

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** PERSONS UNKNOWN

Respondents

---

SECOND AFFIDAVIT OF STAVROS MICHAEL IN SUPPORT OF AN APPLICATION  
FOR AN INJUNCTION

Affirmed: October 2024

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TOMPKINS WAKE

Kate Cornegé (kate.cornege@tompkinswake.co.nz)  
Wendy Embling (wendy.embling@tompkinswake.co.nz)

Counsel: Phillip Cornegé  
phillip@riverbank.co.nz

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Level 8  
430 Victoria Street  
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233086  
3465-0003-7168-V1



**SECOND AFFIDAVIT OF STAVROS MICHAEL IN SUPPORT OF AN APPLICATION  
FOR AN INJUNCTION**

I, **STAVROS MICHAEL**, of Rotorua, General Manager of Infrastructure and Environment at Rotorua Lakes Council affirm –

1. I am authorised to make this affidavit on behalf of RLC and am familiar with the events and issues that are the subject of these proceedings.
2. I have read the affidavits prepared by Wally Lee and Te Whatanui Kipa Leka Taumalolo Skipwith on behalf of the Rotokakāhi Board of Control (**Board**) and wish to respond to some comments in the affidavit of Wally Lee. This affidavit has been prepared under urgency and if I have not responded to a point in either affidavit that should not be taken as agreement by me or RLC.

**Background to the 24 September meeting**

3. There has been ongoing correspondence between RLC and iwi leaders since the works were paused in August 2024. Because Mr Lee has focussed on the meeting that took place on 24 September 2024, I have focussed my response on the correspondence leading up to that meeting.
4. There was a briefing to elected members on 18 September 2024. Prior to that briefing the Chief Executive of RLC, Andrew Moraes, emailed representatives of the Rotokakāhi Board of Control, Te Arawa Lakes Trust, and the Tūhourangi Tribal Authority seeking information to communicate to elected members. The email also offered representatives an opportunity to speak with Councillors the following week. A copy of an email chain is annexed to this affidavit and marked “**2SM-A.**”
5. Following the briefing, Mr Moraes sent a further email to representatives of RBOC, TALT and TTA, which read:

I would like to update you that today I briefed councillors about the situation at Rotokākahi including the views that have been shared with me from some of you.



The council has authorised me to continue speaking with iwi leaders in order to try and mitigate risks to all people at or near the site and to continue with operational tasks as required.

To be clear, council has not stopped the project, nor given me any new direction on alternatives to this project.

I look forward to hearing from you, especially if anyone would like to speak to council next Wednesday 25<sup>th</sup> September probably between 9am and 9.30 am. Please note that this opportunity will be at a public forum, and the appropriate procedures associated with the public forum will apply and our Governance and Democracy team will reach out to you to arrange details.

6. A copy of this later email is annexed to this affidavit as "2SM-B". The email was sent by "bcc" so the email recipients are not visible, but I have also attached a screenshot showing the addressees. Some names have been redacted to keep email addresses private.
7. Nobody took up the opportunity to speak at the Council meeting, but a meeting was arranged between RBOC, TALT and TTA and RLC on 24 September 2024. I agree with the list of attendees set out in Mr Lee's affidavit at paragraph 16, except that I was also in attendance for this meeting, and Mr Te Ururoa Flavell was in attendance as a facilitator.

#### **24 September meeting**

8. The meeting was convened at the Te Arawa Lakes Trust premises on 24 September 2024. I explained the background to the scheme and the status of the works. I did not understand this meeting to be without prejudice.
9. I recall Mr Moraes saying at the meeting that Council had directed staff to continue to complete the scheme, as had been communicated the week prior, but that Council had also directed the CE to continue discussions with iwi leadership on options to ensure the safety of those onsite, including workers, Council staff, police, security staff, the general public and protesters.
10. The facilitator, Mr Flavell, then asked the parties to consider:



- (a) the objectives of the scheme, being the protection of Lake Tarawera;
  - (b) the fact that the works had progressed to near completion before the protests began; and
  - (c) how the works could progress in a manner that ensures the safety of all concerned as well as addressing the cultural risks arising from the pipelaying.
11. It was noted that a wider meeting with Iwi members was to be arranged following this meeting as soon as possible to discuss a way forward, to which RLC noted that time was of the essence to resolve this issue and that a meeting would need to be arranged soon if the parties were to come to a feasible solution.
12. RLC did not agree to a working party of representatives being formed and did not commit to a wider follow up meeting, but rather stressed that resolution had to be arrived at as soon as possible to continue to engage with negotiations. The range of solutions to be discussed did not include alternatives to the scheme.

