

**ENVIRONMENT COURT OF NEW ZEALAND  
WELLINGTON REGISTRY**

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

**ENV-2023-WLG-000005**

**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

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**STATEMENT OF REBUTTAL EVIDENCE OF GRANT ROBERT ECCLES ON  
BEHALF OF WAKA KOTAHI NZ TRANSPORT AGENCY**

Dated 10 October 2023

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## INTRODUCTION

1. My full name is **Grant Robert Eccles**.
2. I prepared a statement of evidence (**Evidence**) regarding the statutory planning framework for the proposed Ōtaki to North of Levin Project (**Ō2NL Project** or **Project**), dated 4 July 2023.
3. My qualifications and experience are set out in my Evidence.
4. In this rebuttal evidence I use the same defined terms as in my Evidence.
5. I repeat the confirmation given in my Evidence that I have read the 'Code of Conduct' for expert witnesses and that my evidence has been prepared in compliance with that Code.
6. This rebuttal evidence responds to points made in evidence by:
  - (a) Ms Anna Carter, on behalf of the Prouse Trust Partnership, and Mrs Karen and Mr Stephen Prouse.
  - (b) Mr Mark St Clair, on behalf of Manawatū-Whanganui Regional Council (**Horizons**), and Greater Wellington Regional Council (**GWRC**);
  - (c) Ms Helen Anderson, on behalf of Horowhenua District Council (**HDC**) and Kapiti Coast District Council (**KCDC**).
7. I attended expert conferencing on 10, 11 and 14 August 2023 with:
  - (a) Ms Ainsley McLeod;
  - (b) Mr St Clair;
  - (c) Ms Anderson;
  - (d) Ms Carter;
  - (e) Mr Karl Cook (representing James McDonnell Limited);
  - (f) Ms Siobhan Karaitiana (representing Muaūpoko Tribal Authority (**MTA**)); and
  - (g) Mr Quentin Parr (representing Ngā Hapū o Ōtaki).

## RESPONSE TO MS CARTER

### Effects on Prouse Property including Ashleigh homestead

8. Ms Carter notes at paragraph 17 of her evidence that she has assessed the effects of the activities of the Project against the planning provisions she considers relevant to the Prouse property. She records her view that the Project's activities and the effects of them *"are generally consistent with the outcomes sought by the relevant objectives and policies of Horowhenua District Plan and Horizon's Regional Plan"* with the exception of several effects-related matters specific to the Prouse property. However, Ms Carter does not go on to identify or provide an analysis of the policy provisions that she believes that the Project is inconsistent with on effects grounds.
9. I agree with Ms Carter that the Project and the management of its effects are generally consistent with the relevant district and regional plans. However, I disagree with her on the degree to which the Project addresses effects on the Prouse property. I rely on the rebuttal evidence of Mr Michael Smith, Mr Gavin Lister, Mr Phil Peet, and Mr Andrew Craig in terms of their responses to the various effects-based concerns raised by Ms Carter.
10. I also note:
  - (a) that Ms Wilkening, in her evidence for the district councils, doubts whether the acoustic survey and modelling (upon which Ms Carter presumably bases her planning opinion) undertaken on behalf of Mr and Mrs Prouse by Mr Jepsen has been undertaken appropriately;<sup>1</sup>
  - (b) Ms Wilkening's view that the additional mitigation sought by Ms Carter is not required for, nor will it have any practicable effect on, attenuating noise at the Ashleigh homestead,<sup>2</sup> and that the methods proposed to manage construction noise and vibration are appropriate;<sup>3</sup> and
  - (c) Mr Smith's view that he agrees with Ms Wilkening that the results of Mr Jepsen's tests are inconclusive at best, and likely understate the performance of the façade of the Ashleigh homestead<sup>4</sup> and that he does not consider that with the mitigation proposed the residual noise

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<sup>1</sup> Evidence of Siiri Wilkening at [27].

<sup>2</sup> Evidence of Siiri Wilkening at [28].

<sup>3</sup> Evidence of Siiri Wilkening at [32].

