

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I MUA I TE KŌTI TAIAO O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE**

ENV-2020-WLG-00014

UNDER the Resource Management Act 1991

IN THE MATTER OF the proposed direct referral of an application for resource consents for activities associated with Te Ahu a Turanga: Manawatū Tararua Highway Project

BETWEEN **WAKA KOTAHĪ NZ TRANSPORT AGENCY**
Applicant

AND **MANAWATŪ-WHANGANUI REGIONAL COUNCIL**
Regulatory Authority

**NOTICE OF MOTION FOR PROCEEDINGS UNDER SECTION 87G OF THE
RESOURCE MANAGEMENT ACT 1991**

26 May 2020

BUDDLEFINDLAY
NEW ZEALAND LAWYERS
Barristers and Solicitors
Wellington

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To: The Registrar
Environment Court
Wellington

INTRODUCTION

1. Waka Kotahi NZ Transport Agency ("**Transport Agency**") gives notice of a motion under section 87G of the Resource Management Act 1991 ("**RMA**") that the Transport Agency's application for the resource consents (the "**Application**") necessary for the construction, operation, and maintenance of the Te Ahu a Turanga: Manawatū Tararua Highway project ("**Project**") be determined by the Environment Court instead of by Manawatū-Whanganui Regional Council ("**Horizons**").
2. The Project requires the construction of approximately 11.5km of state highway connecting Ashhurst and Woodville via a route over the Ruahine Range. The purpose of the Project is to replace the indefinitely closed section of State Highway 3 ("**SH3**") through the Manawatū Gorge.
3. The Application which the Transport Agency seeks to be determined by the Environment Court relates to the following proposed activities for which regional consents¹ are required to construct and operate the Project:
 - (a) earthworks and vegetation clearance;
 - (b) discharges to water and land;
 - (c) discharges to air;
 - (d) takes, uses, and diversions of water, and bores; and
 - (e) works in the beds of rivers.

Grounds

4. The grounds for this motion are as follows:
 - (a) On 11 March 2020, the Transport Agency lodged the Application with Horizons and requested that Horizons allow the Application to be referred directly to the Environment Court rather than be determined by Horizons under section 87E of the RMA.
 - (b) On 23 March 2020, Horizons granted the Transport Agency's request that the Application be referred directly to the Environment Court.²

¹ As the Court is aware, designations for the Project have been confirmed in respect of the Manawatū District, Tararua District, and Palmerston North City District Plans.

² The relevant letter is Exhibit LD1 to the accompanying affirmation of Lonnie Dalzell.

- (c) The Transport Agency has considered the reports prepared by Horizons under section 87F(3) of the RMA, dated 25 May 2020, and wishes to have the Application heard by the Environment Court.
- (d) The Project seeks to provide an urgent solution to pressing transport and associated social and economic problems in the region, arising from the closure of the SH3 through the Manawatū Gorge, and to realise significant benefits to people living in and travelling through the region. Direct referral of the application will, subject to the Court, enable timely and efficient implementation of the Project.
- (e) The need to implement this Project as efficiently as possible is even more pressing in light of the economic impacts of the COVID-19 pandemic; the Project will assist in providing economic stimulus.
- (f) The Project has been the subject of numerous public engagement processes and discussions between the Transport Agency and submitters, which has given submitters and the broader public considerable information in relation to the Application. Further, the Application was preceded by a designation process which attracted 742 submissions and was the subject of a two-week council-level hearing in March and April 2019, and three appeals to the Environment Court.
- (g) The Transport Agency considers that the Application would be highly likely to come to the Environment Court on appeal of any decision made in the first instance by Horizons, for the following reasons:
 - (i) there is significant public interest in the Project;
 - (ii) 19 submissions have been received on the Application, a number of which raise contentious matters; and
 - (iii) the resource consenting process follows a designation process that attracted 742 submissions and three appeals to the Environment Court. To the extent that there are matters at issue arising from the Application, it is highly likely that evidence relating to those matters will need to be tested before the Court.
- (h) For the reasons set out above, and explained in the affirmation of Lonnie William D'Wayne Dalzell dated 26 May 2020, a direct referral will reduce duplication and be more efficient in terms of time and costs for all parties. Further, the direct referral process enables effective participation by submitters and will not unduly prejudice any parties.

