

Environmental Legal Assistance (ELA) Fund

Application form

Before you apply

Before completing this form, read the *Environmental Legal Assistance Fund: Guide for applicants*. This includes the information you will need to complete the application form, and the ELA Fund criteria that your application will be assessed against. Ensure you have provided all information and attach supporting information as required.

Need more help? If you have any questions, call 027 218 4985 or email ela.fund@mfe.govt.nz.

1. Contact information

(1a) Group's full legal name:	Te Taiwhenua o Tamatea Incorporated
(1b) Group's physical address:	6 Kitchener Street, Waipukurau 4200

	(1c) PRIMARY CONTACT	(1d) SECONDARY CONTACT
Full name:	Jenny Nelson-Smith	Dianne Smith
Position in group:	Chairperson	Te Mana Taiao o Tamatea - Lead
Phone number:	s 9(2)(a)	s 9(2)(a)
Email address:		

2. Group details

(2a) What type of group are you? Tick the relevant box:				
<input type="checkbox"/> Residents and ratepayers/community group	<input checked="" type="checkbox"/> Non-government organisation	<input checked="" type="checkbox"/> Iwi/hapū	<input type="checkbox"/> Business group	<input type="checkbox"/> Other (please specify):
(2b) When did your group begin operating? Month and/or year: 06 Sept 1990				

(2c) What are your group's objectives? State your group's key environmental interests, philosophy, and any aims that are specific to your case:

Whāinga | Purpose

E whakapono ana mātou, ia whakarawe te taiao I ngā hua a tinana me ka hangai i te ahuatanga a wairua o te tangata, hei āpiti atu ko te taiao te mauri o te oranga me te hauora o ngai Māori. Ko matou ngā kaitiaki o te taiao, nā reira me tū hei rangatira, kia manaaki, kia tiaki i gā hau takiwā, ngā wai Māori me ngā whenua, anei e rongoā hei piki i te ora o te whanau, ngā haū me te iwi. Ka mutu ka whakaute mātou i te mana me te oranga o te whānau, hapū me te iwi.

We believe that our natural environment provides our physical sustenance as well as the spiritual aspect of our existence; The health of our environment has a direct influence on the health of our people; We are charged to preserve and protect our air, water, and lands and the resources within for the benefit and survival of our whānau, hapū, and iwi; We respect the mana and wellbeing of our whānau, hapū, and iwi.

Ngā hapū and Marae o Te Taiwhenua o Tamatea, holds a profound commitment to the protection and preservation of our natural environment, specifically, the water bodies within our cultural landscape. Our environmental interests are deeply intertwined with our philosophy, guided by the understanding that all water bodies are integral components of a broader cultural tapestry that interlaces people and the environment in a rich history of cultural

and spiritual associations.

We recognise that every freshwater body carries special cultural, spiritual, historical, and traditional significance, forming the foundation of our connection with Tāngata whenua and freshwater. This relationship is deeply rooted in whakapapa, representing an inalienable bond between Māori and freshwater that is documented, celebrated, and passed down through generations.

Freshwater, to us, is acknowledged as a taonga of paramount importance, possessing significant spiritual, physical, and customary value. Our Ohu firmly believes that the well-being of our people is intricately linked to the well-being of our Tāiao. Therefore, we view ourselves as Kaitiaki, Ahi Kā, and protectors of our rohe, entrusted with the obligation and responsibility to protect and sustain it for the prosperity of our mokopuna in the generations to come.

In the context of our legal case against the proposed groundwater extraction from the Ruataniwha Aquifer, our specific aims are aligned with this philosophy. Our evidence as to the significant effects of the proposed groundwater takes on the cultural values of the aquifer was accepted by the Hearing and Commissioners and was a major reason for consent being declined. Now that the applicants have appealed, we have joined to defend the Commissioners' decision and stand up for the delicate ecological balance and cultural significance of the aquifer. Our pursuit is not just a legal battle but a principled stance to safeguard our cultural heritage, spiritual connections, and the enduring relationship between Māori and freshwater.

KA WHITA TE AHIKAROA O TAMATEA TAUHĀ, WHIWHITA!

The home flames of Tamatea are secured, we are here we are luminous!

Group details - supporting information needed:

You must provide all information required for your group's legal status. Tick the boxes to confirm all information has been provided.

INCORPORATED GROUP:

(2d) Does your group have a common seal? Yes No

(2e) Copy of your group's mandate/rules. Constitution Included.

(2f) Current membership list of your group, including physical addresses. Please note who the committee members are and their roles.

TRUST:

(2g) Does your group have a common seal? Yes No

(2h) Copy of trust documents.

(2i) Current membership list of your group, including physical addresses. Please note who the committee members are and their roles.

NON-INCORPORATED GROUP:

- (2j) Details of your group's history, including any relevant documentation (e.g., evidence of regular meetings).
- (2k) Authorisation from the group that at least two named persons can act on behalf of your group for this matter. These two people will sign the declaration in section 6 of this form.
- (2l) Current membership list of your group, including physical addresses. Please note who the committee members are and their roles.

3. Case details

(3a) Name of case or board of inquiry and case Court number: e.g., Stoneleigh District Council v Springfield River Preservation Society Incorporated ENV-2012-CHC-123

ENV-2023-AKL-000057 - I&P Farming Ltd & Te Awahohonu Forest Trust v Hawkes Bay Regional Council

(3b) Date of Court or board of inquiry hearing, if known:

5-day hearing to be held in August or September 2024 depending on available hearing dates. Dates still to be confirmed.

(3c) Type of case: tick the relevant box

<input checked="" type="checkbox"/> Appeal on a resource consent application (section 120, RMA)	<input type="checkbox"/> Board of inquiry
<input type="checkbox"/> Appeal on a plan/plan change (schedule 1, clause 14, RMA)	<input type="checkbox"/> Court of Appeal proceeding
<input type="checkbox"/> Appeal on a policy statement (schedule 1, clause 14, RMA)	<input type="checkbox"/> Enforcement (section 316, RMA)
<input type="checkbox"/> Declaration (section 311, RMA)	<input type="checkbox"/> Fast track consent application
<input type="checkbox"/> Designation (section 179, RMA)	<input type="checkbox"/> High Court proceeding
<input type="checkbox"/> Direct referral (Environment Court)	<input type="checkbox"/> Judicial review
<input type="checkbox"/> First instance hearing (e.g., Freshwater Hearing Panel)	

(3d) Briefly state what the application relates to: 1-2 sentences

An appeal against the decision, to refuse resource consents to take and use groundwater from the Ruataniwha Aquifer.

(3e) Provide an outline of your group's legal case and a history of its involvement so far:

Ngā hapū of Mataweka Marae, Rakautatahi Marae, Rongo-o-Tahu Marae, Whatuiāpiti Marae, Waipukurau Marae, and Ngāti Kahungunu Iwi Incorporated were original submitters to the Tranche 2 groundwater extraction application made by I&P Farming Ltd & Others. The hapū members attended the submissions hearing held in Waipawa in November 2022 whereby the presentation of verbal submissions was undertaken over a half-day period, to the hearing panel. Ngā Hapu O Te Taiwhenua O Tamatea and Ngāti Kahungunu Iwi Incorporated were section 274 parties to the application and worked together. Our group's evidence supported

the Hawke's Bay Regional Council decision to decline the application for water extraction from the Ruataniwha aquifer (see pages 8-12 (submitter evidence) and 33 (Conclusions re Actual and Potential Effects)).

The Commissioner's decision was appealed by eight applicants. Te Taiwhenua o Tamatea joined the appeals as an interested party. Our legal case is based upon evidence that this groundwater extraction application will:

- Further degrade our cultural values system related to Te Mana o te Wai and the Ruataniwha aquifer
- Further degrade the Mauri of our Waipawa and Tukituki Awa
- Further degrade our mahinga kai and our indigenous freshwater species
- Further degrade our Ruataniwha aquifer
- Further degrade Te Taiao
- Cumulatively deplete and diminish the water quantity and quality of the Ruataniwha aquifer
- Not avoid cumulative adverse effects due to these large water extractions

Ngā hapū and Marae of Te Taiwhenua o Tamatea, as Kaitiaki of our wai and whenua, have been actively engaged in opposing the excessive extraction of groundwater from the Ruataniwha Aquifer. Our collective hapū have diligently submitted comprehensive representations, expressing our deep concerns about the environmental impact and cultural significance of allowing such extractions beyond the initially consented limits.

Our opposition to this endeavour is rooted in our commitment to safeguarding our wai resources and the overall well-being of our whenua which impacts the overall well-being of all our people residing on it. We firmly believe that the proposed groundwater extraction, beyond the agreed-upon limits does not reflect responsible stewardship.

As kaitiaki of our cultural and natural heritage, we oppose the exploitation of our water resources for short-term gains. Our collective efforts aim to protect the delicate ecological balance of the aquifer, ensuring its sustainability for current and future generations.

In the face of these challenges, we remain steadfast in our commitment to the legal process, advocating for a fair and just resolution that upholds the principles of environmental conservation, cultural preservation, and community well-being.

(3f) Provide an outline of the procedural steps of the case to date (e.g., any issues resolved at mediation), and any key upcoming events. Clarify which steps you are seeking funding for.

1. We have attended and presented at the hearing's submission process held in November 2022 – we have self-funded that process.
2. We have attended and presented at the 2-day mediation hearings held in December 2023. Following mediation, some appellants withdrew. However, two appellants continued and their case will effectively determine whether water is available for the other appellants to re-apply for. No issues were otherwise resolved at the mediation, therefore this case has been directed to the Environment Court for an appeal hearing. We have self-funded this process.
3. We seek legal aid funding in order to participate in the Environment Court appeal hearing process.

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(3g) List the other parties involved in the case:

Appellants – I & P Farming Ltd and Te Awahohonu Forest Trust (6 other appellants having withdrawn as described above)

Respondents – Hawke’s Bay Regional Council

Section 274 Interested Parties –Ngāti Kahungunu Iwi Incorporated, Fish & Game Council (Hawke’s Bay), Greg Frater, Inglis Bush Community Trust, Onga-Tiko Farming group, Royal Forest & Bird Protection Society of NZ Inc.

(3h) Do you intend to collaborate with any of these parties? If yes, name the parties and provide an explanation of any joint arguments. Give details of proposed sharing of witnesses, legal counsel and any shared costs:

Yes

No

s 9(2)(ba)(i)

Case details - supporting documents needed:

Provide a copy of the following if applicable to your case. Tick the boxes to confirm what you have provided.

(A) Notice of appeal, notice to be party to the proceeding/hearing, or another form of proof that your group is officially recognised as a party to the proceeding/hearing.

(B) Council decision and/or Independent Hearing Commissioner decision, if applicable.

