

IN THE DISTRICT COURT / I TE KŌTI Ā ROHE  
ROTORUA / TE ROTORUA-NUI-A-KAHUMATAMOMOE

CIV-2024-063-000364

**UNDER** THE LOCAL GOVERNMENT ACT 2002

**IN THE MATTER** of an application for an injunction to restrain commission  
of an offence under s 162

**BETWEEN** ROTORUA DISTRICT COUNCIL

Applicant

**AND** ROTOKAKAHI BOARD OF CONTROL

First Respondent

**AND** UNKNOWN PERSONS

Second Respondents

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**MEMORANDUM OF COUNSEL FOR THE APPLICANT IN SUPPORT OF WITHOUT  
NOTICE APPLICATION FOR INJUNCTION RESTRAINING COMMISSION OF  
OFFENCES (RENEWED AND AMENDED)**  
Dated: 1 October 2024

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**MEMORANDUM OF COUNSEL FOR THE APPLICANT IN SUPPORT OF WITHOUT  
NOTICE APPLICATION FOR INJUNCTION RESTRAINING COMMISSION OF  
OFFENCES (RENEWED AND AMENDED)**

**May it please the Court –**

1. Counsel refers to the judgment of his Honour Judge S R Clark, dated 16 July 2024.<sup>1</sup>
2. At paragraph [96], his Honour adjourned the application sine die, with leave granted to the applicant to renew it if needed.
3. RLC seeks to renew the application for an injunction as a result of further incidents that have stopped, obstructed or interfered with the works to such an extent that the works have been paused to ensure the safety of the applicant's contractors, the protestors and members of the public.
4. RLC also seeks to amend the injunction orders to extend to the whole of the road reserve, which will prevent protestors from erecting structures and parking vehicles which hinder the safe completion of the works. A copy of the amended and renewed application, with changes from the original application tracked, is attached to this memorandum as Appendix 1.
5. This application has been made without notice, with service on counsel for the Rotokākahi Board of Control (**the Board**) on a *Pickwick* basis.

**Background**

6. RLC is currently in the process of carrying out wastewater works along Tarawera Road (**works**) as part of Stage One of the Tarawera Wastewater Reticulation Scheme (**scheme**).
7. Tarawera Road is vested in and under the control of RLC under sections 316 and 317 of the Local Government Act 1974.

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<sup>1</sup> *Rotorua District Council v Rotokākahi Board of Control and Persons Unknown* [2024] NZDC 16999.

8. RLC's contractor, Fulton Hogan Limited (**FH**), commenced implementation of the scheme in April 2023. However, in late January/early February 2024, when works commenced on the section of Tarawera Road along the banks of Lake Rotokākahi, FH encountered protest activity which required the works to be ceased to ensure the safety of FH's workers, subcontractors, the protestors and members of the public.
9. As a result, RLC made this application for an injunction on 16 May 2024.

#### **Court's decision on 16 July 2024**

10. The application for an injunction was considered by Judge S R Clark on 16 July 2024, and an oral decision issued on 17 July 2024. While deciding not to grant an injunction at that time, the Judge found that:
  - (a) The proposed pipeline is to be laid within land vested in RLC as road corridor, namely Tarawera Road.<sup>2</sup>
  - (b) The nature of the reticulation works falls within section 232(1)(e) of the Local Government Act 2002.<sup>3</sup>
  - (c) The incidents described in evidence on behalf of RLC did obstruct or interfere with the works.<sup>4</sup>
11. However, the Judge considered that, on the balance of probabilities, the risk of the future commission of offences under s 232 was not established. While declining to grant an injunction at that time, the Judge recorded that:

[92] In saying that, I am going to express some words of caution to the Board of Control, its supporters, and anyone else, for that matter. The decision not to grant the injunction does not stop Tarawera wastewater reticulation scheme from continuing. The scheme remains in place. RLC and its contractors are entitled to continue with the works. Any

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<sup>2</sup> Ibid at 1, at paras [25] and [63].

<sup>3</sup> Ibid at 1, at paras [64] and [65].