#### **Other matters**

13. RLC has no record of receiving a trespass notice as referred to by Wally Lee in paragraph 10 of his affidavit.
14. In August 2024 RLC engaged a surveyor to survey the boundaries of Tarawera Road (including road reserve). Copies of the survey report are annexed to this affidavit and marked "2SM-C". The lakeward boundary was not completed because occupants informed RLC that we did not have consent to do so. I do not agree that consent was required (the boundary is generally the lake) but this still raised concerns about the surveyor's safety. The pipeline works are within the road reserve boundary (on the landward side) and do not cross into the areas identified as A, B and C on the plans provided as part of Mr Lee's affidavit.



**Filing of the injunction**

- 15. Given council’s direction that the works should continue and the absence of any proposal for managing protest activity, a decision was made to continue with the renewal of the injunction on 30 September 2024.
- 16. The renewal of the injunction was filed the following day on 1 October 2024. On 3 October 2024, RLC instructed Tompkins Wake to write to the solicitors for the RBOC. A copy of Tompkins Wake’s email is annexed as “2SM-D.” Mr Moraes sent an additional communication later that afternoon. There has not been a substantive response to either communication.
- 17. I do not agree that there has been a breach of a tikanga based process. The problem seems to me to be that Council is trying to engage on ways for the works to continue safely, and that RBOC is trying to engage on ways for the works not to take place at all, which is not an option as far as Council is concerned.
- 18. RLC remains willing to consider a proposal for additional mitigation measures (although we do not consider these necessary) and to consider any proposal for managing protest activity in a way that does not obstruct or interfere with the works.

Signature of Deponent:



Stavros Michael

**AFFIRMED** by the abovenamed **STAVROS MICHAEL** at Rotorua this  
8th day of October 2024 before me

*Sonya Stevens*



A Solicitor of the High Court of New Zealand

*Deputy Registrar*

Sonya Stevens  
Deputy Registrar  
District Court of New Zealand

# "2SM-A"

**Connor Gordon**

---

**From:** Wally Lee [REDACTED]  
**Sent:** Wednesday, 18 September 2024 11:32 am  
**To:** Andrew Moraes  
**Cc:** Paul Warbrick; Stavros Michael; Tania Tapsell; Kirikowhai Mikaere; Geoff Rolleston; Jem Hamiora-Smith; [REDACTED]@tearawa.iwi.nz; Tait Wichman; Kahurangi White-Parsons; [REDACTED]@police.govt.nz  
**Subject:** Re: Tarawera Sewerage Scheme update

Kia ora Andrew

Rotokakahi Board of Control Position has never changed. It has been well documented through a number of hui that the Tarawera pipeline is not to pass through Rotokakahi whenua and catchment. Options have been provided to RLC that were ignored in favour of the Spencer/Tarawera Rd corridor. Rotokakahi Owners and beneficiaries have maintained their cultural right, customary rights and undisturbed ownership of their lands to gather peacefully on their whenua.

As stated, Rotokakahi Board of Control are open to meeting with RLC elected members to discuss a range of issues and options to protect Rotokakahi and Tarawera for the long term future of the Rotorua community. We look forward to that opportunity in the very near future.  
Naku iti noa

Wally Lee  
RBOC  
Co-Chair

On Wed, 18 Sept 2024 at 10:08, Andrew Moraes [REDACTED] wrote:

Kia Ora Wally et al,

Thanks for your email.

Please see responses below.

As I mentioned I'll be briefing councillors confidentially today and it would be good to understand what BOC position is so I can communicate that to them. Do you have an update for us in that regard? As you mentioned, we are keen to continue working in good faith and hence it would be important to share this information with us so I can share it with Councillors.