(C) Any substantive minutes, directions, and procedural decisions issued by the relevant Court/authority in respect of your case (e.g., changes to the steps in the process and/or scope of the proceeding).

(D) Map/s showing the location of the area relating to your case. Include zoning maps, if applicable.

(E) Your group’s original submission, if applicable.

4. ELA application details

You must answer all questions in this section.

(4a) How does your group's case relate to or raise nationally or regionally important issues affecting the environment?

Our case raises the nationally important issue of the cultural values of wai, and implementation of the National Policy Statement for Freshwater Management 2020 which indicates that the intent is to protect freshwater environmental values ahead of the use and development of water resources. The fact that Te Mana o te Wai includes six principles to afford protection to the 'mana' of the water, strengthens our case that this application should not proceed, given the intent of NPSFM. Our case also implements our kaitiakitanga responsibilities. Supporting mana whenua to be kaitiaki is a nationally important issue. Protection of the Ruataniwha aquifer is a regionally important issue, particularly as this case will effectively determine whether the 6 other irrigators who have withdrawn their appeals can re-apply for a groundwater allocation.

(4b) How does your case relate to the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga?

Our case is based on our relationship as Māori to our natural environment ; wai Māori or freshwater and all other taonga that is precious to us. We have been afforded that right to retain full and exclusive and undisturbed possession of our lands, estates, forests, fisheries and all other taonga precious to us, under article two of Te Tiriti o Waitangi As reasons given and stated in 3(e) our relationship is threatened due to this application for large water extraction.

(4c) What is the potential for your case to create useful case law?

At the time of the Hearing Panels decision report, dated 24 February 2023, page 43, the Panel's understanding was that "*no case law yet exists as to how the provisions of the NPSFM are to be interpreted*". Therefore, our case has the potential to create pioneering case law regarding te mana o te wai in the context of groundwater.

Plan Change 6 to the Hawke's Bay Regional Plan, adopted in 2013, provided an allocation of "Tranche 2" groundwater, provided certain conditions were met. However, our knowledge in 2023 about the actual and potential effects of this allocation is quite different to our knowledge in 2013 (see discussion on p14-15 of the Panel's report). Additionally, Plan Change 6 was produced prior to, and does not implement, the NPSFM 2020. Accordingly, there is a significant legal question as to the weight to be given to different policy instruments.

(4d) What is the potential of your case improving the administration and efficiency of relevant environmental legislation?

As no case law currently exists to interpret how to enact the provisions of the NPSFM, if we are successful, this case may well provide a conduit that defines the effectiveness to the enactment of the fundamental concept and framework of Te Mana o te Wai contained within the NPSFM. This should in turn reflect how to have regard to those provisions within resource consent applications.

(4e) Are there any issues of national or regional importance that will not be addressed in full if legal or expert evidence is not provided by your group?

Yes, there are nationally important issues that will not be addressed in full if our expert evidence is not provided for by our group. This is because we as a natural grouping of Māori Iwi and hapū are in effect the Crown partners as afforded to us under Te Tiriti o Waitangi and

therefore as a Crown partner we are entitled to be represented on a matter that is of regional significance and importance.

5. Financial details

(5a) Legal counsel and/or expert witnesses your group is engaging in your case: *Please consider paying any cultural experts instead of relying on pro-bono contributions.*

Full name	s 9(2)(b)(ii)				
Firm/company					
Area of expertise					
Cost per hour (excl GST)					
Total value of work (excl GST)					
Request for funding? Yes/no					
	\$1000	\$25, 500	\$64,256.25	\$1000	\$1000

(5b) Provide an itemised list of costs incurred by your group for the case so far, including costs incurred at council-level proceedings. Provide the total cost.

(5c) Have you applied for and/or received any other funding from the Crown to support your case/involvement in the proceeding/hearing? If yes, please provide details, including the total amount requested and/or received and the purpose of the funding.

No

Financial details - supporting information needed:



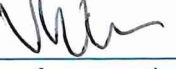
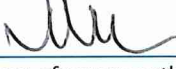
Tick the boxes to confirm all information has been provided.

(5d) A summary of the experience and expertise for each person in (5a) that you are requesting funding for. *This may be in the form of a CV.*

<p><input checked="" type="checkbox"/> (5e) A copy of an original quote for each person in (5a) that you are requesting funding for. Quotes must include the cost per hour, time for preparation, hearing time, any mediation time, and any pro-bono contributions. Quote amounts should align with the amounts in (5a). Estimates are not acceptable.</p>
<p><input checked="" type="checkbox"/> (5f) A copy of your group's most recent audited accounts or two latest bank statements from your group's main operating account. Note what amount is available to support your case below:</p>
<p>\$0</p>

6. Group's declaration

This declaration must be signed by the primary and secondary contacts identified in section 1 if they are members of the group. If either or both contacts are not members of the group, the declaration must instead be signed by duly authorised members of the group. **Each person must have their declaration witnessed by a person authorised to take a statutory declaration.**

<p>We,</p>	
<p>Jenny Nelson-Smith</p>	<p>of Waipukurau Manager</p>
<p>and</p>	
<p>Dianne Smith</p>	<p>of Hastings Manager</p>
<p>both solemnly and sincerely declare that:</p> <ul style="list-style-type: none"> • the details we have given in all sections of this application are true and correct to the best of our knowledge. • we have the authority to commit our group to this application, and we understand and will meet the financial and reporting requirements as specified in the deed of funding contract should our application be successful. • we are not seeking funding in this application for any person who is a member of our group. • our group is eligible for funding as specified in the ELA Fund Guide for Applicants, including our group's not for profit status. • all information contained in this application is subject to the Official Information Act 1982, and therefore this information may be released upon request. • the Ministry may collect from third parties any information it deems necessary about the applicant or the case. • the Ministry reserves the right to seek more information from the applicant before sending the application to the Advisory Panel, and will defer if necessary until the Ministry has received all information requested. <p>We both make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.</p>	
	
<p>(signature of declarer) Jenny Nelson-Smith</p>	<p>(signature of declarer) Dianne Smith</p>
<p>Date: 19 March 2024</p>	<p>Date: 18 March 2024</p>
	
<p>(signature of person authorised to witness statutory declaration)</p>	<p>(signature of person authorised to witness statutory declaration)</p>
<p>Date: 28 March 2024</p>	<p>Date: 28 March 2024</p>

Victoria Kaurangi Yvonnelee Wilson
Enrolled Barrister & Solicitor of the
High Court of New Zealand

Before sending us your application, please check that you have: *tick boxes to confirm*

Answered all relevant questions

Included all required signatures

Attached all required supporting information

Send your application and supporting documents to ela.fund@mfe.govt.nz.



Form 33

Notice of person's wish to be party to proceedings

Section 274, Resource Management Act 1991

To the Registrar
Environment Court
Auckland

We, Ngā Hapu o Te Taiwhenua o Tamatea and Ngāti Kahungunu Iwi Incorporated, wish to be a party to the following proceedings:

In the matter of an appeal under section 120 of the RMA. Between: I&P Farming Ltd, Te Awahonou Forest Trust, Springhill Dairies Partnership, Plantation Road Dairies, Papawai Partnership, Tuki Tuki Awa Limited & Buchanan Trust No2 as the appellants and Hawke's Bay Regional Council as the respondent. This is an appeal on a decision of a resource consent application.

- ~~• the Environment Court's reference number for the proceedings (eg, RMA 232/2003); or~~
- the parties to the proceedings and the nature of the proceedings (eg, an appeal on a resource consent application or an application for an enforcement order)].

We are persons who made submissions about the subject matter of the proceedings

[state whether you are—

- ~~• the Minister for the Environment; or~~
- ~~• a local authority; or~~
- ~~• the Attorney-General representing a relevant aspect of the public interest (in this case, also specify the aspect of the public interest); or~~
- ~~• a person who has an interest in the proceedings that is greater than the interest that the general public has (in this case, also explain the grounds for saying that you come within this category); or~~
- a person who made a submission about the subject matter of the proceedings].

We are not* a trade competitor for the purposes of [section 308C](#) or [308CA](#) of the Resource Management Act 1991.

*Select one.

***We are directly affected by an effect of the subject of the appeal that—**

(a) adversely affects the environment; and

(b) does not relate to trade competition or the effects of trade competition.

*Delete entire paragraph if you are not a trade competitor.

†Select one.

We are interested in all ~~(or part)~~ of the proceedings.

~~*The part of the proceedings I am interested in is:~~

~~[explain which part or parts of the proceedings you are interested in].~~

*Delete if this does not apply.


~~I am interested in the following particular issues:~~

~~[explain which issues raised by the appeal you are interested in]. [state why you support the relief sought, giving clear reasons for your views].~~

We oppose the relief sought as the proposal is contrary to our values associated with Te Mana o te Wai and the following reasons being:

1. The proposal is contrary to the provisions in the National Policy Statement for Freshwater Management 2020 (NPSFW)
2. The proposal is distinctly contrary to the NPSFW O2.1(1)(a) *'the first priority to be given to the health and wellbeing of water bodies and freshwater ecosystems'*
3. This proposal contributes to degradation of our cultural values associated with Te Mana o te Wai
4. The adverse effects of the proposal on the receiving environments can not be remedied or mitigated
5. The proposal will have adverse effects on Indigenous fish species that can not be remedied or mitigated
6. The proposal will have adverse effects on Mahinga Kai sites that can not be remedied or mitigated
7. The proposal will have adverse effects on Native tree species that can not be remedied or mitigate
8. The proposal will have adverse effects on our cultural practices and spiritual values
9. The proposal will contribute towards the decline and loss of ngā Puna o Tamatea (streams, creeks, rivers, tributaries, waterways)
10. The proposal will contribute towards the decline and loss of ngā kai o Tamatea rohe (Indigenous food species)
11. This proposal does not give effect to the Statutory Acknowledgment areas of Tamatea as required under the Heretaunga Tamatea Claims Settlement Act 2018, with regards to lands and waterways within the Ruataniwha rohe (basin)
12. Ngāti Kahungunu Iwi Incorporated (NKII) consider the issuing of consents to take groundwater from the 'tranche 2' allocation of the Hawke's Bay Regional Resource Management Plan (RRMP) would be contradictory to the legislation, policies, and plans guiding the management of freshwater and the environment in Aotearoa and Hawke's Bay
13. NKII consider the issuing of consents would be contradictory to the National Policy Statement for Freshwater Management 2020 (NPSFM) and its direction to manage freshwater in a way that gives effect to Te Mana o te Wai (Policy 1), to actively involve tangata whenua in freshwater management and recognise and provide for Māori freshwater values (Policy 2), and to phase out existing over-allocation and avoid future over-allocation (Policy 11).
14. NKII consider that applications for consent to take and use water cannot be considered in isolation of the land use consents required under the RRMP and the National Environmental Standards (NES) for Freshwater, as to do so would be inconsistent with the NPSFM direction to manage freshwater in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments (Policy 3).

