

**IN THE ENVIRONMENT COURT OF NEW ZEALAND  
I MUA I TE KŌTI TAIAO O AOTEAROA**

**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 KOTAHI NZ TRANSPORT AGENCY**  
Applicant

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

---

**NOTICE OF MOTION BY WAKA KOTAHI NZ TRANSPORT AGENCY SEEKING  
WAIVERS AND DIRECTIONS**

9 April 2020

---

**BUDDLE FINDLAY**  
NEW ZEALAND LAWYERS  
Barristers and Solicitors  
Wellington

Solicitor Acting: **David Randal / Thaddeus Ryan / Frances Wedde**  
Email: david.randal@buddlefindlay.com  
Tel 64 4 499 4242 Fax 64 4 499 4141 PO Box 2694 DX SP20201 Wellington 6140

**To:** The Registrar  
Environment Court  
Wellington

1. Waka Kotahi NZ Transport Agency ("**Transport Agency**") gives notice of a motion under section 291 of the Resource Management Act 1991 ("**RMA**"). The Transport Agency seeks, on an anticipatory basis, waivers and directions in relation to the proposed direct referral of the Transport Agency's application for resource consents for activities associated with Te Ahu a Turanga: Manawatū Tararua Highway Project (respectively, the "**Application**" and "**Project**").<sup>1</sup>
2. Counsel for the Transport Agency and Horizons filed a joint memorandum of counsel on 5 March 2020 notifying the Court of the Transport Agency's intention to seek that the Application be referred directly to the Court and foreshadowing this notice of motion seeking waivers and directions.
3. The Transport Agency continues to seek direct referral; it intends formally to move, under section 87G(2)(a), that the Court grant the resource consents for the Project, and to file that notice of motion immediately following the publication of Horizons' section 87F report in May 2020.
4. In respect of the present notice of motion, the waivers and directions sought aim to simplify the steps leading to the hearing of the Application, and ultimately allow for a shorter direct referral process than would normally be expected, in recognition of the urgency of the Project. The waivers and directions sought are set out in detail below; at a high level, however, the Transport Agency seeks the following:
  - (a) waivers and directions to enable the simplification of the section 274 interested party process;
  - (b) directions to facilitate the electronic management of this proceeding generally (including via a dedicated website);
  - (c) confirmation of key initial steps and dates, and indicative endorsement of the draft timetable to hearing attached as **Appendix A**; and
  - (d) directions relating to communication of the proceedings with the public.

---

<sup>1</sup> This is an originating application under section 291, rather than a standard waiver application under section 281, because there is not yet a proceeding before the Court in the context of which an application under section 281 can be made.

## WAIVERS AND DIRECTIONS SOUGHT

### Filing requirements

#### *Section 274 processes*

5. The Transport Agency respectfully seeks that the following requirements under section 274 of the RMA be waived:
  - (a) the requirement that a party lodge a signed original and one copy of their section 274 notice with the Court, with the direction instead that section 274 parties can file electronically (via email) a copy of their section 274 notice, which may be signed or unsigned; and
  - (b) the requirement under section 274(2B) that a section 274 party serve a copy of their interested party notice on "*all other parties*".<sup>2</sup> A prospective section 274 party should instead be required to serve their notice on the Transport Agency and Horizons only, with service on other parties to be achieved via uploading the notice to a website established for the proceeding (ideally by the Court Registry – as tentatively indicated in the Court's Minute of 24 March 2020 – otherwise by Horizons<sup>3</sup>).
6. The Transport Agency seeks a direction that otherwise all section 274 notices must 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.

#### *Electronic filing*

7. The Transport Agency also seeks directions that:
  - (a) all documents related to the proceeding may be filed with the Court electronically, via email;
  - (b) all documents may be served on the Transport Agency and Horizons electronically via email (at the email addresses specified below); and
  - (c) service of all documents on any other party will be achieved by uploading them to the website established for the proceeding, referred to at paragraph 5(b) above.

---

<sup>2</sup> Section 274(2B).

<sup>3</sup> Horizons' dedicated internet page in relation to the Application is: <https://www.horizons.govt.nz/managing-natural-resources/consents/te-ahu-a-turanga-manawatu-tararua-highway-construc>.