Ngā mihi

**EXHIBIT NOTE**

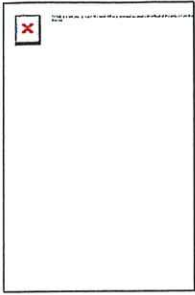
This is the annexure marked "2SM-A" referred to in the affidavit of **STAVROS MICHAEL** affirmed at *Rotorua Court* Rotorua this *8* day of October 2024 before me: *Sonya Stevens*

Signature.....*Sonya Stevens*.....  
A solicitor of the High Court of New Zealand

*Sonya Stevens*  
Deputy Registrar

Sonya Stevens  
Deputy Registrar  
District Court of New Zealand

*[Handwritten initials]*



**Andrew Moraes**

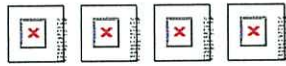
Toihautū | Chief Executive

P: [Redacted]

E: [Redacted]

A: Civic Centre, 1061 Haupapa St, Private Bag 3029, Rotorua 3046, New Zealand

W: [rotorualakescouncil.nz](http://rotorualakescouncil.nz)



**Andrew Moraes**

**| Chief Executive**

P: [Redacted]

**From:** Wally Lee [Redacted]

**Sent:** Tuesday, 17 September 2024 12:19 pm

**To:** Andrew Moraes [Redacted]

**Cc:** Paul Warbrick [Redacted]; Stavros Michael [Redacted]; Tania Tapsell [Redacted]

[Redacted]; Kirikowhai Mikaere [Redacted]; Geoff Rolleston [Redacted]

[Redacted]; Jem Hamiora-Smith [Redacted]; [Redacted]; Tait

Wichman [Redacted]; Kahurangi White-Parsons [Redacted];

[Redacted] [@police.govt.nz](mailto:[Redacted]@police.govt.nz)

**Subject:** Re: Tarawera Sewerage Scheme update

Kia ora Andrew

Thank you for the email.

The Rotokakahi Board of Control, Tuhourangi Tribal Authority and Te Arawa Lakes Trust are meeting this Thursday evening for our kanohi ki te kanohi hui between our governance boards. Our respective boards are still sifting through information and although RLC have provided information as requested, we are still awaiting a response from Ken Phillips, Archaeology BOP Heritage Consultants. **[Andrew Moraes>] Noted. Looking forward to hearing the outcome of the hui**

I have previously asked for information relating to the relationship between RLC, Fulton and Hogan and Waka Kotahi, the relationship between Fulton and Hogan, Waka Kotahi and the Cultural Monitor/s and the relationship between RLC, Fulton and Hogan, the Cultural Monitor/s and Waka Kotahi. This was asked through Kahui Legal and Tomkins Wake Law some time ago through Counsel. This information is yet to be provided. **[Andrew Moraes>] This is quite straightforward. The relationship between FH and RLC is a simple contractual relationship whereby the contractor undertakes works on behalf of the Principal (RLC) under specified contract conditions. We are not aware of the request to clarify the relationship between FH/RLC/WK. In any case, this simple question can easily be answered by any of my team – WK has no role in this project as this is a local road owned by the public via council. Cultural monitors are appointed by mana whenua on a specific work programme to work with the contractor with a focus onto mitigating identified or accidental cultural discovery matters. The normal process is for the Principal (RLC) to pay the costs of the cultural monitors.**

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With regard to your invitation to speak directly with elected Councilors, we accept this would be a very good step forward and would consider a collective hui including RLC, RBOC, TTA and TALT, once we all have the information requested and our collective timelines are complete. **[Andrew Moraes>]** I will await your readiness for this – there will be the opportunity for you to speak to councillors again next week. Please let me know if you would like to come in next Wednesday to speak to the council meeting. I recall you spoke to them directly shortly after I started – March or April this year as well so you will be familiar with the process. In terms of a collective hui, it's practical for RLC to be represented by the CE as the representative of the Council, though we might have some elected members also join subject to availability. Ultimately this is an operational project at this stage and hence is upto the CE to execute.

I trust we continue to act in good faith and with respect.