5. In respect of this last point, the Court has granted waivers and made directions to simplify the section 274 process and facilitate the electronic case management of this proceeding. The Court's waivers and directions³ have been made available to all submitters and are served on them again together with this notice of motion, because they have the effect of varying the requirements of section 274 of the RMA, as follows:
- (a) The requirement that a party lodge a signed original and one copy of their section 274 notice with the Court is waived.
 - (b) Section 274 parties are directed to file electronically (via email) a copy of their section 274 notice, which may be signed or unsigned.
 - (c) The requirement under section 274(2B) of the RMA that a section 274 party serve a copy of their interested party notice on "*all other parties*" is waived.
 - (d) Prospective section 274 parties are instead directed to serve their notice on the Transport Agency and Horizons only, with service on other parties to be achieved by filing their notice with the Environment Court for publication by the Court on the dedicated page which has been established for the proceeding on the Environment Court website.
 - (e) Section 274 notices must otherwise meet the requirements of form 33 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 and the RMA, including the requirement under section 274(3)(b) that a party state, with reasons, whether the person supports or opposes the proceedings.
6. Other directions relate to the electronic filing and service of documents in the proceeding generally.

Additional documentation

7. Accompanying or attached to this notice of motion are the following documents:
- (a) an affirmation by Mr Dalzell for the Transport Agency dated 26 May 2020 in support of this application; and
 - (b) a list of names and addresses of persons to be served with a copy of this notice of motion (**Attachment 1**).

³ The Court's decisions on the Transport Agency's motion are numbered [2020] NZEnvC 44 and 46. See <https://www.environmentcourt.govt.nz/cases-online/te-ahu-a-turanga-manawatu-tararua-highway-project/>

DATED this 26th day of May 2020



D Randal / T Ryan / F Wedde
Counsel for Waka Kotahi NZ Transport
Agency

The applicant's address for service is at the offices of Buddle Findlay (attention: David Randal), Level 17, Aon Centre, 1 Willis Street, PO Box 2694, DX SP20201, phone 64 4 499 4242, facsimile 64 4 499 4141, Wellington. Service on the applicant can also be effected by email to david.randal@buddlefindlay.com.

Advice to recipients of copy of notice of motion

How to become party to proceedings

You may be heard on this application if you come within section 274(1) of the Resource Management Act 1991. If you are a trade competitor of the applicant, your right to be heard may be limited.

You may be heard on the application as a party if,—

- (a) within 15 working days after this notice of motion was lodged with the court, you lodge a notice in Form 33 with the Environment Court and serve copies of your notice on the relevant local authority and the applicant; and
- (b) within 20 working days after this notice of motion was lodged with the court, you serve copies of your notice on all other parties.

Advice

If you have any questions about this notice, contact the Environment Court in Wellington.

ATTACHMENT 1**List of Names and Addresses of Persons to be served**

Number	Name	Organisation	Email address for service
Regulatory Authority			
	Manawatū-Whanganui Regional Council		SJohnston@crlaw.co.nz
Submitters			
1	Carl Westwood	N/A	[REDACTED]
2	Dr Samuel Hill	N/A	[REDACTED]
3	Lou G.Klinkhamer	N/A	[REDACTED]
4	Heather Shotter	Palmerston North City Council	[REDACTED]
5	Helen Worboys	Manawatū District Council	[REDACTED]
6	Ken Barnett	N/A	[REDACTED]
7	John Milford	Business Central	[REDACTED]
8	Nick Shoebridge	N/A	[REDACTED]
9	Graham David Speedy	DaSS Trust	[REDACTED]
10	Jenna McFarlane	Transpower New Zealand Ltd	[REDACTED] [REDACTED]
11	Jamie Jacobs	Heritage New Zealand Pouhere Taonga	[REDACTED]
12	Robert Karaitiana	Te Āpiti Ahu Whenua Trust	[REDACTED]
13	Lynley Fletcher	Meridian Energy Ltd	[REDACTED] [REDACTED]
14	Blair King	Tararua District Council	[REDACTED]

15.	Amelia Geary	Royal Forest & Bird Protection Society of New Zealand Inc	[REDACTED]
16	Malcolm Lucas	Queen Elizabeth the Second National Trust	[REDACTED]
17.	Garry Goodman	The NZ Automobile Association Manawatu District	[REDACTED]
18	John Bent	N/A	[REDACTED]
19	Manu Graham	Department of Conservation	[REDACTED]