

**ENVIRONMENT COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

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

ENV-2022-WLG-

UNDER the Resource Management Act 1991

AND

IN THE MATTER OF an appeal under clause 14(1) of the First Schedule to
the Act

BETWEEN **WAKA KOTAHI NZ TRANSPORT AGENCY**
Appellant

AND **HOROWHENUA DISTRICT COUNCIL**
Respondent

**NOTICE OF APPEAL BY WAKA KOTAHI NZ TRANSPORT AGENCY AGAINST
DECISION ON PROPOSED PLAN CHANGE 4: TARA-IKA GROWTH AREA**

BUDDLE FINDLAY

Barristers and Solicitors
Wellington

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To the Registrar
Environment Court
Wellington

Introduction

1. Waka Kotahi NZ Transport Agency (**Waka Kotahi**) appeals against part of a decision made by Hearing Commissioners (**Panel**) on behalf of Horowhenua District Council (**HDC**) on Proposed Plan Change 4 to the Horowhenua District Plan: Tara-Ika Growth Area (**PC4**).
2. Waka Kotahi made a submission on PC4, and appeared at the hearing held in November and December 2021.
3. In February 2022, Waka Kotahi lodged a Notice of Requirement (**NoR**) for a designation with HDC. The NoR relates to the construction, operation and maintenance of the Ōtaki to north of Levin (**Ō2NL**) state highway project. Specifically, the NoR relates to the section of Ō2NL between Queen Street East and Tararua Road, to the immediate east of Levin. NoRs and resource consent applications for the remainder of the Ō2NL works are to follow.
4. Waka Kotahi, as a Crown entity, is committed to a partnership-based approach with tangata whenua that reflects the principles of Te Tiriti o Waitangi. With our project partners, Muaūpoko and hapū of Ngāti Raukawa ki te Tonga, we have worked together on the development of Ō2NL. Waka Kotahi acknowledges the inalienable connection our iwi and hapū partners have to the waterways, whenua and each other within Horowhenua.
5. Waka Kotahi is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**RMA**).
6. Waka Kotahi received notice of the decision on 4 July 2022 (**Decision**).
7. The decision was made by HDC on recommendation from the Panel.
8. Waka Kotahi supports the intention of the PC4 to provide more housing in Levin. The appeal is seeking amendments that will ensure development neighbouring Ō2NL is appropriate and well-integrated. The amendments also provide greater certainty for both HDC and landowners, as well as greater certainty of design requirements for Ō2NL.

Parts of the decision subject to the appeal

9. Waka Kotahi appeals against the Panel's decision not to include provisions in PC4 that would require potential adverse noise effects from Ō2NL on future Tara-Ika residents, and associated potential reverse sensitivity effects on Ō2NL, to be proactively addressed through design requirements for new development within an 'Ō2NL Noise Management Area'.
10. This appeal therefore focusses on the 'Ō2NL Noise Management Area' and associated provisions that were proposed jointly by the expert planning witnesses for HDC and Waka Kotahi.¹ The 'Ō2NL Noise Management Area' covers most the land subject to the NoR lodged by Waka Kotahi in February 2022, and additional land to the immediate east and west. The location of the proposed 'Ō2NL Noise Management Area', and the area covered by the NoR, are shown in the plan included as **Appendix E**.²

Reasons for the appeal

11. The reasons for the appeal relate to the failure of the Decision to:
 - (a) provide adequate protection for the health and amenity of existing and future residents in the PC4 site from the noise effects from Ō2NL;
 - (b) provide adequate protection for the operation of any future Ō2NL from reverse sensitivity effects associated with future sensitive activities located in the PC4 site; and
 - (c) promote the sustainable management purpose of the RMA.