Heoi ano

Wally Lee

RBOC

Co-Chair

On Mon, 16 Sept 2024 at 17:51, Andrew Moraes <[REDACTED]> wrote:

Tēnā koutou e aku Rangatira,

This Wednesday I am updating our Elected Members on the Tarawera Sewage Reticulation Scheme.

As you are aware, we have met and discussed the current status of the project. You have requested a range of background information and to our knowledge, we have provided the information to Mana Whenua representatives as requested with no further requests received.

On this note, I respectfully ask, do you have any feedback or an updated position that I should communicate to Elected Members to inform their considerations and decision making?

Alternatively, it would be good to understand if you have an interest in speaking directly to elected members should this become possible either this week or next.

Should you have any further queries, or wish to have a separate hui prior, please advise.

Nā,

Ngā mihi

*Andrew*

**Andrew Moraes**

Toihautū | Chief Executive

p: [REDACTED]

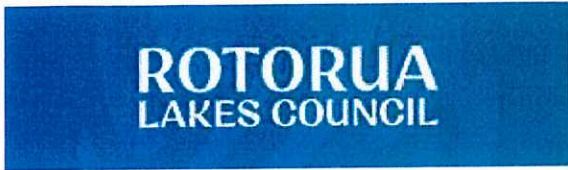
e: [REDACTED]





w: [rotorualakescouncil.nz](http://rotorualakescouncil.nz)

a: Rotorua Lakes Council, 1061 Haupapa Street, Rotorua 3010



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**Andrew Moraes**

| Chief Executive

P: , [REDACTED]

A handwritten signature in blue ink, consisting of a stylized name and a flourish.

# "2SM-B"

Connor Gordon

**From:** Kim McGrath [REDACTED] on behalf of Andrew Moraes  
**Sent:** Wednesday, 18 September 2024 5:25 pm  
**Cc:** Paul Warbrick; Stavros Michael; Tania Tapsell  
**Subject:** Tarawera Sewerage Scheme update

Tēnā koutou e aku Rangatira,

I would like to update you that today I briefed councillors about the situation at Rotokākahi including the views that have been shared with me from some of you.

The council has authorised me to continue speaking with iwi leaders in order to try and mitigate risks to all people at or near the site and to continue with operational tasks as required.

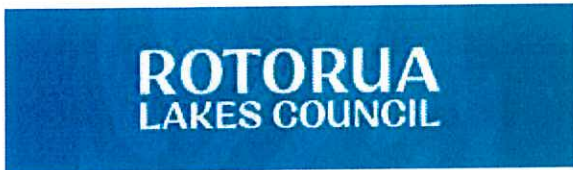
To be clear, council has not stopped the project, nor given me any new direction on alternatives to this project.

I look forward to hearing from you, especially if anyone would like to speak to council next Wednesday 25<sup>th</sup> September probably between 9am and 9.30 am. Please note that this opportunity will be at a public forum, and the appropriate procedures associated with the public forum will apply and our Governance and Democracy team will reach out to you to arrange details.

Ngā mihi

Andrew

**Andrew Moraes**  
Toihautū | Chief Executive  
p: (07) 351 8142  
e: [REDACTED]  
w: [rotorualakescouncil.nz](http://rotorualakescouncil.nz)  
a: Rotorua Lakes Council, 1061 Haupapa Street, Rotorua 3010



## EXHIBIT NOTE

This is the annexure marked "2SM-B" referred to in the affidavit of STAVROS MICHAEL affirmed at Rotorua Court Rotorua this 8 day of October 2024 before me:

Signature: *Sonya Stevens*  
Solicitor of the High Court of New Zealand  
Deputy Registrar  
Sonya Stevens  
Deputy Registrar  
District Court of New Zealand

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*Andrew Moraes*

# Tarawera Sewerage Scheme update

Kim McGrath on behalf of Andrew Moraes

Wed 18/09/24 5:25 pm

Forward Reply All Reply

To: Paul Warbrick; Stavros Michael; Tania Tapsell  
Cc: @tuhourangi.iwi.nz; Daryn Bean; Geoff Rolleston; @tearawa.iwi.nz;  
Bcc: @whakaue.org; @whakaue.org; Wallylee74; Jern Hamiora-Smith;  
leithpomer; @totallytarawera.com; Te Tatau o Te Arawa; Te TaruWhite;  
James Hamiora; Peter Moke

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29

Tenā koutou e aku Rangatira,

I would like to update you that today I briefed councillors about the situation at Rotokākahi including the views that have been shared with me from some of you.