<sup>4</sup> Rebuttal evidence of Michael Smith at [22].

levels at the homestead will be inappropriate and require additional mitigation.<sup>5</sup>

11. I disagree with Ms Carter's view (which is shared by Ms Wilkening) that the establishment works of creating a haul road adjacent to the Prouse property and potentially removing the macrocarpa trees alongside the haul road (if deemed necessary on safety grounds) should be governed by a site specific construction noise and vibration plan, instead of forming part of the Outline Plan waiver sought by Waka Kotahi for establishment works (as is proposed by Waka Kotahi).
12. The macrocarpa trees in question have no protection under the Horowhenua District Plan and thus could be felled as a permitted activity, while the act of constructing a haul road (which in essence is a higher standard access track) would also be a permitted activity. In my view it is therefore inappropriate to require a management plan to be prepared for such works that could be undertaken at any time without resource consent.
13. I note that Mr Smith considers it appropriate that the Prouse's are informed of the timing of any tree felling activity.<sup>6</sup> This can occur without the need for specific condition provisions given that the trees in question are on the Prouse's land outside of the designation, meaning communication with the Prouse's about granting access for any felling will need to take place regardless.
14. Ms Carter makes several references to a proposal to create a vehicle access on the western boundary of the Prouse site that will presumably provide collector road access to future subdivision of the balance of the Prouse property in accordance with the now-operative Tara-Ika Multi Use Zone provisions.
15. Such an access is not indicated on the Tara-Ika Structure Plan, meaning the formation of it would require a resource consent and would be carefully assessed, given it would represent a departure from the Structure Plan.
16. Ms Carter also makes reference to the modelled level of flooding that could occur in the north-western corner of the Prouse property in the vicinity of the proposed access. While I understand that Waka Kotahi has offered to place additional culverts and other works in this location to address the issue, Ms

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<sup>5</sup> Rebuttal evidence of Michael Smith at [31].

<sup>6</sup> Rebuttal evidence of Michael Smith at [32].

Carter remains concerned about the potential loss of development yield on the Prouse property including through a potential inability to install the proposed collector road (mentioned above).

17. In terms of the level of flooding (less than 500mm) that the current modelling shows on the Prouse property in the vicinity of the proposed collector road, I note that Policy 8.1.7 of the Horowhenua District Plan seeks to ensure that access between habitable structures and a safe evacuation area is not inundated by greater than 500m in a 1/200 year event.
18. As a result, and given that the Project has modelled a 25% larger event than referenced in Policy 8.1.7 and that the level of modelled inundation will very likely decrease through the detailed design of the Project,<sup>7</sup> I do not share Ms Carter's concerns with regards to inundation of the proposed collector road access (should it obtain resource consent).

## **RESPONSE TO MR ST CLAIR**

### **Flooding**

19. At paragraphs 88 – 91 of his evidence Mr St Clair discusses the relationship between Policy 3-3 (Regionally Significant Infrastructure) and Policy 9-3 (New Critical Infrastructure) of the Horizons One Plan, and records his view that the effect of Policy 9-3, when coupled with Policy 9-5 (Climate Change), justifies imposition of the conditions proposed by Mr Kinley and Mr McArthur.
20. I agree with Mr St Clair that there is a tension between Policy 3-3 which compels Council to allow minor adverse effects of the establishment of new infrastructure of regional or national importance, and Policy 9-3 that requires critical infrastructure to avoid being established in an area subject to a 1/200 yr flood event unless there is satisfactory evidence to show (amongst other things) that the critical infrastructure will not cause any adverse effects on the environment in the event of a flood.
21. The directive wording of Policy 9-3 ("*must be avoided*") is similar to that used in various directive "*avoid*" policies of the New Zealand Coastal Policy Statement (**NZCPS**) (for example, Policy 13) that were central to the original

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<sup>7</sup> As discussed in more detail in the Rebuttal Evidence of Andrew Craig at [20]-[30].

*King Salmon* Supreme Court decision,<sup>8</sup> and have once again been considered in the recent *Port Otago* Supreme Court decision.<sup>9</sup>

22. In the *Port Otago* decision, the Supreme Court addressed the issue of how to address conflicts between directive policy provisions at [75] – [82]. Of particular relevance here is [76]:

[76] If there is a potential for conflict between the ports policy and the avoidance policies with regard to any particular project, the decision-maker would have to be satisfied that:

- (a) the project is required to ensure the safe and efficient operation of the ports in question (and not merely desirable);
- (b) assuming the project is required, all options to deal with the safety or efficiency needs of the ports have been considered and evaluated. Where possible, the option chosen should be one that will not breach the relevant avoidance policies. Whether the avoidance policies will be breached must be considered in light of the discussion above on what is meant by “avoidance”; including whether conditions can be imposed that avoid material harm; and
- (c) if a breach of the avoidance policies cannot be averted, any conflict between the policies has been kept as narrow as possible so that any breach of any of the avoidance policies is only to the extent required to provide for the safe and efficient operation of the ports.