We agree to participate in mediation or other alternative dispute resolution of the proceedings.


Dianne Smith
Signature of person wishing to be a party
(or person authorised to sign
on behalf of person wishing to be a party)

Date 17/03/2023

Address for service of person wishing to be a party:
Telephone: § 9(2)(a) [redacted]
Fax/email: § 9(2)(a) [redacted]
Contact person: [name and designation, if applicable]

Dianne Smith – Board Member of Te Taiwhenua o Tamatea

Note to person wishing to be a party

You must lodge the original and 1 copy of this notice with the Environment Court within 15 working days after—

- the period for lodging a notice of appeal ends, if the proceedings are an appeal; or
- the decision to hold an inquiry, if the proceedings are an inquiry; or
- the proceedings are commenced, in any other case.

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.

The notice must be signed by you or on your behalf.

You must serve a copy of this notice on the relevant local authority and the person who commenced the proceedings within the same 15 working day period and serve copies of this notice on all other parties within 5 working days after that period ends.

However, 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*).

Advice

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

Schedule 1 form 33: amended, on 10 October 2013, by [regulation 8\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2013 (SR 2013/385).

Schedule 1 form 33: amended, on 10 October 2013, by [regulation 8\(2\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2013 (SR 2013/385).

Schedule 1 form 33: amended, on 10 October 2013, by [regulation 8\(3\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2013 (SR 2013/385).

Schedule 1 form 33: amended, on 10 October 2013, by [regulation 8\(4\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2013 (SR 2013/385).

Schedule 1 form 33: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).

Schedule 1 form 33: amended, on 1 June 2006, by [regulation 10\(4\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2006 (SR 2006/99).

IN THE ENVIRONMENT COURT
AT AUCKLAND
I TE KŌTI TAIAO O AOTEAROA
TAMAKI MAKAUARA

IN THE MATTER

of an appeal under section 120 of the
Resource Management Act 1991

BETWEEN

I & P FARMING LIMITED & OTHERS

[ENV-2023-AKL-000057]

Appellants

AND

HAWKE'S BAY REGIONAL
COUNCIL

Respondent

CENTRAL HAWKE'S BAY DISTRICT
COUNCIL

AND

BRIAN CHAMBERS

FISH & GAME COUNCIL (HAWKES
BAY)

GREG FRATER

INGLIS BUSH COMMUNITY TRUST

NGATI KAHUNGUNU IWI
INCORPORATED

NGĀ HAPU O TE TAIWHENUA O
TAMATEA

ONGA-TIKO FARMING GROUP

ROYAL FOREST & BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED

TE TAIWHENUA O HERETAUNGA

I & P FARMING LIMITED & OTHERS V HAWKES BAY REGIONAL COUNCIL



MINUTE OF THE ENVIRONMENT COURT
(21 June 2023)

BACKGROUND

[1] On 6 March 2023, the Court received a pre-emptive application from the appellants to extend time for filing the above appeal. A decision was issued on 14 March 2023 granting that extension until 3 May 2023.¹ The substantive appeal is now before the Court.

[2] This is an appeal against the decision of the Hawke's Bay Regional Council to refuse resource consents to take and use water at the Ruataniwha Aquifer.

[3] In the track directions issued 5 May 2023, the parties were directed to advise the Court and one another of their agreeability to mediation by 31 May 2023. By that date, interested parties had joined the proceeding under s 274 of the Act.

[4] The Court is advised that all parties are agreeable to mediation except Royal Forest and Bird Protection Society of New Zealand Incorporated, a s 274 interested party.

[5] On 31 May 2023, counsel for the appellants proposed that in-person mediation should occur in Hawke's Bay due to the large number of parties.

Directions

[6] The matter will be set down for Court-assisted mediation. The parties are directed to liaise with one another and the registrar as to a suitable date, location and timeframe for mediation.

¹ Decision [2023] NZEnvC 044.



MJL Dickey
Environment Judge

Issued: 21 June 2023



**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

IN THE MATTER OF an appeal under section 120 of the
Resource Management Act 1991

BETWEEN I & P FARMING LTD

(and 6 other appellants as set out in
Schedule 1)

(ENV-2023-AKL-000057)

Appellant

AND HAWKE'S BAY REGIONAL
COUNCIL

Respondent

AND CENTRAL HAWKE'S BAY
DISTRICT COUNCIL

(and 10 other section 274 parties as set
out in Schedule 2)

Section 274 Interested Party

MINUTE OF THE ENVIRONMENT COURT

(23 January 2024)

Background

[1] The above matter is an appeal against the decision of the Hawke's Bay Regional Council to refuse resource consents to take and use groundwater from the Ruataniwha Aquifer. The appeal was lodged with the Court on 3 May 2023.

[2] The appeal was mediated on 30 November 2023 – 1 December 2023. The Appellants presented a revised proposal to the parties before and during mediation. The parties did not resolve the appeal.

Appellants' Memorandum dated 8 December 2023

[3] On 8 December 2023, the Appellants filed a memorandum proposing the following timetable:

- (a) Appellants to circulate details of the final proposal (and file an amended Notice of Appeal) by **9 February 2024**;
- (b) All parties to identify expert witnesses by **1 March 2024**;
- (c) Parties to identify issues/topics for expert conferencing by **15 March 2024**;
- (d) Expert witness conferencing to commence by AVL in the week beginning **25 March 2024**;
- (e) Parties to file list of issues for determination with the Court following expert conferencing;
- (f) Appellants to circulate evidence-in-chief by **19 April 2024**;
- (g) Other parties to circulate evidence-in-chief by **17 May 2024**;
- (h) Appellants' rebuttal evidence to be circulated by **31 May 2024**;
- (i) Appellants to file four hard copies of all the evidence by **7 June 2024**; and
- (j) A 5-day hearing to be held in **mid-June or July 2024** (depending on available hearing dates).

[4] The parties propose that expert conferencing occur prior to the exchange of evidence-in-chief without the exchange of "will say" statements. This is because the Appellants have already pre-circulated draft expert reports that outline the technical basis for the revised proposal and the technical issues are already understood by the

parties.

[5] The parties seek leave for mana whenua representatives to have the opportunity to attend expert conferencing in accordance with 9.4b of the Environment Court Practice Note 2023. The parties propose that the attendees for each conference are confirmed when topics and issues are agreed.

Directions

[6] The proposed timetable set out at [3] is approved.

[7] The Court agrees that it is appropriate for mana whenua representatives to be given the opportunity to attend and participate in expert conferencing.



MJL Dickey
Environment Judge

SCHEDULE 1

1. Buchanan Trust No. 2
2. Papawai Partnership
3. Plantation Road Dairies
4. Springhill Dairies Partnership
5. Te Awahohonu Forest Trust
6. Tuki Tuki Awa

SCHEDULE 2

1. Brian Chambers
2. Fish & Game Council (Hawke's Bay)
3. Greg Frater
4. Inglis Bush Community Trust
5. Ngāti Kahungunu Iwi Incorporated
6. Ngā Hapu o Te Taiwhenua o Tamatea
7. Onga-Tiko Farming Group
8. Royal Forest and Bird Protection Society of New Zealand Incorporated
9. Te Taiwhenua o Heretaunga
10. Wise Water Use

From: [Dianne Smith](#)
To: [ELA Fund](#)
Subject: RE: Environmental Legal Assistance (ELA) Fund - application received and additional information required
Date: Tuesday, 2 April 2024 1:38:59 pm
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.jpg](#)
[Supplementary for ELA Application.zip](#)

MFE CYBER SECURITY WARNING

This email originated from outside our organisation. Please take extra care when clicking on any links or opening any attachments.

Tēnā koe Emma

Please see the attached and I hope this is all that was required to complete this application.

Ngā mihi

Dianne

On 02/04/2024 11:33 NZDT ELA Fund <ela.fund@mfe.govt.nz> wrote:

Kia ora Dianne

We've received your application for Environmental Legal Assistance funding which has been lodged as:

ELA 2085 – Te Taiwhenua o Tamatea Incorporated.

The following information is needed before we can send your application to the ELA Fund Advisory Panel for consideration:

1. Notice of appeal, notice to be party to the proceeding/hearing, or another form of proof that your group is officially recognised as a party to the proceeding/hearing.
2. Council decision and/or Independent Hearing Commissioner decision, if applicable.
3. Any substantive minutes, directions, and procedural decisions issued by the relevant Court/authority in respect of your case (eg, changes to the steps in the process and/or scope of the proceeding).
4. Map/s showing the location of the area relating to your case. Include zoning maps, if applicable.
5. Your group's original submission, if applicable.
6. An itemised list of costs incurred by your group for the case so far, including costs incurred at council-level proceedings.

Please provide the above no later than **Thursday 4 April 2024**.

If you have any questions, feel free to contact me.

Nāku noa, nā

Emma Kerr-Laurie ([she/her](#))

Legal Coordinator | Kairuruku ā-Ture

Legal Team | Te Taha Ture

Ministry for the Environment | Manatū Mō Te Taiao

s 9(2)(a) emma.kerr-laurie@mfe.govt.nz | mfe.govt.nz



Please note the content of this email may be legally privileged and confidential. Any unauthorised use, distribution or copying of the contents is expressly prohibited. If you have received this e-mail in error, please advise by return e-mail and then delete this e-mail together with all attachments.

From: Dianne Smith s 9(2)(a)
Sent: Thursday, March 28, 2024 4:35 PM
To: ELA Fund <ela.fund@mfe.govt.nz>
Subject: Environmental Legal Assistance (ELA) Fund
Importance: High

MFE CYBER SECURITY WARNING
This email originated from outside our organisation. Please take extra care when clicking on any links or opening any attachments.

Tēnā koe

Please see the attached application form.

Thank you for your consideration in this matter.

