

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

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

**ENV-2023-WLG-000005**

Under the **RESOURCE MANAGEMENT ACT 1991**

In the matter of the direct referral of applications for resource consents 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**

Applicant

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**MEMORANDUM OF COUNSEL FOR THE APPLICANT REGARDING CROSS  
EXAMINATION OF WITNESSES AT HEARING**

18 October 2023

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**BUDDLE FINDLAY**

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**MAY IT PLEASE THE COURT:**

1. This memorandum of counsel is filed on behalf of Waka Kotahi NZ Transport Agency (**Waka Kotahi**), ahead of the hearing beginning 24 October 2023.
2. This memorandum relates to the Minute of the Court issued on 12 October 2023 (**12 October Minute**) and is pursuant to paragraph [2] of the 12 October Minute, which directs:
  - (a) All parties are to advise counsel for Waka Kotahi of all witnesses for all parties, that they wish to cross-examine by 4pm on Tuesday 17 October 2023; and,
  - (b) Counsel for Waka Kotahi are to collate that information and advise the Court by 4pm on Wednesday 18 October 2023.

**Parties' requests for cross examination**

3. Counsel sets out the witnesses Waka Kotahi will call for cross examination in **Appendix A**. Counsel does not intend to cross examine and put its case to all the witnesses, as set out in *Browne v Dunn*.<sup>1</sup> The rationale for that is that there has been extensive evidence, including rebuttal exchange, and putting the case for Waka Kotahi to every witness would be inefficient. If the Court disagrees with this approach, could it please advise counsel accordingly.
4. Counsel for Waka Kotahi have received comment on cross examination from:
  - (a) Horowhenua District Council and Kapiti Coast District Council (the **District Councils**);
  - (b) Manawatū-Whanganui Regional Council and Greater Wellington Regional Council (the **Regional Councils**);
  - (c) The Royal Forest and Bird Protection Society of New Zealand (**Forest and Bird**);
  - (d) Kāinga Ora – Homes and Communities (**Kāinga Ora**);
  - (e) The Horowhenua Equestrian Advocacy Group, the Kapiti Equestrian Advocacy Group and the New Zealand Equestrian Advocacy Group (together, the **Equestrian Groups**); and

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<sup>1</sup> (1893) 6 R. 67, H.L

- (f) Mr John Bent.
5. Mr Bent has sought to cross examine an extensive list of witnesses on a very confined issue as noted in Appendix A.
- (a) Mr Bent has confirmed that he is comfortable providing written questions to those witnesses who are not proposed for cross examination by any of the other parties.
- (b) the relevant witnesses can then provide responses in writing prior to the close of the hearing. We ask the Court to make directions accordingly.
6. Waka Kotahi and the Prouse Trust Partnership, Mrs Karen Prouse and Mr Stephen Prouse (the **Prouse Parties**) are at an advanced stage of negotiations. Counsel have therefore not included cross examination requests relating to the Prouse Parties' issues in this memorandum. Should it be required, counsel will provide an additional list of witnesses for cross examination by 11.00am, 19 October 2023.
7. **Appendix B** sets out the witnesses the parties to proceedings wish to call for cross examination.
8. Waka Kotahi respectfully requests the witnesses not called by parties, and not needed for questioning by the Court, be excused in line with paragraph [3] of the 12 October Minute. The witnesses not required by Waka Kotahi and the other parties to proceedings are listed in **Appendix C** for the Court's reference. **Appendix C** includes those witnesses who will provide written responses to Mr Bent.

**DATED** this 18<sup>th</sup> day of October 2023.



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**David Allen / Thaddeus Ryan**  
**Counsel for Waka Kotahi**

## APPENDIX A – CROSS EXAMINATION FROM WAKA KOTAHI

Experts / witnesses called for cross examination	Party represented
Ms Helen Anderson	District Councils
Mr Tim Kelly	District Councils
Mr David Dunlop	District Councils
Mr Graeme McIndoe	District Councils
Mr John McArthur	District Councils
Mr Mark St Clair	Regional Councils
Mr Peter Kinley	Regional Councils
Mr Stuart Farrant	Regional Councils
Mr James Lambie	Regional Councils
Mr Logan Brown	Regional Councils
Mr Phil Jaggard	Kāinga Ora A separate list is provided for the Kāinga Ora hearing date.