23. Although the Supreme Court's *Port Otago* decision dealt with the NZCPS, the principles set out above are in my view applicable in this context too. In terms of the first test, there is no dispute that the Project is necessary to ensure the safety and efficiency of the state highway network.

24. In terms of the second test, the functional need for the Project to be located on its proposed route, and thus unavoidably located in the areas subject to the 1/200 yr flood event (thereby triggering Policy 9-3), is not disputed by any parties. Within the realm of "avoid", minor and transitory effects can be tolerated as can adverse effects that are so minor, or can be conditioned, that they will not generate "material harm".<sup>10</sup> This guidance needs to be

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<sup>8</sup> *Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 at [24], [62] and [96].

<sup>9</sup> *Port Otago Ltd v Environmental Defence Society Inc* [2023] NZSC 112 at [64] – [68], for example.

<sup>10</sup> *King Salmon* above n 8 at [144] – [146] and more recently, *Port Otago Ltd* above n 9 at [64] – [68].

factored into consideration of Policy 9-3. Any other reading of Policy 9.3 would mean that, almost no project or work could be considered consistent with Policy 9-3. As I set out below, in my view the Project will not generate adverse flooding effects subject to the conditions proposed by Waka Kotahi that will govern the detailed design of the Project.

25. In terms of the third test, and assuming that the avoidance test of Policy 9-3 is breached (which I do not think is the case), the breach is clearly only to the extent necessary to allow for the development of the Project and as a result the safe and efficient operation of the state highway network. Accordingly, I do not share the view of Mr St Clair that Policy 9-3 can be relied upon to justify the flooding conditions proposed in his evidence, especially the condition that seeks to place a design inundation limit on rural land, which I discuss further below.
26. Mr St Clair correctly notes that Policy 9-5 requires a precautionary approach to be undertaken in considering the effects of climate change. In my view, by modelling a flood event larger than the One Plan requires, the approach taken by Waka Kotahi is entirely consistent with Policy 9-5.
27. The misalignment that has arisen between the technical experts with regards to what flooding parameters should be conditioned is largely a result of that precautionary modelling approach. The flooding conditions proposed by Mr McArthur, Mr Kinley, and that in turn are recommended by Mr St Clair, represent an ultra-precautionary approach that does not recognise the circumstances and is not consistent with the enabling direction of Policy 3-3. Similarly, Dr McConchie does not accept that the approach set out in the conditions proposed by Mr McArthur and Mr Kinley is appropriate as it does not consider the environmental context or potential impact of any effects.<sup>11</sup> Mr Craig is of a similar view.<sup>12</sup>
28. In my view, the flooding conditions attached to the rebuttal evidence of Ms McLeod better represent an appropriate balance between recognising the precautionary flood modelling approach adopted by Waka Kotahi at this concept stage of design (as also explained in the rebuttal evidence of Dr McConchie<sup>13</sup>), and setting realistic flooding related parameters that must be

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<sup>11</sup> Rebuttal evidence of Jack McConchie at [98].

<sup>12</sup> Rebuttal evidence of Andrew Craig at [31] to [37].

<sup>13</sup> Rebuttal evidence of Jack McConchie at [72].

achieved by the final design of the Project and that meet the intent of the respective District and Regional Plans and Policy Statements.

29. The proposed condition recommended by Mr St Clair requiring no more than 100mm of inundation on any rural land is not, in my view, a condition that is proportionate to the intensity or duration of the modelled effects of the Project on rural land. Nor is it necessary to ensure that material harm to the utility of the rural land in question is avoided. Mr Craig addresses this matter further in his rebuttal evidence at paragraphs 36 and 37.
30. On that basis, I prefer the condition approach as set out in the rebuttal evidence of Ms McLeod, which will ensure material harm to rural land is avoided while allowing the detailed design of the Project to progress without unnecessary restriction.

### **Disagreement Recorded in Planning JWS**

#### *Flooding from groundwater*

31. At paragraph of his evidence, Mr St Clair correctly sets out the reservation I recorded in the Planning JWS with regards to the efficacy of proposed condition RSW1. My concern at the time was whether flooding associated with groundwater could be quantified and distinguished from flooding from other sources. If not, I was concerned that the condition could create compliance and enforcement issues for both Waka Kotahi and the regulators.
32. Since the Planning Expert Conference, I have been able to speak further with the groundwater experts for Waka Kotahi. They are of the view that, for the purposes of the condition, it is certainly possible to differentiate groundwater induced flooding from other sources. On that basis, my reservation is resolved.