Ngā mihi

Dianne Smith

s 9(2)(a)

s 9(2)(a)

Chairperson Mataweka Marae - Waipawa

Ngā mihi maioha

Dianne Smith

s 9(2)(a)

Chairperson Mataweka Marae - Waipawa

28 February 2023

To submitters
(By email)

Dear Submitter,

Notification of Decision – Tranche 2 Applications

Application no.	Applicant	Application description	Property location
APP-123563	Te Awahohonu Forest Trust	To take and use Tranche 2 groundwater from four existing wells (well no's 16563, 16592, 16593 and 5515) and up to two new wells to irrigate up to 850 ha of pasture, crops and/or horticulture and to augment the Mangaonuku Stream.	Gwavas Station - 5740 State Highway 50 and 97 Matheson Road, Tikokino
APP-123991	Springhill Dairies Partnership	To take and use Tranche 2 groundwater from well no's 1518, 5167, 3870, 4593, 4122 and 5497 to irrigate up to 188 ha of pasture, crops and/or horticulture and to augment the Mangaonuku Stream.	Cnr Tikokino and Makaroro Roads, Tikokino
APP-123541	Tuki Tuki Awa Ltd	To take and use Tranche 2 groundwater from up to four new wells to irrigate up to 136 ha of pasture and crops and/or horticulture and to augment the Tukituki River.	406 Tukituki Road, Takapau
APP-123547	Plantation Road Dairies	To take and use Tranche 2 groundwater from well no. 4830 and up to three new wells to irrigate up to 459 ha pasture and crops and/or horticulture and to augment the Kahahakuri Stream.	1404 Ongaonga Road, and Wakarara Road, Ongaonga
APP-123565 and APP-124498	Papawai Partnership	To take and use Tranche 2 groundwater from well no's 16508 and 1859 to irrigate up to 320 ha of pasture, crops and/or horticulture to and to augment the Waipawa River.	1041 State Highway 50, Ongaonga
APP-123566 and APP-124500	I&P Farming Limited	To take and use Tranche 2 groundwater from up to two new wells to irrigate up to 310 ha of pasture, crops and/or horticulture and to augment an unnamed tributary of the Tukituki River.	337 Ongaonga - Waipukurau Road, Ongaonga
APP-123546	Buchanan Trust No. 2	To take and use Tranche 2 groundwater from well no. 16408 and up to three new wells to irrigate up to 243 ha of pasture, crops and/or horticulture and to augment the Ongaonga Stream	19 Ngaruru Road, Ongaonga
APP-125281	Purunui Trust	To take and use Tranche 2 groundwater from up to three new wells to irrigate up to 175 ha of pasture, crops and/or horticulture and to augment the Waipawa River	385 and 375 Swamp Road, Ongaonga

The hearing panel has prepared its decision on the above applications. The decision is to decline the consents. A copy of the decision report has also been provided.

The Resource Management Act 1991 makes provision for you to appeal against the decision to the Environment Court. Any appeal must be made within 15 working days of your receipt of this notification, in accordance with sections 120 and 121 of the Act.

Thank you for your input into the resource consent application process.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'N Savage'.

NADENE SAVAGE

Hearings Administrator

Policy and Regulation Group

Phone: (06) 835 9200

Email: consentshearingadmin@hbrc.govt.nz



ENVIRONMENT COURT OF NEW ZEALAND

05 May 2023

BY EMAIL ONLY

Dear Parties

ENV-2023-AKL-000057 I&P Farming Ltd & Others v Hawkes Bay Regional Council

Topic: An appeal against the decision of the Hawke's Bay Regional Council to refuse resource consents to take and use groundwater from the Ruataniwha Aquifer

The abovementioned proceeding, being an appeal under section 120 of the Resource Management Act 1991, was lodged with the Environment Court on 03 May 2023.

Directions

An Environment Judge has reviewed this matter and has **directed** as follows:

The appeal is assigned to the standard track.

The parties shall advise the Court and one another, **by 5:00pm on 31 May 2023**, as to whether or not they are agreeable to Court-assisted mediation and by Audio-Visual Link if in-person mediation is not possible.

If the parties agree to mediate, the appeal is to be placed "on hold" until **11 August 2023** to allow for mediation to be scheduled and for a post-mediation report to be filed and served by the respondent by then.

If the parties are not agreeable to mediation, the matter is to be set down for a judicial conference (online via Microsoft Teams) to timetable a hearing.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Diana Wolfgramm', with a long horizontal flourish extending to the right.

Diana Wolfgramm
Hearing Manager

ENVIRONMENT COURT

E-mail address: diana.wolfgramm@justice.govt.nz

LIST OF PARTIES - EMAIL

<u>Lodgement:</u>	<u>ENV-2023-AKL-000057</u>	<u>I&P Farming Ltd & Others v Hawkes Bay Regional Council</u>
Initiator	Buchanan Trust No. 2	Bal Matheson, Richmond Chambers, PO Box 1008, Shortland Street, Auckland 1140, matheson@richmondchambers.co.nz
Initiator	Buchanan Trust No. 2	Michael Doesburg, Wynn Williams & Co - Auckland, PO Box 2401, Shortland Street, Auckland 1140, mike.doesburg@wynnwilliams.co.nz
Initiator	I & P Farming Limited	Bal Matheson, Richmond Chambers, PO Box 1008, Shortland Street, Auckland 1140, matheson@richmondchambers.co.nz
Initiator	I & P Farming Limited	Michael Doesburg, Wynn Williams & Co - Auckland, PO Box 2401, Shortland Street, Auckland 1140, mike.doesburg@wynnwilliams.co.nz
Initiator	Papawai Partnership	Bal Matheson, Richmond Chambers, PO Box 1008, Shortland Street, Auckland 1140, matheson@richmondchambers.co.nz
Initiator	Papawai Partnership	Michael Doesburg, Wynn Williams & Co - Auckland, PO Box 2401, Shortland Street, Auckland 1140, mike.doesburg@wynnwilliams.co.nz
Initiator	Plantation Road Dairies	Bal Matheson, Richmond Chambers, PO Box 1008, Shortland Street, Auckland 1140, matheson@richmondchambers.co.nz
Initiator	Plantation Road Dairies	Michael Doesburg, Wynn Williams & Co - Auckland, PO Box 2401, Shortland Street, Auckland 1140, mike.doesburg@wynnwilliams.co.nz
Initiator	Springhill Dairies Partnership	Bal Matheson, Richmond Chambers, PO Box 1008, Shortland Street, Auckland 1140, matheson@richmondchambers.co.nz
Initiator	Springhill Dairies Partnership	Michael Doesburg, Wynn Williams & Co - Auckland, PO Box 2401, Shortland Street, Auckland 1140, mike.doesburg@wynnwilliams.co.nz
Initiator	Te Awahohonu Forest Trust	Bal Matheson, Richmond Chambers, PO Box 1008, Shortland Street, Auckland 1140, matheson@richmondchambers.co.nz
Initiator	Te Awahohonu Forest Trust	Michael Doesburg, Wynn Williams & Co - Auckland, PO Box 2401, Shortland Street, Auckland 1140, mike.doesburg@wynnwilliams.co.nz
Initiator	Tuki Tuki Awa	Bal Matheson, Richmond Chambers, PO Box 1008, Shortland Street, Auckland 1140, matheson@richmondchambers.co.nz
Initiator	Tuki Tuki Awa	Michael Doesburg, Wynn Williams & Co - Auckland, PO Box 2401, Shortland Street, Auckland 1140, mike.doesburg@wynnwilliams.co.nz
Respondent - Territorial Auth	Hawke's Bay Regional Council	Matthew Conway, Simpson Grierson, PO Box 2402 / DX SX 11174, Wellington 6140, Matt.Conway@simpsongrierson.com



THE ENVIRONMENT COURT OF NEW ZEALAND

NOTICE OF MEDIATION

The parties to these proceedings in the attached schedule have been directed to attend court-assisted mediation. The prerogative for setting a date for the mediation lies solely with the Registrar and is made first and foremost in terms of the availability of an Environment Commissioner. Accordingly this matter has been set down for mediation at the date, time and at the venue specified below:

DATE: Thursday, 30 November 2023

TIME: 10:00 AM

VENUE: East Pier Hotel
50 Nelson Quay
Ahuriri
Napier
Phone: (06) 8340035

Note To Participants:

Participation in the mediation process is mandatory, and each party must participate in person or by a representative unless leave is granted by the Court not to attend. Any application for leave to be excused **must be made in writing** to the Registrar, giving reasons and be served upon all other participants to the proceedings.

The Court has released a Practice Note on Alternative Dispute Resolution, which may assist parties in the protocols around the Mediation Process. A copy of this Practice Note can be obtained through this Environment Court Registry.

Information on the Environment Court and the Court's Practice Notes which serve as a guide, are available at www.justice.govt.nz/courts/environment-court.

If any party has special needs (for example in relation to disability and access, deafness), they are to advise the Court in writing of this not later than 10 working days from the date of the mediation so that appropriate arrangements can be considered.

<https://www.justice.govt.nz/courts/going-to-court/pre/interpreters-language-and-disability-access/>

Should any party wish to contact the Mediator either before or after the mediation, then all contact should be through the Court's Registry.

Dated at Auckland Environment Court Registry on 01 September 2023

Rochelle Holland
Case Manager - Mediation



Direct dial phone: (09) 916 9679

E-mail address: Rochelle.Holland@justice.govt.nz

ENVIRONMENT COURT

CX10086

PO Box 7147

Auckland

Telephone: (09) 916 9091

Facsimile: (09) 916 9090

LIST OF PARTIES - EMAIL

TOPIC: An appeal against the decision of the Hawke's Bay Regional Council to refuse resource consents to take and use groundwater from the Ruataniwha Aquifer

<u>Lodgement:</u>	<u>ENV-2023-AKL-000057</u>	<u>I&P Farming Ltd & Others v Hawkes Bay Regional Council</u>
Initiator	Buchanan Trust No. 2	Bal Matheson, Richmond Chambers, PO Box 1008, Shortland Street, Auckland 1140, matheson@richmondchambers.co.nz
Initiator	Buchanan Trust No. 2	Michael Doesburg, Wynn Williams & Co - Auckland, PO Box 2401, Shortland Street, Auckland 1140, mike.doesburg@wynnwilliams.co.nz
Initiator	I & P Farming Limited	Bal Matheson, Richmond Chambers, PO Box 1008, Shortland Street, Auckland 1140, matheson@richmondchambers.co.nz
Initiator	I & P Farming Limited	Michael Doesburg, Wynn Williams & Co - Auckland, PO Box 2401, Shortland Street, Auckland 1140, mike.doesburg@wynnwilliams.co.nz
Initiator	Papawai Partnership	Bal Matheson, Richmond Chambers, PO Box 1008, Shortland Street, Auckland 1140, matheson@richmondchambers.co.nz
Initiator	Papawai Partnership	Michael Doesburg, Wynn Williams & Co - Auckland, PO Box 2401, Shortland Street, Auckland 1140, mike.doesburg@wynnwilliams.co.nz
Initiator	Plantation Road Dairies	Bal Matheson, Richmond Chambers, PO Box 1008, Shortland Street, Auckland 1140, matheson@richmondchambers.co.nz
Initiator	Plantation Road Dairies	Michael Doesburg, Wynn Williams & Co - Auckland, PO Box 2401, Shortland Street, Auckland 1140, mike.doesburg@wynnwilliams.co.nz
Initiator	Springhill Dairies Partnership	Bal Matheson, Richmond Chambers, PO Box 1008, Shortland Street, Auckland 1140, matheson@richmondchambers.co.nz
Initiator	Springhill Dairies Partnership	Michael Doesburg, Wynn Williams & Co - Auckland, PO Box 2401, Shortland Street, Auckland 1140, mike.doesburg@wynnwilliams.co.nz
Initiator	Te Awahohonu Forest Trust	Bal Matheson, Richmond Chambers, PO Box 1008, Shortland Street, Auckland 1140, matheson@richmondchambers.co.nz
Initiator	Te Awahohonu Forest Trust	Michael Doesburg, Wynn Williams & Co - Auckland, PO Box 2401, Shortland Street, Auckland 1140, mike.doesburg@wynnwilliams.co.nz
Initiator	Tuki Tuki Awa	Bal Matheson, Richmond Chambers, PO Box 1008, Shortland Street, Auckland 1140, matheson@richmondchambers.co.nz
Initiator	Tuki Tuki Awa	Michael Doesburg, Wynn Williams & Co - Auckland, PO Box 2401, Shortland Street, Auckland 1140, mike.doesburg@wynnwilliams.co.nz
Respondent - Territorial Auth	Hawke's Bay Regional Council	Katherine Viskovic, Simpson Grierson - Wellington, PO Box 2402, DX SX 11174, Wellington 6140,