<sup>4</sup> Ibid at 1, at paras [66] to [70] and [88].

thought that this decision has stopped the works is wrong. This Court cannot make that decision. The only Court that could be the High Court in a different type of proceedings.

[93] Peaceful protest against the pipeline is, of course, permissible. But actions taken to destroy, to damage, to stop, to obstruct or to interfere with the works will undoubtedly be met with future legal action. Similar actions to that seen in January – the blocking of a road, driving at cones, driving at workers' cars and others in an enclosed lane – are likely to lead to a renewal of the injunction proceeding as an example. In addition, that could lead to police prosecution involvement.

12. The Judge adjourned the application sine die, with leave granted to RLC to renew the application at any time. The Judge directed that any renewal of the application should, as a matter of urgency, be directed back to him, given that he is seized of the background.<sup>5</sup>

#### **Steps taken prior to recommencing works**

13. Following the Court's decision on 17 July 2024, RLC, and its contractors FH, have taken the following steps to ensure that the works can be recommenced as safely as possible:<sup>6</sup>
  - (a) Met with representatives of the Rotorua Police on 6 and 14 August 2024 to discuss RLC's plans for recommencement of the works;
  - (b) Amended the traffic management plan to enable access to the boat ramp to Lake Rotokāhahi;
  - (c) Arranged for installation of fixed CCTV cameras across the work site, and for body cameras to be used by traffic management workers;
  - (d) Arranged for installation of screened security fencing alongside the work site;

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<sup>5</sup> Ibid at 1, at para [96].

<sup>6</sup> Second affidavit of Gerhardus Mostert sworn 27 September 2024, at paras 6 to 8.

- (e) Set up a separate compound for equipment to be safely secured overnight;
  - (f) Engaged a security company (Watchdog Security) to provide security during the hours the works are in operation; and
  - (g) Arranged for workers to have satellite phones due to poor cell phone reception in this location.
14. On-site preparation, including setting up traffic management measures such as security fencing, commenced on 19 August 2024 and the wastewater works recommenced on 26 August 2024. In order to limit the effect of the works on access to the boat ramp to Lake Rotokākahi, it was proposed to carry out works both during the day and at night for this section of Tarawera Road.<sup>7</sup>

#### **Obstruction and interference with the works**

15. Since recommencing the works on 26 August 2024, RLC's contractors and subcontractors have experienced the following incidents:<sup>8</sup>
- (a) Protestors physically entering the work site;
  - (b) Protestors blocking workers' vehicles by standing in front of them and preventing workers from leaving the work site;
  - (c) Protestors parking on Tarawera Road in locations that are identified by signage as no-parking areas;
  - (d) Protestors attempting to push down security fences along the work site;
  - (e) Protestors unplugging and switching off spotlights providing light for night works; and

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<sup>7</sup> Second affidavit of Gerhardus Mostert sworn 27 September 2024, at para 15.

<sup>8</sup> Affidavit of Ross Dallaway affirmed 24 September 2024 and Affidavit of Baden James Neylon affirmed 18 September 2024.

- (f) Verbal abuse and threats of violence.
16. While peaceful protest was anticipated, RLC submits that the nature and quality of the incidents that have occurred have exceeded peaceful protest and directly affect the safety of RLC's contractors and subcontractors.
17. As a result of these incidents the works ceased again on 28 August 2024. The time that has elapsed since then has been spent working with Police and FH on a plan for responding to any further incidents, as well as continuing attempts to engage with the Board.<sup>9</sup>

**Credible threat that obstruction and interference will continue**

18. RLC submits that there is a credible threat that works will continue to be obstructed or interfered with, and that an injunction is appropriate.<sup>10</sup> In particular:
- (a) Protestors have gathered at the boat ramp to Lake Rotokākahi since 19 August, with numbers ranging from around ten people to as many as 100 people as part of a hikoi on 26 August 2024.<sup>11</sup>
- (b) The actions taken by protestors have escalated, including approaching and entering the work site, pushing on the security fencing, blocking vehicles, and verbally abusing the workers;<sup>12</sup> The protestors have set up two camps, one on the lakeward side of Tarawera Road (next to the boat ramp access to Lake Rotokākahi) and one on the landward side of Tarawera Road. These camps include tents, marquees, portable toilets and cooking facilities.<sup>13</sup>

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<sup>9</sup> Second affidavit of Gerhardus Mostert affirmed 27 September 2024, at paras 20 to 25.

