Before the Expert Panel

under: the Fast-track Approvals Act 2024

in the matter of: an application for resource consents, approvals and a notice of requirement to alter a designation, to construct a four-lane, median divided highway to replace existing State Highway 2 corridor between Te Puna and Ōmokoroa, known as 'Takitimu North Link - Stage 2'

applicant: **NZ Transport Agency Waka Kotahi**
Requiring Authority and Applicant

Memorandum of counsel on behalf of the NZ Transport Agency Waka Kotahi

Dated: 6 March 2026

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MEMORANDUM OF COUNSEL ON BEHALF OF THE NZ TRANSPORT AGENCY WAKA KOTAHI

1 This memorandum is filed on behalf of the NZ Transport Agency Waka Kotahi (*NZTA*) in relation to NZTA's application for resource consents, approvals and a notice of requirement to alter a designation (together, the *Application*) to replace the existing State Highway 2 corridor between Te Puna and Ōmokoroa, known as 'Takitimu North Link - Stage 2' (the *Project*).

2 In response to Minute 10 dated 25 February 2026, this memorandum sets out NZTA's comments on the Panel's draft conditions. NZTA has prepared an updated set of conditions, which are **attached** to this memorandum. Those conditions accept the Panel's amendments, where those amendments are agreed, and reject those that are not agreed. Commentary is provided to explain the rejections, and other new changes.

3 For completeness, NZTA maintains its position as set out in the Closing Legal Submissions dated 16 February 2026, except where departed from in this memorandum (and the proposed conditions attached).[1]

Condition 1

4 NZTA understands and generally supports the Panel's objective of ensuring the approvals clearly remain within the scope of what has been applied for and assessed. However, we submit that an additional "Condition 1" is not necessary to achieve that objective, for the following reasons:

4.1 The Panel notes, as a matter of law, that the scope of an application is defined by the documents relied on as part of the application.[2] We agree and as such, submit that a condition restating that established legal position is unnecessary.

4.2 The scope of the approvals is constrained by the activities applied for and the effects assessed, and then given practical effect through the conditions (including the certification and outline plan processes). The conditions address all environmental effects without reliance on the supporting documentation. In *Ara Tūhono – Pūhoi to Wellsford, Pūhoi to Warkworth Section*, the Board of Inquiry observed that "*the terms and parameters of the consent granted are delineated by conditions and the extent of effects assessed, regardless of*

[1] For completeness, NZTA remains opposed to the deletion of the 'deemed certification' conditions in all approvals. However, updated Wildlife Approval or Complex Freshwater Fisheries Approval conditions have not been provided, in response to the Panel's draft conditions, to reflect this position.

[2] Takitimu North Link – Stage 2 Draft Decision dated 25 February 2026 (*Draft Decision*), at page 72.

the absence of a Condition 1."[3] It is submitted that the Panel's scope objective is best achieved by ensuring the conditions and associated certification/outline plan processes are clear and enforceable, rather than by a broad "general accordance" obligation.

4.3 Furthermore, NZTA considers the requirement that the Project be carried out "in general accordance with" the Substantive Application and supporting documents is inappropriate in the context of this Project. NZTA does not intend to do anything that would result in effects outside of what has been assessed. The documentation and technical reports assess the effects of the indicative alignment (and accounting for potential changes to that alignment within the designation boundary). They do not purport to contain a confirmed route, design or construction methodology for the Project to act in accordance with.[4] It is unclear how a "general accordance with" requirement is to be applied to documentation that is expressly indicative and intended to evolve through those later processes.

5 We submit the argument for not including a "Condition 1" is particularly strong for the designation conditions, as the designation has a second stage of design and approval through the outline plan of works (*OPW*) process provided for in s176A RMA. Designations can be very wide and flexible, or very limited and subject to tight conditions. NZTA (and other requiring authorities) have many examples of designations that are not subject to any conditions. Conversely, there are also examples of notices of requirement being lodged for projects that are "construction ready" and seeking a waiver of the OPW. In such situations, there is no second stage of design, and a decision-maker must be certain that the specific consented design is adequate to mitigate any effects.

6 If the Panel is minded to retain a "Condition 1", NZTA submits it should be reframed narrowly and consistently across both designation and consent conditions, confirming that the "general accordance with" requirement is subject to final detailed design and that where any inconsistency arises, the final detailed design, conditions and any management plans certified under them and/or the outline plan prevail over the Substantive Application documents. Please refer to NZTA's amended wording to the Panel's draft "condition 1", as attached.