Respondent - Territorial Auth	Hawke's Bay Regional Council	katherine.viskovic@simpsongrierson.com Liam Stevens, Simpson Grierson - Wellington, PO Box 2402, DX SX 11174, Wellington 6140, Liam.Stevens@simpsongrierson.com
Respondent - Territorial Auth	Hawke's Bay Regional Council	Matthew Conway, Simpson Grierson, PO Box 2402 / DX SX 11174, Wellington 6140, Matt.Conway@simpsongrierson.com
Interested Party S274	Central Hawke's Bay District Council	Asher Davidson, PO Box 317, Shortland Street, Auckland 1140, asher@casey.co.nz
Interested Party S274	Chambers, Brian	Brian Chambers, NO ADDRESS AVAILABLE, bc.tuki@gmail.com
Interested Party S274	Fish & Game Council (Hawkes Bay)	Fish & Game Council (Hawkes Bay), NO ADDRESS AVAILABLE, cnewton@fishandgame.org.nz
Interested Party S274	Frater, Greg	Greg Frater, NO ADDRESS AVAILABLE, frater.greg.onga@gmail.com
Interested Party S274	Inglis Bush Community Trust	Inglis Bush Community Trust, NO ADDRESS AVAILABLE, clint.deckard@frontiers.co.nz
Interested Party S274	Ngati Kahungunu Iwi Incorporated	Ngati Kahungunu Iwi Incorporated, NO ADDRESS AVAILABLE, ngaio@kahungunu.iwi.nz
Interested Party S274	Ngâ Hapu o Te Taiwhenua o Tamatea	Ngâ Hapu o Te Taiwhenua o Tamatea, NO ADDRESS AVAILABLE, diannesmith@xtra.co.nz
Interested Party S274	Onga-Tiko Farming Group	Onga-Tiko Farming Group, NO ADDRESS AVAILABLE, george@tiko.co.nz
Interested Party S274	Royal Forest and Bird Protection Society of New Zealand Incorporated	Peter Anderson, Royal Forest & Bird Protection Society of NZ Inc., PO Box 631, Wellington, P.Anderson@forestandbird.org.nz
Interested Party S274	Royal Forest and Bird Protection Society of New Zealand Incorporated	Tom Kay, Royal Forest and Bird, T.Kay@forestandbird.org.nz
Interested Party S274	Te Taiwhenua o Heretaunga	Marei Apatu, Te Taiwhenua o Heretaunga, PO Box 718, Hastings 4156, marei.apatu@ttoh.iwi.nz
Interested Party S274	Te Taiwhenua o Heretaunga	Morry Black, Mauri Protection Agency, PO Box 516, Hastings 4156, moryb@xtra.co.nz
Interested Party S274	Wise Water Use	Wise Water Use, NO ADDRESS AVAILABLE, contact@wisewateruse.org.nz

SCHEDULE OF PROCEEDINGS

1. **Topic:** An appeal against the decision of the Hawke's Bay Regional Council to refuse resource consents to take and use groundwater from the Ruataniwha Aquifer
- Topic Number:** ENV-2023-304-000039
- i. I&P Farming Ltd & Others v Hawkes Bay Regional Council
- Appeal Against Decision Of Consent Authority pursuant to Section 120 of the Resource Management Act 1991
- Court Reference: ENV-2023-AKL-000057
-

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

**I MUA I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKAURAU ROHE**

ENV-2023-AKL-000057

UNDER the Resource Management Act 1991 (RMA)

IN THE MATTER of an appeal under section 120 of the RMA

BETWEEN **I&P FARMING LIMITED AND TE AWAHOHONU
FOREST TRUST**

Appellants

AND **HAWKE'S BAY REGIONAL COUNCIL**

Respondent

AND **BRIAN CHAMBERS**

**MEMORANDUM OF COUNSEL FOR THE APPELLANTS REGARDING
FINAL PROPOSAL**

9 February 2024

Solicitor acting:

M J Doesburg
Wynn Williams
PO Box 2401, AUCKLAND 1140
Tel +64 9 300 2600
mike.doesburg@wynnwilliams.co.nz

Counsel instructed:

B J Matheson
Richmond Chambers
33 Shortland Street
Auckland
matheson@richmondchambers.co.nz

CENTRAL HAWKES BAY DISTRICT COUNCIL

INGLIS BUSH COMMUNITY TRUST

NEW ZEALAND FISH & GAME COUNCIL

**NGĀ HAPU O TE TAIWHENUA O TAMATEA AND
NGĀTI KAHUNGUNU IWI INCORPORATED**

ONGA – TIKO FARMING GROUP

**ROYAL FOREST & BIRD PROTECTION SOCIETY
INCORPORATED**

TE TAIWHENUA O HERETAUNGA

THOMAS FRATER

WISE WATER USE

Section 274 parties

MAY IT PLEASE THE COURT

1. By Minute dated 23 January 2024, the Environment Court approved the evidence exchange timetable proposed by the Appellants to bring the appeals to hearing.¹
2. The first step in the timetable is for the Appellants to circulate details of their final proposal and file an amended Notice of Appeal by 9 February 2024.
3. The amended Notice of Appeal is **enclosed** with this memorandum. The details of the final proposal are set out below.

Final proposal

Overview

4. The Appellants presented the revised proposal to the parties before and during mediation, narrowing the scope of the proposal. The final proposal includes the following key changes from the original proposal:
 - (a) Five of the seven original Appellants (Springhill Dairies Partnership, Plantation Road Dairies, Papawai Partnership, Tuki Tuki Awa Limited and the Buchanan Trust No.2) do not wish to proceed further and wish to formally withdraw their appeals. This change has been reflected in the amended Notice of Appeal enclosed with this memorandum. Two Appellants remain – I&P Farming Limited and Te Awahohonu Forest Trust.
 - (b) In light of the proposed withdrawals, the total amount of groundwater sought to be taken by the remaining Appellants has reduced.² The revised proposal is for a total groundwater take of up to 4,392,400 m³ / year, compared with the volume of 15,000,000m³ originally sought.

Breakdown of volumes sought

5. The revised proposed take of up to 4,392,400 m³ / year comprises of:

¹ Minute of the Environment Court dated 23 January 2024.

² The original proposal involved eight applicants and was for a total groundwater take of 15,000,000 m³/year, comprising of 8,439,259 m³/year for irrigation and 6,560,741 m³/year for augmentation.

- (a) 2,700,000 m³ / year for irrigation;
- (b) 1,186,300 m³ / year for augmentation; and
- (c) up to 506,100m³ / year for wetland enhancement or augmentation in very dry years (if required).
6. The remaining Appellants originally sought to take 6,114,930 m³ / year for irrigation and augmentation. However, Te Awahohonu Forest Trust has reduced its proposed irrigation take (which has also reduced the volume of water required for augmentation). The result is a “surplus” of 2,228,630 m³ / year that is within the scope of the original applications.
7. The augmentation volumes identified at 5(b) above are those required for 9 out of 10 years. This means that in 1 year of every 10, the augmentation volumes may be fully used before flows return above the augmentation triggers. To provide the option for additional augmentation to be considered (subject to further assessment of effects), the Appellants propose that up to 506,100m³ / year of water remains within the scope of the appeal. The remaining 1,722,530m³ / year of “surplus” is not being pursued.
8. Furthermore, the Appellants’ proposal involves the enhancement of wetlands on their sites. Subject to further assessment of effects, part of the 506,100m³ / year referred to above may be used to support those wetlands.
9. A summary of the volume sought by the Appellants, the current proposal and water available for further augmentation or mitigation is provided below:

	Volume (m³ / year)
Total originally sought by all applicants	15,000,000
Total originally sought by 2 Appellants	6,114,930
Proposed take for irrigation	2,700,000 (1,800,000 Te Awahohonu Forest Trust, 900,000 I&P Farming Limited)
Proposed take for augmentation	1,186,300 (815,600 Te Awahohonu Forest Trust, 370,700 I&P Farming Limited)
Potential additional augmentation or mitigation	506,100
Balance not being pursued	1,722,530

Withdrawal of appellants

10. The Appellants advised the parties about the proposed withdrawal of the five Appellants noted in paragraph 4(a) in September 2023, in advance of mediation on 30 November and 1 December 2023.³
11. On 7 February 2024, counsel for the Appellants contacted the parties seeking their confirmation that they had no issues as to costs in relation to the proposed withdrawals. Hawke's Bay Regional Council and Central Hawke's Bay District Council confirmed there were no issues as to costs. No other responses were received.


Next steps

12. The next step in the timetable is for all parties to identify expert witnesses by 1 March 2024.

Hearing date

13. As noted above, the Court has set down an evidence exchange timetable to bring the appeals to hearing in mid-June or July 2024 (depending on available hearing dates).⁴
14. To assist with scheduling, and given the number of parties, counsel and witnesses, and the mid-year school holidays in July, the Appellants respectfully request directions that the Registrar liaise with the parties to schedule an appropriate hearing date as soon as practicable, or at least indicate a period of 2 to 3 weeks within which any hearing might be able to be accommodated.

DATED this 9th day of February 2024

Handwritten signatures of B J Matheson and M J Doesburg in blue ink, positioned above a dotted line.