<sup>10</sup> Ibid at 1, at para [77].

<sup>11</sup> Affidavit of Ross Dallaway affirmed 24 September 2024, at paras 7 to 10; Affidavit of Baden James Neylon affirmed 18 September 2024, at paras 8 and 10.

<sup>12</sup> Affidavit of Baden James Neylon affirmed 18 September 2024, at para 9.

<sup>13</sup> Second affidavit of Gerhardus Mostert affirmed 27 September 2024, at paras 27 and 28.

(c) Media releases and social media posts have reported the protestors' intention to continue protesting regarding the works.<sup>14</sup>

19. Despite commencing the works in this section of Tarawera Road in January 2024, no substantial progress has been made towards completion of the wastewater works as a result of the incidents of obstruction and interference.<sup>15</sup> Each time RLC's contractors have endeavoured to recommence works, the incidents have escalated. RLC submits that the evidence shows that there is a real risk of the future commission of offences against section 232 of the Local Government Act 2002 which warrants the granting of an injunction. There have been no occasions when the works have been carried out without some interference. That has escalated from interference with traffic management measures to direct interference with the work site.

#### **Renewal of application for injunction**

20. On the grounds set out above, RLC seeks:

- (a) Renewal of the application for an injunction on an urgent basis as directed in the Court's decision; and
- (b) Amended orders for an injunction in the form attached to this memorandum.

21. There are two key amendments sought. The first extends the breadth of the exclusion zone and the second extends the length.

22. RLC seeks to amend the orders for an injunction to extend to the road reserve on both sides of the formed road corridor. This is because having vehicles parked in the coned-off areas is interfering with traffic management and because protesters are crossing the open traffic lane to

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<sup>14</sup> Second affidavit of Gerhardus Mostert sworn 27 September 2024, at para 29 and 30.

<sup>15</sup> Second affidavit of Gerhardus Mostert sworn 27 September 2024, at para 34.

approach the fenced off area. The more limited orders originally sought are no longer considered adequate. The extent of the road reserve is shown in the images at pages 001 and 003 of the exhibit bundle “GM” attached to the affidavit of Gerhardus Mostert sworn on 11 July 2024. As the image at 003 shows, the lakeward boundary of the road reserve is the lake and the road reserve extends into the area treated as lakeside. The landward boundary extends into the vegetated area, including some areas used for parking and access to DOC land. The legal boundary on the landward side of Tarawera road has been surveyed and will be marked with tape (or otherwise) where practicable.

23. Secondly, RLC proposes to define the work zone to include the full section of Tarawera Road, comprising approximately 1.6km between the Blue and Green Lakes Lookout and the intersection with Mead Road, (rather than the section that is, from time to time, being used for the works, as was originally sought). This is a result of consultation with the Rotorua Police and in response to the risk of a ‘rolling worksite’ approach creating additional points of conflict and tension between FH and protestors.<sup>16</sup>
24. Counsel submits that the amended orders are a reasonable restriction on use of a public road, and rights and freedoms under the New Zealand Bill of Rights Act 1990, as:
  - (a) The orders prevent interference or obstruction with the works, but do not prevent use of the open traffic lane for the purpose of passing and repassing on the public road, in accordance with the temporary traffic management measures.
  - (b) The orders will be in place for the limited time period required to complete the works on this section of Tarawera Road, estimated to be approximately four weeks, if works can take place unimpeded.

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<sup>16</sup> Second affidavit of Gerhardus Mostert affirmed 27 September 2024, at paras 38 to 41.



- (c) Protest activity may continue to take place outside of the work zone, which will be clearly demarcated by tape, fence or otherwise.
- (d) Alternative access to Lake Rotokākahi is available from Waipa Mill Road.
- (e) RLC's statutory powers as landowner and road controlling authority enable it to restrict use of the road, including closing the road under section 342 and Schedule 10 of the Local Government Act 1974.