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[3] Final Report and Decision of the Board of Inquiry into the Ara Tūhono - Pūhoi to Wellsford Road of National Significance: Pūhoi to Warkworth Section (September 2014), at page 45, paragraph 183.

[4] As set out in the Substantive Application (page 25), "*Any features, areas or dimensions outlined in this Report are approximate and may change as a result of the detailed design process*."

Designation Conditions

Imposition of lapse on the alteration

7 The Panel states that pursuant to clause 26, schedule 5 FTAA, it is necessary to specify a lapse date for the alteration to designation to avoid the approval lapsing after 2 years.[5] With respect, this is incorrect. Specifically, clause 26(1) provides: *"A decision document for a resource consent or* ***designation*** *must specify the date on which the approval lapses* ***unless it is given effect to*** *by the specified date"* (emphasis added).

8 The definition of "designation"[6] does not include an alteration to a designation. NZTA does not seek a designation for the Project, rather it seeks an alteration to an existing designation (which covers the existing SH2 in the Project area), which has already been given effect to. An alteration to a designation, once confirmed and included in the district plan, merges and forms part of the principal designation. It has no separate identity to which a lapse date could attach, and a designation cannot lapse in part. As such, clause 26 does not apply to the alteration.

9 This approach is consistent with that taken in the RMA. Section 181 of the RMA sets out the particular provisions which apply to a requirement for an alteration to an existing designation as if it were a requirement for a new designation. The provisions listed in section 181 do not encompass the lapse period addressed in section 184. Had the intent been for lapse periods to apply to alterations, then section 184 would have been included in that specific, exhaustive list.

10 The Panel refers to case law which "*suggests that an alteration to an existing designation does not trigger a new lapse period and therefore the original designation's lapse date continues to apply*"[7] but concludes that neither of the cases it references "*clearly determines the issue*".[8] We agree with the Panel's characterisation of the two Environment Court cases to which it refers. However, since those two cases were decided, the High Court has made a clear determination on the issue. In *Poutama Kaitiaki Charitable Trust and D & T Pascoe v Taranaki Regional Council* the High Court stated that:[9]

> Section 181(2) of the RMA, …appears to contemplate that the original designation - as with the present case - has been implemented. In such

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5 Draft Decision, paragraph 17.

6 As in s166, RMA.

7 Draft Decision, paragraph 17.

8 Draft Decision, footnote 6.

9 *Poutama Kaitiaki Charitable Trust and D&T Pascoe v Taranaki Regional Council* [2022] NZHC 629, at [64].

> circumstances, a lapse date on a variation makes no sense because the land affected is already subject to an implemented designation.

11 The Court then confirmed that "…*Section 181(2) prescribes the sections of the Act relevant to an alteration of a designation. The lapse provision is explicitly excluded*…"[10]

12 Therefore, a lapse date is not required for, and cannot be imposed on an alteration to a designation. As such, NZTA respectfully requests the Panel remove the lapse date from the alteration.

Outline plan of works

13 It is submitted that an OPW condition is not necessary as it merely duplicates existing statutory requirements under section 176A of the RMA, which NZTA is already required to comply with. Accordingly, NZTA opposes the inclusion of an OPW condition. That said, if the Panel is minded to include an OPW condition, NZTA considers amendments are required to the current draft condition (and to the management plan conditions and Table 1), for workability.

14 Not all of the management plans required under the designation conditions are relevant to and within the scope of section 176A. Therefore, not all of those management plans will be submitted through the OPW process. NZTA will (and is statutorily required to) submit any management plans that are relevant to that process.

15 In addition, some of the management plans required under the designation conditions will need to be prepared and submitted to council for certification in advance of detailed design, and lodgement of the outline plan. In particular, 'enabling works' versions of plans – for example, an enabling works construction management plan and enabling works construction traffic management plan are proposed to be in place to support archaeological and contamination investigations. Accordingly, the OPW process cannot apply to *all* management plans.

16 NZTA has proposed changes to the OPW condition, and management plan conditions, to maintain the ability to prepare and implement some management plans (as appropriate) prior to and / or post the outline plan and to ensure that only relevant plans are presented to the council in the OPW.

17 NZTA understands Western Bay of Plenty District Council is supportive of NZTA's proposed approach, and amendments to GC4.