B J Matheson / M J Doesburg
Counsel for the Appellants

³ Email from Mike Doesburg (Counsel for the Appellants) to the parties dated 12 September 2023.

⁴ Minute of the Environment Court dated 23 January 2024.

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

**I MUA I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKAURAU ROHE**

ENV-2023-000057

UNDER the Resource Management Act 1991 (RMA)

IN THE MATTER of an appeal under section 120 of the RMA

BETWEEN **I&P FARMING LIMITED AND TE AWAHOHONU
FOREST TRUST**

Appellants

AND **HAWKE'S BAY REGIONAL COUNCIL**

Respondent

AND **INGLIS BUSH COMMUNITY TRUST**

**MEMORANDUM OF COUNSEL FOR THE APPELLANTS SEEKING
EXTENSION FOR STATEMENT OF TOPICS AND ISSUES**

15 March 2024

Solicitor acting:

M J Doesburg
Wynn Williams
PO Box 2401, AUCKLAND 1140
Tel +64 9 300 2600
mike.doesburg@wynnwilliams.co.nz

Counsel instructed:

B J Matheson
Richmond Chambers
33 Shortland Street
Auckland
matheson@richmondchambers.co.nz

NEW ZEALAND FISH & GAME COUNCIL

**NGĀ HAPU O TE TAIWHENUA O TAMATEA AND
NGĀTI KAHUNGUNU IWI INCORPORATED**

ONGA – TIKO FARMING GROUP

**ROYAL FOREST & BIRD PROTECTION SOCIETY
INCORPORATED**

THOMAS FRATER

WISE WATER USE

Section 274 parties

DRAFT

MAY IT PLEASE THE COURT

1. On 23 January 2024, the Court directed that a statement of topics and issues for expert conferencing be filed by Friday 15 March 2024. The purpose of this memorandum is to seek an extension for the filing of that statement.
2. On 13 March 2024, the parties were informed of the change of representation of Te Taiwhenua o Tamatea, along with their intent to seek amendments to the evidence exchange and conferencing timetable.
3. The parties are discussing the proposed changes to the timetable with Te Taiwhenua o Tamatea, which may have implications for the timetabling of conferencing, as well as evidence exchange. In particular, the current timetable provides for expert witness conferencing ahead of evidence exchange, but the proposed changes may include some expert conferencing occurring after evidence exchange. That may result in different issues and topics for conferencing, that would be identified now.
4. Counsel propose that the timeframe to file a statement of topics and issues is extended by one week, with leave reserved to amend the directions in accordance with any changes to the timetable that may occur as a result of the discussions referred to above.
5. Accordingly, Counsel for the Appellants respectfully requests directions that:
 - (a) the timeframe to file a statement of topics and issues for conferencing is extended by one week, to 22 March 2024; and
 - (b) leave is reserved for the parties to seek an amended to the direction to file a statement of topics and issues, in the event there are changes to the wider timetable.

DATED this 15th day of March 2024

.....
B J Matheson / M J Doesburg
Counsel for the Appellants

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

IN THE MATTER OF an appeal under section 120 of the Resource
Management Act 1991

BETWEEN I & P FARMING LTD AND TE AWAHOHONU FOREST
TRUST

(ENV-2023-AKL-000057)

Appellant

AND HAWKE'S BAY REGIONAL COUNCIL

Respondent

AND FISH & GAME COUNCIL (HAWKES BAY)
(and 6 other section 274 parties as set out in
Schedule 1)

Section 274 Interested Party

NOTICE OF CHANGE IN REPRESENTATION

13 March 2024

Counsel:
Sally Gepp / Shoshona Galbreath
3 Brookside
Nelson 7010

sally@sallygepp.co.nz | 021 558 241
shoshona@sallygepp.co.nz | 021 905 314

To the Registrar of the Environment Court

And to the appellants, respondent and s 274 parties

Notice of change of representation

This document notifies you that—

1. Counsel for Te Taiwhenua o Tamatea (TTOT) (section 274 party) is now Sally Gepp and Shoshona Galbreath.
2. The address for service of TTOT is now 3 Brookside Nelson 7010. Service is also accepted by email to sally@sallygepp.co.nz and shoshona@sallygepp.co.nz.

Dated: 13 March 2024



Sally Gepp
Counsel for Te Taiwhenua o Tamatea

SCHEDULE 1 - s 274 parties

1. Greg Frater
2. Inglis Bush Community Trust
3. Ngāti Kahungunu Iwi Incorporated
4. Te Taiwhenua o Tamatea
5. Onga-Tiko Farming Group
6. Royal Forest and Bird Protection Society of New Zealand Incorporated

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

IN THE MATTER OF an appeal under section 120 of the Resource
Management Act 1991

BETWEEN **I & P FARMING LTD AND TE AWAHOHONU
FOREST TRUST**

(ENV-2023-AKL-000057)

Appellant

AND **HAWKE'S BAY REGIONAL COUNCIL**

Respondent

AND **FISH & GAME COUNCIL (HAWKES BAY)
AND OTHERS**

Section 274 Interested Parties

**MEMORANDUM OF COUNSEL SEEKING CHANGE TO PRE-HEARING
TIMETABLE**

21 March 2024

May it please the court

Counsel:
Sally Gepp / Shoshona Galbreath
3 Brookside
Nelson 7010

sally@sallygepp.co.nz | 021 558 241
shoshona@sallygepp.co.nz | 021 905 314

1. This Memorandum is filed on behalf of Te Taiwhenua o Tamatea (**TTOT**) (section 274 party).
2. In a Minute dated 23 January 2024, the Court made the following timetabling directions:
 - a. Parties to identify issues/topics for expert conferencing by 15 March 2024;
 - b. Expert witness conferencing to commence by AVL in the week beginning 25 March 2024;
 - c. Parties to file list of issues for determination with the Court following expert conferencing;
 - d. Appellants to circulate evidence-in-chief by 19 April 2024;
 - e. Other parties to circulate evidence-in-chief by 17 May 2024;
 - f. Appellants' rebuttal evidence to be circulated by 31 May 2024;
 - g. Appellants to file four hard copies of all the evidence by 7 June 2024; and
 - h. A 5-day hearing to be held in mid-June or July 2024 (depending on available hearing dates).
3. This Memorandum seeks amendments to that timetable. By way of context for the amendments, TTOT has only recently instructed counsel and was previously participating without legal representation.
4. The purpose of the amendments is:
 - a. To change the order of evidence in chief and expert witness conferencing (with the exception of groundwater conferencing), to ensure that witnesses participating in expert witness conferencing have the benefit of considering cultural evidence from TTOT and others. This will be particularly important for the planning witnesses, and is appropriate given the importance of the cultural dimension of wai as recognised in s 6(e), s 8 and the NPSFM. The appellant expressed a preference for excepting groundwater conferencing from that change of order so that groundwater modelling evidence in chief, in particular, could be focussed on issues remaining in dispute, as it would otherwise be very lengthy.
 - b. To push out the date for commencing expert conferencing on groundwater issues, on the basis that TTOT has only recently identified an expert in groundwater modelling, and made

arrangements to call that witness jointly with Forest & Bird. Due to pre-existing commitments, the witness would not be able to properly prepare for conferencing until May, so would not be in a position to attend conferencing until mid-May.

- c. Consequent on the change of order for expert conferencing on issues other than groundwater, to amend the directions relating to rebuttal evidence so that all parties may provide rebuttal evidence on matters arising out of conferencing statements (which previously only the appellant's witnesses would have been able to comment on).
 - d. TTOT is participating in this process pursuant to its responsibilities as kaitiaki. In order to fund its participation it is reliant on an application to the Ministry for the Environment's Environmental Legal Assistance Fund. Due to the timing of funding rounds, it expects a decision on its funding application on around 3 May, following the meeting of the Panel that decides applications on 26 April. The current timetable would require it to prepare evidence prior to receiving that confirmation of funding.
5. The requested amended timetable is set out below:
- a. Joint witness conferencing on groundwater in mid-May 2024 (week of 13 or 20 May, subject to availability).
 - b. Appellants to circulate their evidence in chief by 31 May 2024.
 - c. Other parties to circulate their evidence in chief by 28 June 2024.
 - d. Conferencing on all topics other than groundwater during July 2024 (week of 8, 15 or 22 July, subject to availability).
 - e. Parties to file list of issues for determination with the Court following expert conferencing.
 - f. All parties' rebuttal evidence due 2 August 2024.
 - g. Appellants to file four hard copies of all the evidence by 7 August 2024.
 - h. A 5 day hearing on suitable dates from 19 August 2024 (subject to parties' availability).
6. Counsel has made enquiries with the Court and understands that the Court has availability 12 – 30 August 2024 and all of September 2024.
7. Counsel engaged with all parties on the proposed timetable amendments. Initial feedback from the appellants resulted in the

proposal to split groundwater conferencing off from other conferencing so that it would occur prior to evidence in chief. Counsel then requested parties' views on the amended timetable, and all responses are set out below:

a. Appellants' response:

The Appellants don't support the proposed changes to the timetable outlined below.

The existing timetable was agreed at mediation and confirmed by all parties in December last year. The proposed changes push the timetable back by more than a month and would prevent a hearing in July 2024, which has been targeted for some time.

While we appreciate that you have only recently been engaged, your client has been aware of the issues in this proceeding and the timetable for a long time. We do not know the names of your client's or Forest & Bird's groundwater expert, despite the direction to identify expert witnesses by 1 March 2024.

The Appellants would be open to small amendments to the timetable, but consider it would be inefficient to delay conferencing on groundwater modelling until May. The Appellants would be open to a timetable along the lines of:

- *Expert conferencing on groundwater modelling in late March, early April;*
- *Appellants' evidence in chief, 26 April 2024;*
- *Other parties' evidence in chief, 24 May 2024;*
- *Expert conferencing on other topics, week of 3 June 2024;*
- *All parties' rebuttal 21 June 2024;*
- *Hearing in the week of 1 or 8 July 2024.*

In the interest of time, we would be glad to either record the Appellants' position in your memorandum, or draft our own memorandum in response to yours.

b. Respondent:

The Council is comfortable with either the timetable proposed by TTOT or the applicants. In particular it supports expert conferencing for all of the experts, other than the groundwater modelling experts, occurring after evidence exchange

c. Forest & Bird:

Forest & Bird supports the timetable proposed by TTOT. It is in the same position as TTOT in that it has only recently secured a groundwater modelling witness (to be shared with TTOT) and that person is not available until mid-May 2024. Accordingly, it would be significantly disadvantaged if the current timetable is maintained.

d. Fish and Game Council (Hawke's Bay):

Fish & Game supports the changes to the timetable.

e. No other responses were received.