8. Service on the Transport Agency and Horizons (respectively) can be effected as follows:

<b>Address for service</b>	<b>Transport Agency</b>	<b>Horizons</b>
<b>By email:</b>	<a href="mailto:david.randal@buddlefindlay.com">david.randal@buddlefindlay.com</a>	<a href="mailto:SJohnston@crlaw.co.nz">SJohnston@crlaw.co.nz</a>
<b>By post:</b>	David Randal, c/- Buddle Findlay, Aon Centre, 1 Willis Street, PO Box 2694, Wellington 6140	Shannon Johnston, c/- Cooper Rapley Lawyers, 227 Broadway Avenue, Palmerston North 4414

#### *Grounds*

9. The waivers and directions outlined above are sought on the following grounds:
- (a) Counsel understand from the Court's minute dated 24 March 2020 that the Court is prepared to establish a dedicated website for the Application, if considered practicable by the Registry staff. If this is not possible, Horizons' website (which currently hosts the Application and associated materials<sup>4</sup>) is able to be used for this purpose.
  - (b) Waiving the requirements to file and serve hard copies of section 274 notices and other documents will enable these documents to be circulated more easily and efficiently. The use of electronic means of communication in the direct referral process is endorsed in the Environment Court Practice Note 2014 as a way of managing the process efficiently.
  - (c) Due to current nationwide restrictions on travel, post, and other operations arising from the Covid-19 pandemic, the filing and service of hard copies of documents in this proceeding may not be achievable.
  - (d) A direct referral process is likely to attract more parties than usual proceedings in the Environment Court. Waiving the requirement to serve documents on all parties will alleviate some of the issues that can arise for section 274 parties in the direct referral process.
  - (e) Generally, the waivers and directions sought will facilitate the efficient case management of the Application and assist with administrative challenges associated with managing large volumes of documents.

---

<sup>4</sup> <https://www.horizons.govt.nz/managing-natural-resources/consents/te-ahu-a-turanga-manawatu-taranua-highway-construc>.

## **Timetable and case management**

### *Timetabling*

10. The Transport Agency respectfully seeks directions:
  - (a) approving the draft timetable attached as **Appendix A** on an indicative basis (ie subject to confirmation by the Court in due course); and
  - (b) fixing now the dates for the initial steps in the timetable.
11. In particular, confirmation of the following milestones and dates is requested at this early stage:
  - (a) the Transport Agency to file (and serve on Horizons and any other parties) its evidence-in-chief by **Friday, 12 June 2020**, with any necessary supplementary evidence (in light of the parties' section 274 notices, the agreed statement of issues, and the outcomes of mediation and expert conferencing) to be filed by **Monday, 20 July 2020**;
  - (b) a pre-hearing conference to be scheduled shortly after the close of the section 274 period, on **Friday, 19 June 2020**;
  - (c) Court-assisted mediation to take place following the pre-hearing conference, on **Monday and Tuesday, 22 and 23 June 2020**;
  - (d) in relation to expert conferencing:
    - (i) an agreed statement of issues to be filed by the parties two working days following mediation, on **25 June 2020**; and
    - (ii) Court-assisted expert conferencing to take place between **26 June and 8 July 2020** (with the expert planners to conference at the end of that period).
12. In relation to expert conferencing, the Transport Agency also seeks a direction that 'will-say' statements not be required, as conferencing discussions can be framed by the evidence-in-chief filed by the Transport Agency and the parties' agreed statement of issues.

### *Communicating with submitters*

13. In order to facilitate active and early communication with submitters and potential section 274 parties, the Transport Agency seeks the following directions:
  - (a) Horizons must provide a copy of the Court's Minute containing waivers and directions, including the indicative timetable and any fixed dates,

when it serves its section 87F report on submitters in accordance with section 87F(5)(b) of the RMA;

- (b) the Transport Agency must provide a copy of the Court's Minute containing waivers and directions, including the indicative timetable and any fixed dates, when it serves notice of its direct referral application on submitters in accordance with section 87G(2)(b)(ii) of the RMA; and
- (c) Horizons must publish the Court's Minute containing waivers and directions, including the indicative timetable and any fixed dates, on its website.