Operational safety – Designation Condition GC5

18 For the reasons outlined in its response to RFI5 and the Closing Legal Submissions, NZTA opposes the inclusion of an operational safety

[10] At [66].

condition and does not consider it to be necessary. However, if the Panel is minded to retain Condition GC5, NZTA considers some minor wording changes are required for clarity and certainty. NZTA cannot 'ensure' a safe transition as it cannot control and /or guarantee driver behaviour. Accordingly, NZTA proposes to replace 'ensure' with 'provide for'. NZTA understands Western Bay of Plenty District Council is supportive of NZTA's proposed amendments to GC5.

Ecology conditions – LC.01 and BC.01

19 As set out in the evidence of Mr Jeremy Garrett-Walker dated 6 March 2026, NZTA considers:

19.1 It is not necessary or appropriate to refer to the Stream Ecological Valuation (*SEV*) (even if only in relation to residual effects) in the Proposed Conditions.

19.2 The condition requiring a cap on the length of streams to be realigned and impacted by permanent reclamation and/or culverted or piped, is not necessary to manage the effects of the Project.

References to SEV in LC.01 Condition 28

20 NZTA opposes the inclusion of any reference to SEV in the conditions.

21 If the Panel is nevertheless minded to impose conditions referring to SEV, NZTA considers amendments are required to clarify that, as per the Panel's draft decision and the Panel advisor's memorandum, it only relates to *residual* loss.[11] One option would be to link all references to SEV and potential value within the Panel's proposed additions to LC.01 Condition 28.1 to 'residual loss' (eg inserting 'as relevant to residual loss' or similar). Mr Garrett-Walker also recommends providing clarity around the interpretation of 'potential value', as set out in his evidence dated 6 March 2026, at paragraph 21.

22 It is submitted that the inclusion of references to SEV in the 'purpose' section of SMMP Condition 28.1 is not appropriate, because the SEV is to only apply to residual loss (under Condition 28.4(e)) – a loss that, it is submitted, is unlikely to eventuate in practice due to NZTA's suite of other obligations within Condition 28.

Stream length condition in LC.01 Condition 28 and BC.01 Condition 13.12

23 If the Panel is nevertheless minded to impose a condition requiring a cap on streams, NZTA considers that condition needs to be amended (as set out in the evidence of Mr Garrett-Walker, and in the attached conditions) in order to make a distinction between the extent of existing open-water streams that may be disturbed, and the post-

[11] Draft Decision, paragraph 338, and the memorandum from Mr Graham Ussher dated 24 February 2026, paragraphs 2.1-2.4.

construction total length of additional culverts / piping. Bay of Plenty Regional Council have confirmed that they agree with these changes proposed to the condition.[12]

24 Further, it is submitted that, if a stream length condition is imposed, in order to retain flexibility in design, it is appropriate to provide a 'buffer'. NZTA seeks a 30% buffer on the figures proposed, which would result in a 4,000m cap for streams to be realigned and impacted by permanent reclamation and/or culverting, and a 550m cap for additional culverting or piping.

Conditions requiring an offer lapse date

25 The Panel's draft Designation Conditions CU4, CNV9, and Consent Conditions LC.01 Condition 19 delete existing proposed conditions that impose a time limit on the acceptance of offers to be made by NZTA to third parties ie offers for building condition surveys, and cultural measures, but the rationale for these changes is not detailed in the draft decision. NZTA opposes these deletions.

26 Deleting these conditions leaves NZTA with an obligation to keep the relevant offers 'open' for acceptance indefinitely, which is onerous and unpracticable. It is important that the time limits on acceptance of the third party offers remain, and NZTA is not aware of other parties raising issues with these conditions.

27 It is noted that these conditions differ from the 'deemed certification' conditions that the Panel has also sought to remove. These conditions do not assume acceptance of an obligation (as is the case for the standard 'deemed certification' conditions). They simply provide an expiry, so that NZTA and the third parties that the conditions relate to, have certainty.

Stormwater conditions – DC.03

28 NZTA opposes the Panel's proposed Conditions 10.2 - 10.4. We submit that the conditions are not necessary to manage the effects of the Project, not appropriate for this Project, and / or are otherwise provided for in the other conditions of consent proposed.

29 With respect to Conditions 10.3 and 10.4, NZTA's stormwater expert has advised that:

29.1 There are no stream flow or stream level gauges on any of the streams that cross the Project (or near the Project, with appropriate hydrological properties).

29.2 There is also no recorded data to calibrate the model (as proposed in Condition 10.3).

[12] Noting that the changes proposed in relation to stream length and culvert caps, as addressed in paragraph 24, are not supported by Bay of Plenty Regional Council.