Relief sought

12. Waka Kotahi seeks that the provisions of PC4 (including Structure Plan 013 and the relevant District Plan Maps) be amended as shown in **Appendix D** (and to reflect the extent of the 'Ō2NL Noise Management Area' shown in **Appendix E**).
13. Those amendments appropriately address the matters raised in this appeal, and reflect the agreement reached by the expert planners for HDC and Waka Kotahi during the hearing process. That agreement was set out in a joint

¹ Discussed in the Decision at paragraphs 3.101 to 3.114.

² The Ō2NL Noise Management Area is referred to on that plan as the 'Waka Kotahi Proposed Ō2NL Noise Overlay'.

memorandum provided by HDC and Waka Kotahi to the Hearing Panel on 16 February 2022, provided as **Appendix F**.

Appendices to this Notice of Appeal

14. The following documents are attached to this notice:
- (a) **Appendix A:** a list of names and addresses of persons to be served with a copy of this notice;
 - (b) **Appendix B:** a copy of Waka Kotahi's submission on PC4;
 - (c) **Appendix C:** a copy of the Decision;
 - (d) **Appendix D:** the amendments to the provisions sought as relief by Waka Kotahi;
 - (e) **Appendix E:** the plan showing the location of the proposed 'Ō2NL Noise Management Area'; and
 - (f) **Appendix F:** the agreement memorandum provided by HDC and Waka Kotahi to the Hearing Panel on 16 February 2022.



D Allen / T Ryan
Counsel for Waka Kotahi NZ Transport Agency

Dated: 15 August 2022

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

**How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

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

Appendix A: Persons to be served

Recorded below is a list of names and emails / addresses Waka Kotahi will serve with a copy of this appeal. Service will clarify a hard copy will be available on request.

1. Horowhenua District Council, districtplan@horowhenua.govt.nz and milcahx@horowhenua.govt.nz (as the proponent of and decision-maker on the plan change, and as submitter 25 as recorded in the Summary of Submissions)
2. Sue-Ann Russell sueann100@hotmail.com
3. Hayden & Prudence Stewart hj.pa.stewart@gmail.com
4. Peter James Cameron, 32 McKenzie Street, Levin 5510
5. Simon Austin austinlevin@xtra.co.nz
6. Erin Nijhuis thursy@hotmail.com
7. Elisabeth Susan Leighfield leigh053@gmail.com
8. Geoff Kane kanevale@xtra.co.nz
9. Ann Thomas ann.thomas@xtra.co.nz
10. Phillipa & Pasanka Wickremasinghe phillipabw@gmail.com
11. Helen Olive Brown helenolivebrown@gmail.com
12. John & Jenny Brown farmerjohnbrown65@gmail.com
13. Gwyneth Schibli (as submitter 12 – 15) wbschilbi@gmail.com
14. Carol & Rob Bloomfield carol@mrsb.co.nz
15. Ministry of Education, C/- BECA Ltd alice.falloon@beca.com
16. Jennings Family Trust sam@jennings.co.nz
17. Michael Harland, 1 Linley Place, Levin 5510
18. Julia Burgess tonyburgess9@me.com
19. Fire & Emergency New Zealand, C/- BECA Ltd aimee.brown2@beca.com

20. Gill Morgan gillibnz@yahoo.com
21. Kevin Daly kevindaly124s@gmail.com
22. Haddon Preston paul@landlink.co.nz
23. Horowhenua District Residents & Ratepayers Association
leoneb@xtra.co.nz
24. Brendan McDonnell bmcbuilders@actrix.co.nz
25. Electra dylan.andrews@electra.co.nz
26. Rangeview Villas Body Corporate john.welch@aubreys.co.nz
27. Horizons Regional Council penelope.tucker@horizons.govt.nz
28. Incite on behalf of Redwood Grove Properties tom@incite.co.nz
29. Leith Consulting monique@leithconsulting.co.nz
30. Truebridge Associates roger@truebirdge.co.nz
31. Muaūpoko Tribal Authority ceo@muaupoko.iwi.nz
32. Catriona McKay catriona.mackaynz@gmail.nz
33. Margaret Day maggie.day@gmail.com
34. Prouse Trust Partnership karen.stephen@xtra.co.nz
35. Charles Rudd, 242 Hokio Beach Road, RD1, Levin 5571
36. Vivienne Gwenyth Bold vivienneg@gmail.com

