCDC:
 - a. Notice of a requirement for a designation for a Project (public work) pursuant to section 168 of the Resource Management Act 1991 (RMA) which is to construct, operate, maintain, and improve a state highway, shared use path and associated infrastructure, located generally between the northern boundary of the Kāpiti Coast District immediately to the east of existing State Highway 1 (SH1) and the northern extent of the Peka Peka to Ōtaki Expressway (PP2Ō) near Taylors Road on SH1

For full details of consents sought please refer to Form 9 (in Volume I) and Part D of Volume II: Supporting Information and Assessment of Effects on the Environment.

2. Concurrent applications for resource consents and notices of requirement are lodged with Greater Wellington Regional Council, Manawatū-Whanganui Regional Council and Horowhenua District Council as detailed in Volume I of the accompanying documentation.
3. The applications relate to the construction, operation, maintenance and improvement of new state highway and shared use path and associated infrastructure, between Taylors Road (to the north of Ōtaki) and State Highway 1 north of Levin known as the Ōtaki to North of Levin Highway Project ("Ō2NL Project"). The Ō2NL Project is the northern most section of the Wellington Northern Corridor, connecting to the Peka Peka to Ōtaki expressway, which is due to be completed in late 2022. Once PP2Ō is complete, a minimum 4-lane expressway from central Wellington CBD to north of Ōtaki (Taylors Road) will be provided. The Ō2NL Project is described in further detail in Volume II, Part C of the accompanying documentation.
4. The reasons for the request are as follows:
 - The applications relate to the delivery of significant infrastructure (with an overall cost of approximately \$1.5b) with a wide range of public benefits. In particular, the Ō2NL Project enhances the safety of travel on the state highway network, improves the resilience of the state highway network, enables mode choice for travel between local communities and supports inter-regional and intra-regional growth and productivity through improved movement of people and freight on the state highway network.
 - A direct referral will reduce duplication and be more efficient in terms of time and costs for all parties. This is because:
 - as the Ō2NL Project has developed it has been the subject of comprehensive public engagement over many years, which has given key potential submitters and the community a sound understanding of the Project and the matters that are likely to be issues in respect of the applications; and
 - a decision made by GW would likely come to the Environment Court on appeal because there is significant local and regional interest in the Project and there are a number of potentially affected parties such that the likelihood of an appeal is high.
 - The Ō2NL Project is complex, because it includes substantial physical works over a 24km length; is located in four council jurisdictions; and includes two notices of requirement and applications for a numerous of resource consents. For this reason, it is expected that evidence would be provided by numerous expert witnesses and it is appropriate for the Environment Court to consider evidence on the Project given the Environment Court's:
 - extensive experience with large complex infrastructure project that are technical in nature;

- ability to direct mediation and expert witness conferencing to narrow issues of contention (including access to commissioners with particular expertise in managing these processes); and
- ability to test evidence through cross-examination.
- The streamlined decision-making delivered by the application being determined directly by the Environment Court, and that decision being final subject to any appeals on points of law, better enables commencement by mid-2024 (should the Environment Court grant the consents and confirm the associated notices of requirement for a designation).
- The direct referral process enables effective participation by submitters and no parties will be unduly prejudiced by granting this request.

Waka Kotahi has also requested that Greater Wellington Regional Council, Manawatū-Whanganui Regional Council and Horowhenua District Council allow the applications for resource consent and notices of requirement lodged with those councils for the Project to be determined by the Environment Court instead the respective councils.



.....
Signature of person authorised to sign on behalf of the Waka Kotahi NZ Transport Agency

Date: 1 November 2022

Contact details: Waka Kotahi NZ Transport Agency (Ō2NL Project)
Electronic address for service: environmentalplanning@nzta.govt.nz
Postal address: PO Box 5084
Wellington 6140
Contact person: Caitlin Kelly
Telephone: +64 4 830 6844
Email: Caitlin.kelly@nzta.govt.nz

Appendix Two: Environment Canterbury suggested criteria for making a decision on a direct referral request

Criteria	Guide notes
1. Necessity	
Consider if a hearing would otherwise be necessary.	Are there or are there likely to be any submitters?
Consider whether there are alternative decision making bodies that could better determine the application	Is this a matter of national significance that could be referred to the Environmental Protection Authority
Consider whether if in the normal course of events the decision will likely result in an Environment Court appeal and/or court case.	Are the likely matters of appeal substantive, or will they be matters of a minor nature that will most likely be resolved through mediation?
2. Providing an Enabling Process	
Consider the reasons the applicant has provided in making the application to go to the Environment Court.	What reasons has the applicant supplied with their application? Are these valid?
Consider how the decision will affect other applications in process.	Will other applicants be advantaged or disadvantaged by a referral? Will matters of processing priority or resource allocation priority be affected?
Consider the effect on submitters and/or affected parties	Will the referral benefit submitters through their sharing of resources and/or focusing the matters they are submitting on? Will submitters be deterred by the cost and formality of a court process and therefore put the quality of the consent decision in jeopardy?
Consider the effects on other Consent Authorities	What effect will there be on any other consent authority involved in this proposed activity or project?
3. Cost and Timeliness	
Consider whether the overall cost will be more or less than the normal process	Will there be a cost advantage or disadvantage for the applicant? Will there be a cost advantage or disadvantage for any other party?
Consider the timeframe effects	Will the Environment Court be a faster or slower option than a council hearing and possible appeal? Will the court process delay or speed up decision making on other consent applications?
Consider the implications on available resource within the Council	Will the referral free up council resource or require greater resource?
Consider the available funding to support the Council's costs in carrying out their duties at the Environment Court	Is funding available to cover the costs of acting as a witness at the Court? Has the applicant offered to pay for any additional costs that will be incurred by the Council?
4. Technical Resolution	

Consider whether there is a matter that will be best determined through cross examination and presentation of sworn evidence	Will the Environment Court assist the resolution of matters of a scientific or technical nature? Will the Environment Court decision provide precedence that will assist decision making for other applications/future applications?
5. Any other relevant matter	