8. TTOT requests that the Court makes a direction confirming the timetable in paragraph 5 above.

Dated: 21 March 2024



Sally Gepp
Counsel for Te Taiwhenua o Tamatea

<p>30 November - 01 December 2023 <u>Topic:</u> An appeal against the decision of the Hawke's Bay Regional Council to refuse resource consents to take and use groundwater from the Ruataniwha Aquifer</p>	<p>ENV-2023-AKL-000057 I&P Farming Ltd & Others v Hawkes Bay Regional Council</p>	
<p><u>PARTY</u></p>	<p><u>PARTICIPANT</u></p>	<p><u>ROLE</u></p>
<p>Hawkes Bay Regional Council (Respondent)-6</p>	<p>Malcolm Miller</p>	<p>Manager- Consents</p>
	<p>Paul Barrett</p>	<p>Team Leader - Consents</p>
	<p>Neil Thomas</p>	<p>Technical Expert - water resources</p>
	<p>Hilary Lough</p>	<p>Technical expert - water resources</p>
	<p>Laura Drummond</p>	<p>Technical Expert - ecology</p>
	<p>Katherine Viskovic</p>	<p>Legal Counsel</p>
<p>I & P Farming Limited/Appellants -20</p> <ul style="list-style-type: none"> • Buchanan Trust No. 2 • Papawai Partnership • Plantation Road Dairies • Springhill Dairies Partnership • Te Awahohonu Forest Trust • Tuki Tuki Awa 	<p>Serena O'Donnell</p>	<p>Client Representative (Chair, TAFT)</p>
	<p>Myka Nuku</p>	<p>Client Representative (Trustee, TAFT)</p>
	<p>Shayne Walker</p>	<p>Client Representative (Trustee, TAFT)</p>
	<p>Heitia Hiha</p>	<p>Client Representative (Trustee, TAFT)</p>
	<p>Wiremu Cottrell</p>	<p>Client Representative (Trustee, TAFT)</p>
	<p>Robert Cottrell</p>	<p>Advisor to Te Awahohonu Forest Trust</p>
	<p>Stormie Waapu</p>	<p>Consultant</p>
	<p>Cameron Ormsby</p>	<p>Consultant</p>
	<p>Ewan Gardiner</p>	<p>Client Representative (Secretary, TAFT)</p>
	<p>Leon Collier</p>	<p>Client Representative (Secretary, TAFT)</p>
	<p>Duncan Abernethy</p>	<p>Client Representative (I&P Farming)</p>
	<p>Moray Abernethy</p>	<p>Client Representative (I&P Farming)</p>
<p>Ian Abernethy</p>	<p>Client Representative (I&P Farming)</p>	

	Julian Weir	Expert Groundwater Engineer
	Susan Rabbitte	Expert Geologist-Hydrogeologist
	Alexandra Johansen	Expert Geologist
	Dr Vaughan Keesing	Expert Ecologist
	James Allen	Farm Systems Expert
	Gerard Willis	Expert Planning
	Bal Matheson	Legal Counsel
Wise Water Use (Interested Party) -3	Paul Bailey	Interested Party
	Trevor Le-Lievre	Advocate
	Grenville Christie	Advocate
Kaiwaka Trust / Brian Chambers (Interested Party) -2	Brian (Bruno) Chambers	Interested Party
	Patrick Maloney	Support
Inglis Bush Community Trust (Interested Party)-2	Clint Deckard	Interested Party
	Peter Meredith	Trustee
Central Hawke's Bay District Council (Interested Party)-2	Asher Davidson	Legal Counsel
	Dylan Muggeridge	Group Manager Strategic Planning & Development
Royal Forest & Bird Protection Society (Interested Party)-2	Tom Kay	Freshwater Advocate
	Peter Anderson	Legal Counsel
Ngā Hapū o Te Taiwhenua o Tamatea (Interested Party) Ngāti Kahungunu Iwi (Interested Party)-11	Dianne Smith	Hapū Member
	Pam Kupa	Hapū Member
	Johnny Nepe-Apatu	Hapū Member
	Joanne Heperi	Hapū Member

	Jenny Nelson-Smith	Hapū Member
	Crystal Pekepo-Ratu	Hapū Member
	Ngavii Pekepo	Hapū Member
	Joy Pekepo	Hapū Member
	Tautoko Ratu	Hapū Member
	Ngaio Tiuka	Iwi Director
	Shade Smith	Iwi Director
<i>Onga Tiko Farming Group</i> (Interested Party)- 10	Duncan Holden	Interested Party
	Mike Rittson-Thomas	Interested Party
	Grant Charteris	Interested Party
	Charlie Graham	Interested Party
	Thomas Wilson	Interested Party
	Hugh Abbiss	Interested Party
	Colin Schaw	Interested Party
	Alistair Setter	Interested Party
	Gary Williams	Interested Party
	George Williams	Interested Party
<i>(Thomas) Gregory Frater</i> (Interested Party) -1	Thomas Gregory Frater	Interested Party

Total :60 (incl. Commissioner)

From: [ELA Fund](#)
To: [Dianne Smith](#)
Subject: RE: RE: Environmental Legal Assistance (ELA) Fund - application complete
Date: Monday, 13 May 2024 2:28:00 pm
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.jpg](#)
[image008.png](#)
[image009.jpg](#)
[image010.png](#)
[image011.png](#)
[image012.png](#)
[image013.png](#)
[image014.png](#)
[image015.jpg](#)

Kia ora Dianne,

With the current AOG changes and Next financial year budget to be announced shortly, there has been some delay with finalising the applications and we appreciate your patience as we work to have the round 5 decisions out to applicants as soon as we can. I can confirm these will be sent before the end of the week.

Ngā mihi

Chloe-Beth Winter

Business Support Coordinator | Kairuruku Taunaki Pakihi

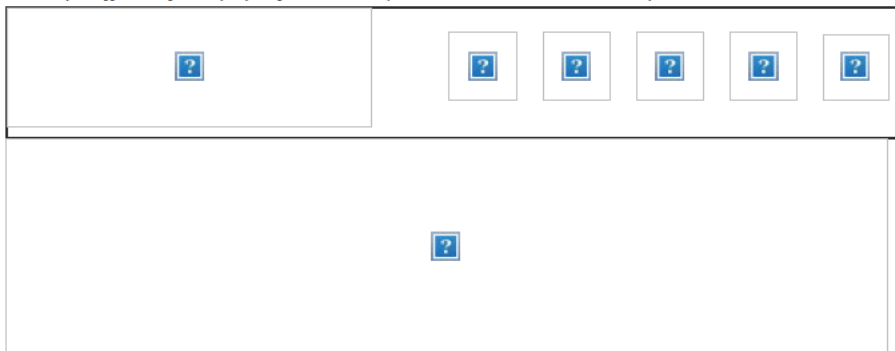
Business Support and Facilities | Nā Whirinakitanga me Ngā Whare Ā-Pākihi

Transformation and Operations | Te Rōpu Panonitanga me ngā Mahi

Ministry for the Environment | Manatū Mō Te Taiao

s 9(2)(a) | Chloe-beth.winter@mfe.govt.nz | environment.govt.nz

Ministry staff work flexibly by default. For me, this means Mon-Fri 8am-4.30pm.



From: Dianne Smith s 9(2)(a)
Sent: Monday, May 13, 2024 8:29 AM
To: ELA Fund <ela.fund@mfe.govt.nz>
Subject: FW: RE: Environmental Legal Assistance (ELA) Fund - application complete

MFE CYBER SECURITY WARNING

This email originated from outside our organisation. Please take extra care when clicking on any links or opening any attachments.

Ata marie

I am writing to seek clarification if there has been a decision made regarding this application please

as the 10th of May has since passed.

Thank you and I look forward to your response.

Ngā mihi

<p>signature_1483761271</p> 	<p>Dianne Smith General Manager Te Mātai Ao (Environmental Planner)</p>	<p>L1/117 Heretaunga St West, Hastings. ☎ - 06 876 6506 s 9(2)(a) ✉ s 9(2)(a) 🌐 - Heretaungatamatea.iwi.nz</p>
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From: Dianne Smith s 9(2)(a)
Date: Tuesday, 9 April 2024 at 6:27 PM
To: Dianne Smith s 9(2)(a)
Subject: Fwd: RE: Environmental Legal Assistance (ELA) Fund - application complete

----- Original Message -----

From: ELA Fund <ela.fund@mfe.govt.nz>
To: Dianne Smith s 9(2)(a)
Date: 03/04/2024 09:10 NZDT
Subject: RE: Environmental Legal Assistance (ELA) Fund - application complete

Kia ora Dianne

You will get notification by 10 May 2024.

From: Dianne Smith s 9(2)(a)
Sent: Tuesday, April 2, 2024 5:05 PM
To: ELA Fund <ela.fund@mfe.govt.nz>
Subject: RE: Environmental Legal Assistance (ELA) Fund - application complete

MFE CYBER SECURITY WARNING

This email originated from outside our organisation. Please take extra care when clicking on any links or opening any attachments.

Kia ora anō Emma

Thank you for that. Just so that I understand the process, when would we get notification of the outcome please?

Thank you

Nga mihi

On 02/04/2024 16:57 NZDT ELA Fund <ela.fund@mfe.govt.nz> wrote:

Kia ora Dianne

Yes that's fine thank you. It appears we now have all the necessary information for this application. It will be sent to the ELA Advisory Panel for review and a recommendation will be made at the Panel meeting on **24 April 2024**. I will contact you if the Panel have any further questions about your application. A Ministry for the Environment decision will be sent approximately three weeks following that meeting.

If you have any questions, please don't hesitate to contact me.

Nāku noa, nā

Emma Kerr-Laurie ([she/her](#))

Legal Coordinator | Kairuruku ā-Ture

Legal Team | Te Taha Ture

Ministry for the Environment | Manatū Mō Te Taiao

027 218 4985 | emma.kerr-laurie@mfe.govt.nz | mfe.govt.nz

From: Dianne Smith [s 9\(2\)\(a\)](#)

Sent: Tuesday, April 2, 2024 4:36 PM

To: ELA Fund <ela.fund@mfe.govt.nz>

Subject: RE: Environmental Legal Assistance (ELA) Fund - application received and additional information required

MFE CYBER SECURITY WARNING

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Kia Ora Emma

Please see attached.

It is difficult to quantify this amount as Mana Whenua and Hapū members consistently give their time freely without reimbursements as they travel and attend hui at their own costs, therefore there are no receipts as such. The only receipt being for the payment to become a party to the proceedings.

I hope this is what you require.

Nga mihi

Dianne

On 02/04/2024 14:22 NZDT ELA Fund
<ela.fund@mfe.govt.nz> wrote:

Kia ora Dianne

Yes that's great thanks. Can you please also provide a total estimate of the costs incurred by your group for the case so far?