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Ngā mihi

Andrew

Andrew Moraes

Toihautū | Chief Executive

p: (07) 351 8142

e: [redacted]

w: [rotorualakescouncil.nz](http://rotorualakescouncil.nz)

a: Rotorua Lakes Council, 1061 Haupapa Street, Rotorua 3010



*[Handwritten signatures]*

"2SM-C"

**EXHIBIT NOTE**  
 This is the annexure marked "2SM-C" referred to in the affidavit of STAVROS MICHAEL affirmed at Rotorua this day of October 2024 before me:  
 Signature.....  
 A solicitor of the High Court of New Zealand

Part Section 2  
 Block VI Tarawera  
 Survey District  
 (Scenic Reserve)

Tarawera Road



I hereby certify that the dimensions shown on this plan are the calculated offsets to the road boundary from the surveyed features, as surveyed on 30 August 2024.

*Paul Jeffrey Andrews*  
 B.Surv, M.Sr-SNZ  
 Licensed Cadastral Surveyor

- NOTE:**
1. Origin of Survey: LINZ Geodetic Database
  2. Boundary information has been adopted from existing survey plans.
  3. Control points are in terms of Geodetic Datum 2000, Bay of Plenty 2000 Circuit.
  4. The points labeled 'Edge Line' are the centre of the white edge line.
  5. The points labeled 'Nail' are survey marks flush in the seal and circled with pink paint.

This plan has been prepared in accordance with an Agreement for Provision of Professional Services. This plan should not be relied upon for any other purpose without reference to and approval from SurveyOne Ltd.

2252  
 492  
 21 Grand View Road  
 Kawhia Point Rotorua  
 Ph: 07 357 5863  
 Mobile: 027 478 6767  
 Email: paul@surveyone.co.nz



Rotorua Lakes  
 Council

Offset Distances for Boundary Location  
 Tarawera Road

PROJECT REF: 2252  
 DRAWING No: 2252-1  
 SHEET 1 OF 2 SHEETS  
 ORIGINAL SCALE (A3): 1:500

COMPLETED: 31 Aug 2024  
 PUA: 20-31 Aug 2024  
 PRINTED: 31 Aug 2024

FILE REFERENCE: 2252  
 SUR REFERENCE: 492  
 CAD REFERENCE:  
 FIELD BOOK:  
 LEVEL BOOK:  
 SURVEY BOOK: PUA 30 Aug 2024  
 FIELD DIMENSIONS TO PARTS:  
 REFERENCE TO SCALE: MANNING