29.3 It would take 5-10 years to collect a sufficient amount of data to calibrate a model. Prior to this, NZTA would also have to install and maintain the stream flow or stream level gauges.

30 Accordingly, these conditions are not appropriate for this Project, given the lack of stream flow or level gauges in place on relevant streams.

31 In addition, there is unlikely to be enough time to adequately calibrate the model prior to the relevant design work taking place, and a wet or dry year could skew the results of any short-term monitoring that may be able to be completed prior to the relevant design work. It is also unclear as to what adverse effect the proposed conditions are to manage (beyond what is already managed via NZTA's existing proposed conditions). Accordingly, it is submitted that the conditions proposed are more onerous than necessary.

32 NZTA therefore opposes the inclusion of Conditions 10.3 and 10.4. In the event the Panel is minded to retain those conditions, amendments have been proposed to the conditions, for workability.

Archaeological Authority conditions

33 The updated archaeological authority conditions, as attached, now include the 'Schedule' of sites (lot descriptions) to be subject to the archaeological authorities. We note that this Schedule includes existing SH2 Crown land, as was always intended, and was assessed as part of the Project.

Response to Minute 10

Total earthworks area and volume of excess cut to waste

34 In response to Minute 10 from the Panel:

34.1 The total area of earthworks for the Project, based on the specimen design, is approximately 100 ha.

34.2 The total volume of excess cut to waste for the Project, to be disposed of off-site, and based on the specimen design, is up to 1.1 million cubic metres.[13]

34.3 The total volume of excess cut to waste for the Project (to be disposed of onsite and offsite), based on the specimen design, is up to 2 million cubic metres.

Activity status of consents / compliance with rules

35 NZTA and Bay of Plenty Regional Council have been working together to prepare the 'reasons for consent' table requested in Minute 10 at

[13] The reference in the Substantive Application (dated 1 August 2025) to 2 million cubic metres to be disposed of offsite, is an error. The 2 million cubic metres referred to is to be disposed of in offsite locations *and* sites within the designation.

paragraph 12. A joint table will be provided to the Panel early next week.

Minor corrections to draft decision

36 To assist the Panel, NZTA has prepared a list of factual corrections to the draft decision issued by the Panel. This list is provided in **Appendix A**.

37 NZTA thanks the Panel for its time and effort in considering the Application, and for the opportunity to provide comments on its draft conditions.

Dated 6 March 2026

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Rebecca Tompkins / Alice Hall
Counsel for NZ Transport Agency Waka Kotahi

APPENDIX A – MINOR CORRECTIONS TO DRAFT PANEL DECISION

1 Page 6, paragraph 16 refers to the proposed reclamation of 2.56m^2 of wetlands. This should instead refer to 2.56ha.

2 Pages 8 and 84, paragraph 22.3(g) and paragraph 376(c) refer to a 'Flocculation Management Plan'. The relevant plan name that should instead be referred to is the 'Chemical Treatment Management Plan'.

3 Page 8 (and any other lists of all management plans) should also include the 'Works Completion Report'.

4 Page 12, paragraphs 44 and 45 refer to a 'wildlife approval'. These paragraphs should instead refer to the 'complex freshwater approval'.

5 Page 15, paragraph (n) refers to 'Risk-Declining' species. This reference should be to 'At Risk-Declining' species.

6 Page 18, paragraph 57 refers to the Closing Legal Submissions being provided on 16 January 2026. This should instead refer to 16 February 2026.

7 Page 22, paragraph 81 refers to the due date for the final decision as 16 March 2026. This should instead refer to 19 March 2026.

8 Page 35, paragraph 138 refers to the groups relevant and formally invited for engagement on 6 June 2025, prior to lodgement of the Application. It lists Tauranga Moana Iwi Collective Limited Partnership. Although Tauranga Moana Iwi Collective Limited Partnership was identified as a potentially relevant group, no such 'group' formally exists at present because the relevant Deed has not been enacted in legislation. Accordingly, there was no group to which a formal invitation could be issued or with which any engagement could occur prior to lodgement of the Application.

9 Page 46, paragraph 193 refers to the Pirirākau CIA being publicly available. We understand that the CIA is not publicly available, but that the Panel has been provided with an unredacted version.

10 Page 106, paragraph 487 refers to the Panel's draft decision being circulated on 24 February 2026. It should refer to 25 February 2026.