### **RESPONSE TO MS ANDERSON**

#### **Tara-Ika East-West Arterial**

##### *Enablement via O2NL designation*

33. At paragraphs 103 and 104 of her evidence, Ms Anderson sets out her view that it is possible (and in her view more efficient) for the overbridge component of the Tara-Ika East-West Arterial to be provided for within the Ō2NL designation, and thus form part of the Ō2NL works authorised by the Ō2NL designation. Her suggestion is that Waka Kotahi include a condition

on the designation that requires the overbridge to be constructed as part of the Ō2NL works, subject to gaining any necessary resource consents from Horizons. The alternative is that HDC applies for the necessary resource consents under the Horowhenua District Plan and the Horizons One Plan.

34. I agree that constructing the East-West overbridge at the same time as the Project works would be efficient. However in my view Waka Kotahi are unable to make the amendment suggested by Ms Anderson because Waka Kotahi neither has, nor proposes to take, financial responsibility<sup>14</sup> for constructing, operating or maintaining any part of the East-West Arterial.
35. While Waka Kotahi has offered to fund construction of the East-West arterial overbridge,<sup>15</sup> and an agreement with HDC is imminent in that regard, that does not constitute Waka Kotahi taking financial responsibility for the overbridge as a public work in terms of s168 of the RMA, which would also mean taking on all the responsibilities for the work (eg land acquisition) under the Public Works Act 1981 (**PWA**). The financial responsibility for the East-West Arterial as a public work, and thus the overbridge, remains with HDC.
36. Further, the provision of the overbridge as part of the Ō2NL works would not respond to an effect of the Project, meaning imposing such a condition would not be appropriate on effects grounds.

### **Taylor's Road Interchange**

#### *Additional Condition – Parallel Arterial Road*

37. As a result of the evidence of Mr Dunlop and Mr Mallon, Ms Anderson has included a new condition in her evidence that requires a parallel two-way local arterial road to be included at the Taylor's Road interchange.
38. In addressing this matter, Mr Peet confirms at paragraph 13 of his rebuttal evidence that the Project as currently designed "will increase the resilience of this highway route and will not create additional issues". He further comments at paragraph 13 that the resilience concerns identified by Mr Dunlop and Mr Mallon will "only eventuate if there is an accident in the 4km of stretch of new highway between Otaki and Taylor's Road", which is a very low probability event given the high safety standard of highway that will be built.

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<sup>14</sup> Waka Kotahi as a Requiring Authority can only issue a NOR for a public work for which it has financial responsibility - s168 RMA

<sup>15</sup> Evidence of Lonnie Dalzell, 4 July 2023 at [135].

39. Given that the adverse effect that the parallel local arterial road will address is of a very low probability and low potential impact (alternative routes will be available in the unlikely event of a crash) my view is that the condition requiring provision of the local arterial road is unwarranted on effects grounds. It is also pertinent to note that the effects of such a road have not been considered in the range of technical effects assessments undertaken to date for the Project.
40. Mr Peet also records at paragraph 15 of his rebuttal evidence that the interchange layout identified by Mr Dunlop that would facilitate the parallel local arterial road is very similar to a layout that was considered but not preferred on a range of grounds during the alternatives consideration phase of the Project.
41. I am mindful that it is very settled in resource management practice that a Requiring Authority that has issued a Notice of Requirement is entitled to, having adequately considered alternatives in a robust and consistent manner, choose whatever alternative it sees fit provided that the preferred alternative achieves the Project Objectives.
42. There is no dispute from any party (including Ms Anderson) that the consideration of alternatives process for the Project has been adequate, and that the designation as sought achieve the Project Objectives. To then require through conditions that Waka Kotahi construct that part of the Project around Taylors Road very close to a form that was considered and not preferred in the alternatives consideration process would be inconsistent with the settled practice I refer to above.
43. Considering Kapiti-Coast District Plan policy matters, I remain of the view that the proposed works without the parallel local arterial road are consistent with the relevant infrastructure objectives and policies<sup>16</sup>. This is consistent with the opinion of Ms Anderson at paragraph 10 of her evidence that “in terms of an overall planning analysis of the NoRs, having particular regard to the s171(1) matters, there are no District Plan specific matters that remain outstanding or are in dispute”.

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<sup>16</sup> See AEE section 68.9 and AEE Appendix Two

## **Flood Hazard**

### *Additional Conditions – Flood Level Increase and Flood Hazard*

44. For the same reasons that I set out in earlier when responding to Mr St Clair's evidence, I disagree with the floods hazard conditions that Ms Anderson recommends that mirror those recommended by Mr St Clair.

**Grant Robert Eccles**

**10 October 2023**