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*Handwritten signature*

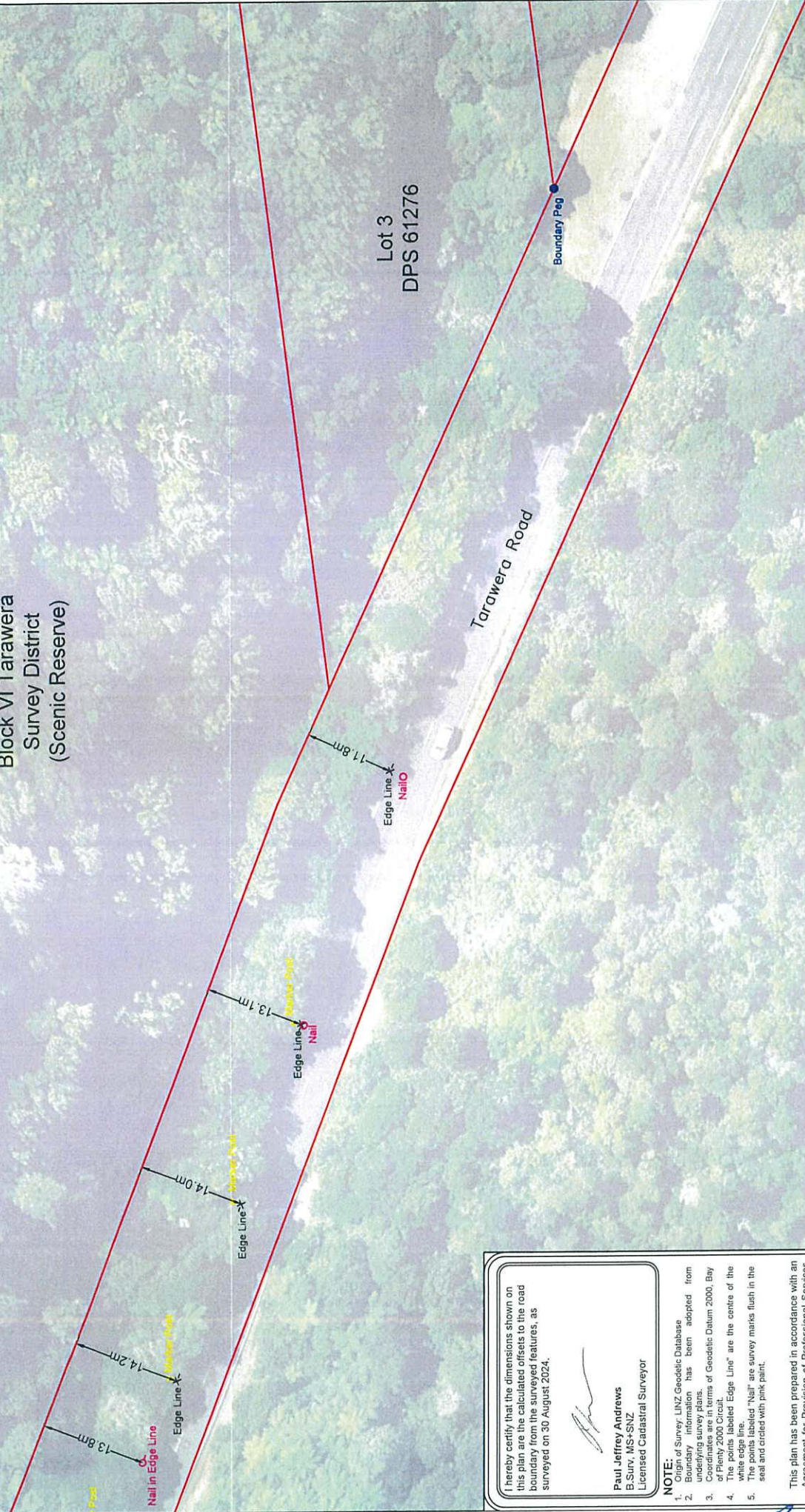


Part Section 2  
Block VI Tarawera  
Survey District  
(Scenic Reserve)

Lot 3  
DPS 61276

Tarawera Road

Boundary Peg



I hereby certify that the dimensions shown on this plan are the calculated offsets to the road boundary from the surveyed features, as surveyed on 30 August 2024.

*Paul Jeffrey Andrews*  
Paul Jeffrey Andrews  
B.Surv. MS+SNZ  
Licensed Cadastral Surveyor

- NOTE:**
1. Origin of Survey: LINZ Geodetic Database
  2. Boundary information has been adopted from the LINZ Geodetic Database
  3. Coordinates are in terms of Geodetic Datum 2000, Bay of Plenty 2000 Circuit.
  4. The points labeled 'Edge Line' are the centre of the white edge line.
  5. The points labeled 'Nail' are survey marks flush in the seal and circled with pink paint.

This plan has been prepared in accordance with an Agreement for Provision of Professional Services. This plan should not be relied upon for any other purpose without reference to and approval from SurveyOne Ltd.