### **Procedural orders**

- 25. This application is made without notice; however, counsel for the Rotokākahi Board of Control has been served on a *Pickwick* basis.
- 26. RLC also seeks an order enabling redaction from exhibit C to the Affidavit of Ross Dallaway sworn 24 September 2024 of the names of workers employed by RLC's contractors and subcontractors who do not wish to be publicly named in this proceeding for reasons of personal safety; full copies of the exhibit could be provided confidentially to the Court and counsel if directed by the Court.

Dated: 1 October 2024



K E Cornegé/P V Cornegé  
Counsel for the applicant

**APPENDIX 1: AMENDED ORDERS (proposed amendments shown tracked)**

The applicant, Rotorua District Council operating as Rotorua Lakes Council, applies for orders that:

- (a) ~~No person may stop, obstruct, or interfere~~ the respondents are restrained from stopping, obstructing, or interfering with the works as defined in Schedule 1 to this application, whether directly or indirectly;
  - (b) ~~No person may enter~~ the respondents are restrained from entering the work zone at any time during the construction period, both as defined in Schedule 1 to this application, without authorisation from Rotorua Lakes Council and/or its contractors ~~the person~~ in charge of ~~the any~~ worksite;
  - (c) ~~No person may stop or obstruct~~ the respondents are restrained from stopping or obstructing personnel, vehicles, or construction machinery authorised by Rotorua Lakes Council or its contractors from accessing the work zone; ~~and~~
  - (d) ~~No person may park vehicles in areas identified by signage as no-parking areas as part of any traffic management plan in relation to the works at any time during the construction period;~~
  - (e) ~~No person may erect or place any building, fence, or other obstacle of any kind on the road reserve forming part of the work zone at any time during the construction period; and~~
- ~~(d)(f)~~ service of the above orders is to be effected ~~on the respondents~~ by:
- (i) ~~displaying using reasonable endeavours to display~~ a copy of the orders at ~~each location that, from time to time, forms part of~~ the boundaries of the work zone;

- (ii) posting a copy of the orders on Rotorua Lakes Council's website and Facebook page;
- (iii) giving public notice of the orders in a newspaper circulating in the Rotorua District; and
- (iv) emailing a copy of the orders to solicitors for the Lake Rotokākahi Board of Control at the address for service provided in this proceeding. the subcommittee of the Lake Rotokākahi Control Board (at 2 233086 3446 8385 6941 V2 \_\_\_\_\_ jemma.hamiorasmith@gmail.com; wallylee72@gmail.com; petermoke.pm@gmail.com).

## SCHEDULE 1

1. The **works** are:
  - (a) the installation of the pipeline along Tarawera Road as part of Stage One of the Tarawera Wastewater Reticulation Scheme, including associated works such as drilling, valve assemblies, earthworks and site reinstatement; and
  - (b) associated traffic management measures including traffic signals, cones, security fencing, and lighting.
  
2. The **work zone** means:
  - ~~(a) The area of Tarawera Road that is, from time to time, being used by Rotorua Lakes Council's contractors and subcontractors to undertake the works (**worksite**) as identified by temporary traffic management delineators **plus** a 1m buffer zone around the perimeter of the worksite.~~
  - (a) The section of Tarawera Road from Mead Road to the Blue and Green Lakes Lookout (as shown in Figure 1), including:
    - (i) any area being used by Rotorua Lakes Council's contractors and subcontractors as an active worksite from time to time (**worksite**);
    - (ii) any open traffic lane; and
    - (iii) the road reserve, to be identified by tape or otherwise at any location where the boundary of the road reserve is not the edge of Lake Rotokākahi.
  - (b) Fulton Hogan's construction yard on Spencer Road, Rotorua.
  
3. The **construction period** is the period starting from the date this order is made and ending on the day that construction of the works is completed.

Figure 1. Aerial photograph showing the approximate distance between The Blue and Green Lakes Lookout and Mead Road which is intended to be subject to the orders sought closing Tarawera Road.