Appendix B: Waka Kotahi's submission on PC4

[provided separately]

Appendix C: A copy of the Decision

[provided separately]

Appendix D: The amendments sought as relief by Waka Kotahi

[overleaf]

Appendix E: Plan showing the extent of the proposed 'Ō2NL Noise Management Area'

[provided separately]

Appendix F: Joint memorandum to the Hearing Panel from HDC and Waka Kotahi

[provided separately]

Appendix D: The amendments sought as relief by Waka Kotahi

Amendments to the provisions in the Decision-version of PC4 sought by Waka Kotahi through this appeal are shown in **bold underline** and **~~bold strikethrough~~** text.

In addition to the text below, Waka Kotahi also seeks that the Structure Plan and District Plan maps be amended to show the Ō2NL Noise Management Area, as indicated on the plan attached to this notice of appeal as Appendix E.³

ISSUE 6A.1 OVERALL PRINCIPLES FOR DEVELOPMENT IN TARA-IKA

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ISSUE DISCUSSION

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State Highway 57 separates Tara-Ika from the rest of the urban area of Levin/Taitoko. The preferred corridor for the Ōtaki to North of Levin/Taitoko highway is also located in Tara-Ika (near to existing State Highway 57), ~~creating a risk of severance between Tara-Ika and the rest of Levin/Taitoko.~~

~~Due to the alignment of future and existing state highways, there is a risk that Tara-Ika will develop in way that is disconnected from the urban area of Levin/Taitoko and associated services. Unless addressed, this will have a negative impact on the amenity of the resulting development and the well-being of residents.~~

The proposed Ō2NL highway will bring a range of benefits to both Tara-Ika and the wider region. However, there is also the potential for adverse effects, which will need to be avoided, remedied and mitigated. As the Tara-Ika Plan Change and the Ō2NL highway have proceeded on different timeframes and under different regulatory processes, it has been necessary to take a strategic approach to try and anticipate potential effects and how these can be appropriately addressed.

...

³ Referred to on that plan as the 'Waka Kotahi Proposed Ō2NL Noise Overlay'.

Objectives & Policies

Objective 6A.1

To achieve an integrated, efficient, and connected development that reflects cultural values and local identity, represents good urban design, is supported by a well-connected, safe and efficient transport network that supports a range of transport modes and has the facilities, social infrastructure, and amenities necessary to contribute to the health, safety, and wellbeing of residents. This includes:

- Encourage housing at a range of densities;
- Provision for a local-scale commercial centre;
- Access to quality public open space;
- Safe and efficient walking and cycling options;
- Design that reflects Muaūpoko cultural values and local history and identity;
- Protection of culturally significant sites;
- Environmentally sensitive design;
- Within the Arapaepae Road Special Treatment Overlay, development that is appropriate for the site in terms of scale, access, and compatibility with surrounding land uses;
- Within the Arapaepae Special Treatment Overlay **and the Ō2NL Noise Management Area**, the health and wellbeing of occupants is appropriately protected.

...

Policy 6A.1.11

Recognise the anticipated benefits of the proposed Ōtaki to North Levin Highway and take a strategic approach to managing potential adverse effects by requiring habitable rooms containing noise sensitive activities located within the Ō2NL Noise Management Area to meet acoustic requirements that address the health and wellbeing of occupants.

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15A.3 RESTRICTED DISCRETIONARY ACTIVITIES

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15A.3.2 Residential

(a) Any development within the Arapaepae Road Special Treatment Overlay noted on Structure Plan 013.

(b) Any activity that does not comply with Rule 15A.6.2.7 – Noise sensitive activities in the 'Ō2NL Noise Management Area'.