PROJECT REF: 2522  
DRAWING NO: 2252-1  
SHEET 2 OF 2 SHEETS  
ORIGINAL SCALE (A3): 1:500

### Offset Distances for Boundary Location Tarawera Road

**Rotorua Lakes Council**

FILE REFERENCE	2252
SUR REFERENCE	492
CAD REFERENCE	
FIELD BOOK	
LEVEL BOOK	2024_30_Aug_2024
SURVEYED	2024_30_Aug_2024
PREPARED BY	PAUL JEFFREY ANDREWS
PRINTED	31_Aug_2024

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Ph: 07 357 888  
Mobile: 027 478 6767  
Email: paul@surveyone.co.nz



# "2SM-D"

**Connor Gordon**

**From:** Kate Cornegé <Kate.Cornege@tompkinswake.co.nz>  
**Sent:** Thursday, 3 October 2024 11:09 am  
**To:** Stephanie Northey; angela@kahuilegal.co.nz  
**Cc:** Connor Gordon; Wendy Embling  
**Subject:** FW: Update on Lake Rotokākahi

Kia ora Stephanie and Angela,

I refer to the below email from Mr Moraes, which is the communication I understand you referenced at the Court conference yesterday. As we understand it, the RBOC's position remains that the pipeline should not pass through the Rotokākahi catchment and that protest activity will continue as long as the works continue. We also understand that RBOC has not provided any proposal for either (i) how the works could be carried out in a way that would mitigate the RBOC's concerns (as described in Mr Moraes' email) or (ii) how the protest activity can be managed to ensure it does not obstruct the works or result in further offences, noting that RBOC cannot control the behaviour of all protesters. Can you please advise if I have misunderstood RBOC's position?

As there is no date yet for drilling to restart (although Council does not want to delay this), there is time for RBOC and Council to continue the conversation about (i), as indicated in Mr Moraes' email. As I see it, (ii) is more relevant to the injunction application. If RBOC has any proposal to make in relation to (ii), we invite them to make it as soon as possible. As noted previously, Council is willing to consider any proposal to narrow the orders sought if such orders would allow the works to continue safely and if those orders are openly supported by RBOC.

I am happy to jump on a call if that would assist; appreciate you have not had much time to get back into this matter.

Ngā mihi,

Kate

**EXHIBIT NOTE**

This is the annexure marked "2SM-D" referred to in the affidavit of STAVROS MICHAEL affirmed at Rotorua this 8<sup>th</sup> day of October 2024 before me:

*Sonya Stevens*  
Signature: *Sonya Stevens* Deputy Registrar  
Solicitor of the High Court of New Zealand  
District Court of New Zealand

**TOMPKINS  
WAKE**

**Kate Cornegé** She/Her  
Partner  
P: +64 7 838 6053 | M: +64 21 762 401

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**From:** Kim McGrath <Kim.McGrath@rotorualc.nz> **On Behalf Of** Andrew Moraes  
**Sent:** Tuesday, 1 October 2024 12:08 pm  
**Subject:** Update on Lake Rotokākahi

Tēnā koutou e aku Rangatira,

Following the hui a iwi last Tuesday, I'm writing to enquire if there has been any mitigation measures suggested by the Lake Rotokākahi Control Board and Tūhourangi that would address your concerns of negative impact to Wahi Tapu and pollution.

As we discussed last week, the council members have instructed me to complete the project which means that works need to continue at the site. To enable this to happen, council will need to proceed with filing for an injunction through the District Court imminently. We are taking this action as we want to ensure that works can proceed legally and safely for the wellbeing of protestors and workers at the site.

It has now been a month since site works were paused and – while we have no date for drilling to restart – we will need to undertake some works on site and for this reason we have to instruct our lawyers. I value the honesty and integrity of our discussions to date and wanted you to hear this update from me directly. I'd like to reiterate that council is open to hearing any mitigation solutions you have for the Rotokākahi pipe and that we are ready to work with your appointed cultural monitor.

I am available to talk with you further by phone or face to face and look forward to hearing from you.

Ngā mihi ki a koe

*Andrew*

**Andrew Moraes**

Toihautū | Chief Executive

p: (07) 351 8142

e: [andrew.moraes@rotorualc.nz](mailto:andrew.moraes@rotorualc.nz)

w: [rotorualakescouncil.nz](http://rotorualakescouncil.nz)

a: Rotorua Lakes Council, 1061 Haupapa Street, Rotorua 3010



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A handwritten signature in blue ink, appearing to be "Andrew Moraes", located in the bottom right corner of the page.