#### *Grounds*

14. The waivers and directions outlined at paragraphs 10 to 13 above are sought on the following grounds:

- (a) As the Court is aware, there is a high degree of public interest in the Project, which will replace the section of SH3 indefinitely closed following landslides in April 2017. The Project will improve safety and travel times in the Manawatū-Whanganui Region, and deliver significant national, regional and local benefits. In light of the evolving situation with Covid-19, the Project will (subject to the Court) play a significant role in providing stimulus for the local, regional, and national economy.
- (b) Given the importance of the Project, the Transport Agency is highly motivated to complete the Project as quickly as possible. The Transport Agency aims to complete the Project in the summer of 2024/2025. In order to achieve this completion date, the Transport Agency hopes to begin the Project's main works in the summer 2020/2021 earthworks season.
- (c) The directions and waivers sought are to provide for an efficient process, and the timing of this notice of motion is intended to enable the Transport Agency and Horizons to communicate with submitters regarding the process and allow all parties to begin to prepare for a hearing as early as possible.
- (d) Bringing forward the due date for filing and serving the Transport Agency's evidence-in-chief (from 20 July to 12 June) will assist prospective parties in deciding whether to join the proceedings and participating in the process.

- (e) The directions sought at paragraph 13 above will ensure that submitters are well aware of (and in a position to prepare for) the proposed direct referral of the Application. This will prevent any party from being unduly prejudiced.

**DATED** this 9<sup>th</sup> day of April 2020



---

**D G Randal / T J Ryan / F R Wedde  
Counsel for Waka Kotahi NZ Transport  
Agency**

Address for service of applicant: Aon Centre, 1 Willis Street, PO Box 2694,  
Wellington 6140  
Telephone: 64 4 499 4242  
Fax/email: david.randal@buddlefindlay.com  
Contact person: David Randal

## Appendix A – updated draft timetable

<b>Transport Agency lodged application for Main Works Consent (and request direct referral to the Court under section 87D)</b>	Wednesday, 11 March 2020 (done)
<b>Formal acceptance by Horizons of application</b>	Tuesday, 17 March 2020 (done)
<b>Public notification of application</b>	Wednesday, 25 March 2020 (note: Horizons notified the Application two working days earlier than foreshadowed in counsel's joint memorandum of 5 March 2020)
<b>Submissions close</b>	Friday, 24 April 2020 (20 WD from public notification, excluding Good Friday and Easter Monday)
<b>Preparation of Horizons' section 87F report</b>	Monday, 25 May 2020 (20 WD from submission close excluding the Anzac Day holiday)
<b>Notice of motion filed with the Environment Court</b>	Tuesday, 26 May 2020 (next working day)
<b>Applicant to file and serve on Horizons and any other parties its evidence-in-chief (soft copy only)</b>	Friday, 12 June 2020
<b>Close of interested party period</b>	Wednesday, 17 June 2020 (15 WD from notice of motion, excluding Queen's Birthday)
<b>Pre-hearing conference</b>	Friday, 19 June 2020 (2 WD after close of section 274 period)
<b>Mediation</b>	Monday and Tuesday 22 and 23 June 2020 (Next WD after PHC)
<b>Agreed statement of issues</b>	Thursday, 25 June 2020 (2 WD after mediation)
<b>Expert conferencing (facilitated by the Court)</b>	Friday 26 June 2020 to Wednesday 8 July (with planners on the Wednesday)
<b>Applicant to serve any supplementary evidence on other parties</b>	Monday, 20 July 2020 (8 WD after conferencing)
<b>Applicant's supplementary evidence filed in Court, together with joint witness statements (soft copy only)</b>	Tuesday, 21 July 2020
<b>Section 274 parties and Horizons to serve evidence on other parties</b>	Monday, 3 August 2020

	(10 WD after applicant's supplementary evidence)
<b>Section 274 parties' and Horizons' evidence filed in Court (soft copy only)</b>	Tuesday, 4 August 2020
<b>Common bundle of documents filed in Court (soft copy only)</b>	Friday, 7 August 2020
<b>Applicant to serve rebuttal evidence on other parties</b>	Monday, 17 August 2020 (10 WD after section 274 parties' and Horizons' evidence)
<b>Rebuttal evidence filed in Court (soft copy only)</b>	Tuesday, 18 August 2020
<b>Hard copies of all evidence and common bundle of documents filed in Court</b>	Wednesday, 19 August 2020
<b>Hearing</b>	Monday to Friday, 24 August to 4 September 2020 (two weeks) 4 WD from lodgement of rebuttal evidence