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15A.6 CONDITIONS FOR PERMITTED ACTIVITIES

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15A.6.2 Residential Zones

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15A.6.2.7 Noise sensitive Activities in the 'Ō2NL Noise Management Area'

(a) Any new building, or alteration to an existing building, that contains a noise sensitive activity and is located within the 'Ō2NL Noise Management Area' shown on the Planning Maps must be designed, constructed and maintained to achieve the indoor design noise levels from road traffic set out in Table 15A-1 below (excluding areas not deemed to be habitable spaces as defined in Schedule 1 of the Building Regulations 1992):

Table 15A-1: Indoor Design Limits

<u>Building Type</u>	<u>Occupancy/Activity</u>	<u>Maximum Indoor Design Noise Level</u> <u>$L_{Aeq(24h)}$</u>
<u>Residential</u>	<u>Living spaces, sleeping spaces (including visitor</u>	<u>40dB</u>

	<u>accommodation and retirement accommodation)</u>	
<u>Education</u>	<u>Assembly halls</u>	<u>35dB</u>
	<u>Conference rooms, drama studios</u>	<u>40dB</u>
	<u>Lecture rooms and theatres, music studios</u>	<u>35dB</u>
	<u>Libraries</u>	<u>45dB</u>
	<u>Sleeping areas in educational facilities</u>	<u>40dB</u>
	<u>Teaching areas</u>	<u>40dB</u>
<u>Health</u>	<u>Overnight medical care, wards</u>	<u>40dB</u>
	<u>Clinics, consulting rooms, theatres, nurses' stations</u>	<u>45dB</u>
<u>Cultural Buildings</u>	<u>Places of worship, marae</u>	<u>35dB</u>

Note: This table is informed by Waka Kotahi guidance material on managing State Highway noise. The purpose of this table is to specify the noise level standards for different types of activities. It should not be taken as an indication of what types of activities will be considered acceptable in this location.

(b) If windows must be closed to achieve the design noise levels in (a), the building must be designed, constructed and maintained with a ventilation and cooling system. For habitable spaces a ventilation cooling system must achieve the following:

(i) Ventilation must be provided to meet clause G4 of the New Zealand Building Code. Noise from the system must not

exceed 30 dB LAeq(30s) when measured 1 metre away from any grille or diffuser.

(ii) The occupant must be able to control the ventilation rate in increments up to a high air flow setting that provides at least 6 air changes per hour. Noise from the system must not exceed 30 dB LAeq(30s) when measured 1 metre away from any grille or diffuser.

(iii) The system must provide cooling controllable by the occupant that can maintain the temperature at no greater than 25°C. Noise from the system must not exceed 30 dB LAeq(30s) when measured 1 metre away from any grille or diffuser

Note: The provisions of Condition 15A.6.2.7 apply irrespective of whether the Ōtaki to north of Levin highway has been constructed or is operational.

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15A.8 MATTERS OF DISCRETION AND CONDITIONS FOR RESTRICTED DISCRETIONARY ACTIVITIES

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15A.8.1.2 Noise sensitive activities in the 'Ō2NL Noise Management Area' (refer to Rule 15A.3.2(b))

(a) Matters of Discretion

(i) The likely sensitivity of the activity to noise effects from Ō2NL and the effectiveness of any mitigation proposed.

(ii) The current and future effects of the non-compliance on the health of building occupants.

(iii) Effects on the operation of existing and proposed state highways.

(b) Non-Notification

(i) Under section 77D of the RMA, an activity requiring resource consent under Rule 15A.8.3.2(b) shall not be publicly notified or limited notified, except:

- Waka Kotahi NZ Transport Agency may be an affected party for the purposes of limited notification; or
- where the Council decides special circumstances exist (pursuant to Section 95A(9)); or
- where the applicant requests public notification (pursuant to Section 95A(3)(a)).