## APPENDIX B – CROSS EXAMINATION FROM PARTIES

Party	Experts / witnesses called for cross examination
District Councils	Witnesses for Waka Kotahi: <ul style="list-style-type: none"> <li>- Mr Lonnie Dalzell;</li> <li>- Mr Phil Peet;</li> <li>- Dr Jack McConchie;</li> <li>- Mr Andrew Craig;</li> <li>- Ms Ainsley McLeod;</li> <li>- Mr Grant Eccles;</li> <li>- Mr Gavin Lister;</li> <li>- Mr Michael Smith; and</li> <li>- Mr Nick Goldwater.</li> </ul>
Regional Councils	Witnesses for Waka Kotahi: <ul style="list-style-type: none"> <li>- Mr Andrew Craig;</li> <li>- Dr Jack McConchie;</li> <li>- Dr Alex James;</li> <li>- Mr Nick Goldwater;</li> <li>- Mr Nick Keenan;</li> <li>- Ms Ainsley McLeod; and</li> <li>- Mr Grant Eccles</li> </ul>
Forest and Bird	Witnesses for Waka Kotahi: <ul style="list-style-type: none"> <li>- Ms Ainsley McLeod.</li> <li>- Mr Nick Goldwater.</li> </ul> Witnesses for the Regional Councils: <ul style="list-style-type: none"> <li>- Mr James Lambie;</li> <li>- Mr Mark St Clair.</li> </ul>
Kāinga Ora	Witnesses for Waka Kotahi: <ul style="list-style-type: none"> <li>- Mr Andrew Craig;</li> <li>- Dr Jack McConchie; and</li> <li>- Mr Nick Keenan.</li> </ul>

The Equestrian Groups	<p>Witnesses for Waka Kotahi:</p> <ul style="list-style-type: none"> <li>- Mr Lonnie Dalzell;</li> <li>- Mr Phil Peet.</li> </ul>
Mr John Bent	<p>Witnesses for Waka Kotahi:</p> <ul style="list-style-type: none"> <li>- Mr Lonnie Dalzell;</li> <li>- Mr Keith Hamill;</li> <li>- Mr Nick Keenan;</li> <li>- Ms Ainsley McLeod;</li> <li>- Ms Siobhan Karaitiana (Project iwi partner representing Muaūpoko Tribal Authority).</li> </ul> <p>Witnesses for the Regional Councils:</p> <ul style="list-style-type: none"> <li>- Mr Stuart Farrant;</li> <li>- Mr Logan Brown;</li> <li>- Mr Mark St Clair.</li> </ul> <p>Witnesses for the District Councils:</p> <ul style="list-style-type: none"> <li>- Ms Justine Bennett;</li> <li>- Ms Helen Anderson.</li> </ul> <p>Witnesses for Kāinga Ora:</p> <ul style="list-style-type: none"> <li>- Mr Phil Jaggard</li> </ul> <p>Witnesses for the Prouse Parties:</p> <ul style="list-style-type: none"> <li>- Ms Anna Carter</li> </ul>

## APPENDIX C – WITNESSES NOT IDENTIFIED FOR CROSS EXAMINATION

Experts / witnesses	Party represented
Mr Jamie Povall	Waka Kotahi
Mr Andrew Curtis	Waka Kotahi
Mr Gregor McLean	Waka Kotahi
Ms Kathryn Halder	Waka Kotahi
Mr Daniel Parker	Waka Kotahi
Mr Ian Bowman	Waka Kotahi
Ms Jo Healy	Waka Kotahi
Mr Doug Fairgray	Waka Kotahi
Mr Keith Hamill	Waka Kotahi
Ms Siobhan Karaitiana	Muaūpoko Tribal Authority
Ms Dianne Rump	Muaūpoko Tribal Authority
Mr Dean Wilson	Muaūpoko Tribal Authority
Mr Lindsay Poutama	Ngāti Raukawa
Mr Wayne Kiriona	Ngāti Raukawa
Ms Janelle Tamihana	Ngāti Raukawa
Mr Quentin Parr	Ngāti Raukawa
Ms Kim Tahiwī	Ngāti Raukawa
Mr Rawiri Rikihana	Ngāti Raukawa
Mr Te Kororangi Hakaraia	Ngāti Raukawa
Ms Michala Lander	District Councils
Mr Mike Cullen	District Councils
Mr Sean Mallon	District Councils
Ms Siiri Wilkening	District Councils
Mr Bryn Hickson-Rowden	District Councils
Ms Justine Bennett	District Councils
Ms Michaela Stout	Regional Councils
Ms Sarah Newall	Regional Councils
Mr Mike Thompson	Regional Councils
Mr Peter Stacey	Regional Councils
Mr Jon Williamson	Regional Councils

Ms Julia Williams	Regional Councils
Mr Kerry Pearce	Regional Councils
Ms Anna Carter	The Prouse Parties
Mrs Karen Prouse	The Prouse Parties
Ms Amelia Geary	Forest and Bird – Ms Geary has withdrawn her evidence.