Ngā mihi,

Emma Kerr-Laurie ([she/her](#))

Legal Coordinator | Kairuruku ā-Ture

Legal Team | Te Taha Ture

Ministry for the Environment | Manatū Mō Te Taiao

027 218 4985 | emma.kerr-laurie@mfe.govt.nz | mfe.govt.nz

From: Dianne Smith s 9(2)(a)

Sent: Tuesday, April 2, 2024 1:38 PM

To: ELA Fund <ela.fund@mfe.govt.nz>

Subject: RE: Environmental Legal Assistance (ELA) Fund - application received and additional information required

MFE CYBER SECURITY WARNING

This email originated from outside our organisation. Please take extra care when clicking on any links or opening any attachments.

Tēnā koe Emma

Please see the attached and I hope this is all that was required to complete this application.

Ngā mihi

Dianne

On 02/04/2024 11:33 NZDT ELA Fund

<ela.fund@mfe.govt.nz> wrote:

Kia ora Dianne

We've received your application for Environmental Legal Assistance funding which has been lodged as:

ELA 2085 – Te Taiwhenua o Tamatea Incorporated.

The following information is needed before we can send your application to the ELA Fund Advisory Panel for consideration:

1. Notice of appeal, notice to be party to the proceeding/hearing, or another form of proof that your group is officially recognised as a party to the proceeding/hearing.
2. Council decision and/or Independent Hearing Commissioner decision, if applicable.
3. Any substantive minutes, directions, and procedural decisions issued by the relevant Court/authority in respect of your case (eg, changes to the steps in the process and/or scope of the proceeding).

4. Map/s showing the location of the area relating to your case. Include zoning maps, if applicable.
5. Your group's original submission, if applicable.
6. An itemised list of costs incurred by your group for the case so far, including costs incurred at council-level proceedings.

Please provide the above no later than **Thursday 4 April 2024**.

If you have any questions, feel free to contact me.

Nāku noa, nā

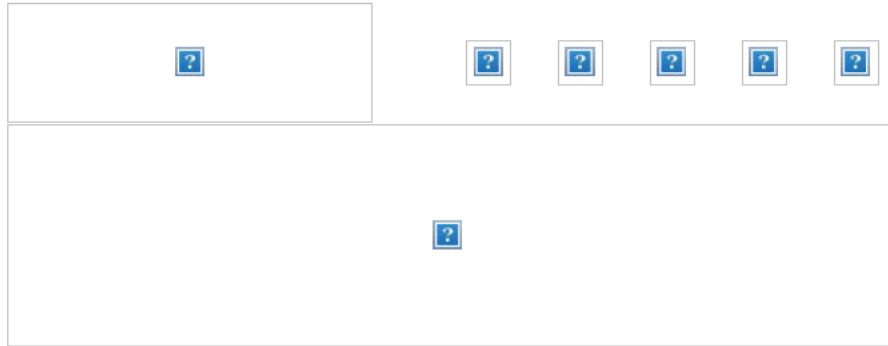
Emma Kerr-Laurie (she/her)

Legal Coordinator | Kairuruku ā-Ture

Legal Team | Te Taha Ture

Ministry for the Environment | Manatū Mō Te Taiao

027 218 4985 | emma.kerr-laurie@mfe.govt.nz | mfe.govt.nz



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From: Dianne Smith § 9(2)(a)
Sent: Thursday, March 28, 2024 4:35 PM
To: ELA Fund <ela.fund@mfe.govt.nz>
Subject: Environmental Legal Assistance (ELA) Fund
Importance: High

MFE CYBER SECURITY WARNING
This email originated from outside our organisation. Please take extra care when clicking on any links or opening any attachments.

Tēnā koe

Please see the attached application form.

Thank you for your consideration in this matter.

Ngā mihi

Dianne Smith

s 9(2)(a)

Chairperson Mataweka Marae - Waipawa

Ngā mihi maioha

Dianne Smith

s 9(2)(a)

Chairperson Mataweka Marae - Waipawa

Ngā mihi maioha

Dianne Smith

s 9(2)(a)

Chairperson Mataweka Marae - Waipawa

Ngā mihi maioha

Dianne Smith

s 9(2)(a)

Chairperson Mataweka Marae - Waipawa

Ngā mihi maioha

Dianne Smith

s 9(2)(a)

Chairperson Mataweka Marae - Waipawa

From: [ELA Fund](#)
To: s 9(2)(a) [redacted]
Cc: s 9(2)(a) [redacted]
Subject: 2085 - Te Taiwhenua o Tamatea Inc - Confirmed Minutes
Date: Tuesday, 14 May 2024 6:47:00 pm
Attachments: [2085 - Te Taiwhenua O Tamatea Inc.pdf](#)
[image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.jpg](#)


Kia ora

2085 - Te Taiwhenua o Tamatea Inc

Your application to the Environmental Legal Assistance Fund regarding the involvement of Te Taiwhenua o Tamatea Inc in the proceeding I&P Farming Limited and Te Awahohonu Forest Trust v Hawkes Bay Regional Council ENV-2023-AKL-000057 has been approved for funding. A copy of the decision is attached for your information.

The recommendation from the Independent Advisory Panel (Panel) to the General Manager – Legal & Risk at the Ministry for the Environment (MfE) was that up to \$13,000 (excl GST) be made available as a contribution towards the costs of the case for the people listed below. The General Manager – Legal & Risk accepted the Panel's recommendation. **If there are any changes to your legal counsel and/or expert witnesses, you must provide a quote and CV for each new person you wish to add to your Deed of funding.**

s 9(2)(ba)(i)

A large rectangular area of the document is redacted with a solid grey fill. The text 's 9(2)(ba)(i)' is visible at the top left of this redacted area.

Please note that agreements with legal counsel and expert witnesses should not be undertaken on the strength of this letter where payment is reliant on MfE funding. A Deed of funding is required between Te Taiwhenua o Tamatea Inc and MfE, which sets out the terms and conditions of funding. There may be matters you wish to discuss with MfE prior to signing this Deed.

A proposed Deed of funding will be sent to you in the next week. **If there has been a change to your legal counsel and/or expert witnesses, please let us know as soon as possible.** We will contact you if we require further information.

It is important to note that the decision of the General Manager – Legal & Risk to provide financial assistance should not be seen as an indication that MfE endorses the specifics of your case, but that MfE considers your case raises matters of significant environmental public interest. The decision to assist your group financially was based on assessment of the application against the ELA Fund's criteria and evaluation of the appropriate priorities for spending public money.

If you have any questions, please contact me.

Nāku noa, nā

Ngā mihi

Chloe Winter

Business Support Coordinator | Kairuruku Taunaki Pakihi

Business Support and Facilities | Tautoko Pakihi Me Nga Whakarunga

Ministry for the Environment | Manatū Mō Te Taiao

s 9(2)(a) | chloe-beth.winter@mfe.govt.nz | mfe.govt.nz

*Ministry staff work flexibly by default. For me this means I am **unavailable from 4pm Monday-Friday.***



ELA reference number:	2085
Group name:	Te Taiwhenua o Tamatea Incorporated
Application type:	New
Proceeding:	<i>I&P Farming Limited and Te Awahohonu Forest Trust v Hawkes Bay Regional Council ENV-2023-AKL-000057</i>
Group's status at proceeding:	s274 party
Conflicts (conflicted members are not present during evaluations):	None

Key details of the Group:

Te Taiwhenua o Tamatea Incorporated (Group; te Taiwhenua) was created in 1990 and represents ngā hapū and marae of Te Taiwhenua o Tamatea. As kaitiaki and ahi kā, the Group is committed to protecting the natural environment (especially water bodies) in its rohe for future generations.

Key details of the Group's case and the proceeding:

In June 2015, an independent Board of Inquiry issued its decision on Plan Change 6 (PC6) to the Hawke's Bay Regional Resource Management Plan. PC6 established two tranches of groundwater in the Ruataniwha aquifer for allocation. Since then, there have been eight resource consent applications to the Hawke's Bay Regional Council to take groundwater from Tranche 2 (Applications). The Applications were heard together on 15 November to 14 December 2022. On 24 February 2023, the Hearing Panel declined the Applications (Decision).

On 3 May 2023, the Applicants jointly appealed the Decision, seeking for the Applications to be granted. Te Taiwhenua and Ngāti Kahungunu Iwi Incorporated jointly joined the proceedings as s274 parties. Following mediation in December 2023 (where the Group presented), only I&P Farming Limited and Te Awahohonu Forest Trust (Appellants) continued with the appeal. No issues were resolved during mediation.

The Group opposes the relief sought by the Appellants because the Applications:

- Are contrary to the National Policy Statement for Freshwater Management 2020 (NPSFM 2020).
- Are contrary to its cultural values associated with Te Mana o Te Wai.
- Will have adverse unmitigable effects on indigenous species, mahinga kai sites, cultural practices and ngā Puna o Tamatea (waterbodies).

s 9(2)(ba)(i)

Potential implications of the Group's case and the proceeding:

The Group states the case raises nationally important environmental issues and relates to the relationship of Māori with their taonga because of the cultural values of wai and kaitiakitanga responsibilities. The case can create useful case law and improve the administration of environmental

legislation regarding the implementation of the NPSFM 2020. As a Crown partners under Te Tiriti o Waitangi, the Group has a right to be represented for this issue.

Estimates/quotations for legal counsel and experts for which funding is being requested:

The Group is requesting funding for:

Name and expertise:	Name of business:	Amount requested (excl GST):
s 9(2)(b)(ii)		
Total requested:		\$50,000.00 (\$92,756.25)

Evaluation and conclusion:

The Panel considered the application and supporting documents, and after applying the funding criteria noted the following matters:

- The Panel considers that:
 - The case raises regionally important matters affecting the environment.
 - It relates to the relationship of Māori with their taonga.
 - It has the potential to create useful case law and improve the administration and efficiency of relevant environmental legislation.
 - It involves issues of regional importance which will not be addressed in full without the participation of the group.
 - There is a degree of collaboration undertaken or proposed to be undertaken by the funding applicant with other parties in the case.
 - The Group does not have a private interest in the outcome.

Recommendation:

The Panel recommends that funding of up to \$13,000 (excl GST) be made available to the Group as a contribution towards the costs of its case and be allocated as per the table below and the residual to the be dispersed as the Group sees fit.

Name and expertise:	Business/company:	Amount recommended (excl GST):
s 9(2)(g)(i)		

s 9(2)(g)(i)

Total recommended:	\$13,000

Ministry decision:

The Ministry accepts / ~~declines~~ the recommendation.



Phirak Appleton, General Manager – Legal & Risk

Ministry for the Environment

Date: 10/05/2024.