

**IN THE ENVIRONMENT COURT
AT WELLINGTON**

**I TE KŌTI TAIAO O AOTEAROA
KI TE WHANGANUI-A-TARA**

Decision No. [2023] NZEnvC 173

IN THE MATTER

of a direct referral of applications for
resource consents and notices of
requirement under sections 87G and
198E of the Resource Management Act
1991 for the Ōtaki to North of Levin
Project

BY

NEW ZEALAND TRANSPORT
AGENCY-WAKA KOTAHI

(ENV-2023-WLG-005)

Applicant

Court: Judge B P Dwyer sitting alone under s 279 of the Act

Hearing: In Chambers

Last case event: Joint memorandum received 10 August 2023

Date of Decision: 14 August 2023

(On the papers)

Date of Issue: 14 August 2023

DECISION OF THE ENVIRONMENT COURT

A: Application for confidentiality orders granted as set out in Annexure A.



REASONS

Introduction

[1] Kāinga Ora has applied for confidentiality orders under ss 277 and 279 of the Act. I directed Waka Kotahi and Horowhenua District Council to respond to the application, including comment as to whether any other party appears to have an interest in the matters raised in Kāinga Ora's application. Both indicated no other parties appeared to be affected.

[2] The parties lodged agreed orders on 10 August 2023.

Discussion

[3] I have thoroughly considered Kāinga Ora's reasons for the application. I will not recite any of those reasons, as they reveal the sensitive issues that lead Kāinga Ora to make this application.

[4] Section 277 RMA provides that all hearings shall be held in public, but that the Court may order that any evidence may be heard in private and may prohibit or restrict the publication of any evidence, if it considers the reasons for doing so outweigh the public interest in a public hearing and publication of evidence.

[5] Section 278 of the RMA gives the Environment Court and Environment Judges the same powers that the District Court has in the exercise of its civil jurisdiction. I consider the District Court (Access to Court Documents) Rules 2017 are potentially relevant. Those rules provide rights of the public and the parties to a proceeding to access documents held on the Court file. Rule 5(1) provides that those rules do not affect the Court's inherent power to control its own proceedings. Rule 5(2) provides that the Court may direct that documents of any kind may be accessed only with the permission of a Judge.

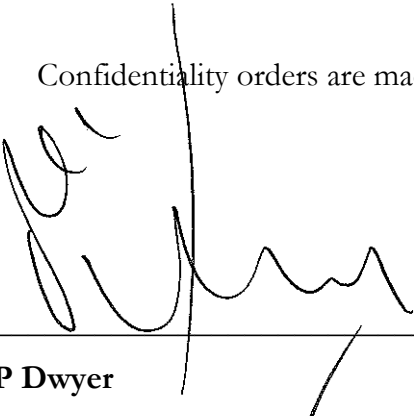
[6] The principle of open justice is fundamental. It is well established that there are circumstances in which the interests of justice require that rule be departed from,

but only to the extent necessary to serve the ends of justice.¹

[7] I consider that the adverse effects arising from the publication of evidence and other documents covered by the application is a special circumstance that requires that in this case that the principle of open justice is departed from. I will make the orders sought.

Orders

[8] Confidentiality orders are made as set out in Annexure A.


B P Dwyer
Environment Judge



¹ *Erceg v Erceg* [2016] NZSC 135.

Annexure A

ORDER FOR CONFIDENTIALITY

1. The following documents (“Documents”) are to be confidential to Kāinga Ora – Homes and Communities (“Kāinga Ora”), Waka Kotahi New Zealand Transport Authority (“Waka Kotahi”), Horowhenua District Council, including their expert witnesses and the Court and are not to be released more widely to parties to the proceedings or to the public generally:
 - 1.1 The evidence in chief on behalf of Kāinga Ora [in relation to the matters described in Order 1.1 of the agreed order dated 10 August 2023].
 - 1.2 The evidence in chief of Horowhenua District Council insofar as it responds to the matters in Order 1.1.
 - 1.3 Any rebuttal evidence insofar as it responds to the matters in Order 1.1.
 - 1.4 Legal submissions from the three parties insofar as they respond to the matters in Order 1.1.
 - 1.5 Expert conferencing statements insofar as they respond to the matters in Order 1.1.
 - 1.6 This Application and documentation in support of or relating to it.
2. To be clear, the evidence in chief filed on behalf of Waka Kotahi is not a Document covered by this Order. Nor is this Order itself.

3. The Documents are not to be uploaded to the Council's website.
4. Publication or communication of the Documents other than to the Court, counsel and the three parties to this issue (including their expert witnesses) is prohibited.
5. The Court files in respect of the Documents are not to be searched, inspected or copied without the leave of the Court.
6. Attendance at the part of the hearing at which the Documents are discussed shall be limited to the three parties (including their expert witnesses) to this issue.
7. The transcript produced from the part of the hearing at which the Documents are discussed will remain confidential to the Court and three parties (including their expert witnesses) to this issue. The Court's copy of the transcript is to remain on the Court file and is to be marked "*confidential*", with a copy of this order attached.
8. The Court will issue a separate and confidential decision on the issues relating to the Documents, if required.
9. These orders remain in force until further order of the Court.