

Before the Expert Consenting Panel

under: the Fast-track Approvals Act 2024

in the matter of: applications for resource consents and archaeological authorities and notices of requirement by the New Zealand Transport Agency Waka Kotahi to develop a rapid transit link and associated infrastructure and connections between Brigham Creek and Auckland City centre, alongside State Highway 16, known as 'North West Rapid Transit'

applicant: **New Zealand Transport Agency Waka Kotahi**
Requiring Authority

Legal submissions on behalf of the New Zealand Transport Agency Waka Kotahi in relation to the Panel's third request for information

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LEGAL SUBMISSIONS ON BEHALF OF NEW ZEALAND TRANSPORT AGENCY WAKA KOTAHI IN RELATION TO PANEL'S THIRD REQUEST FOR INFORMATION

INTRODUCTION

- 1 These legal submissions are filed on behalf of the New Zealand Transport Agency Waka Kotahi (*NZTA*) in relation to its notices of requirements (*NORs*) and applications for resource consents and archaeological authorities (together, the *Application*) for the North West Rapid Transit (*NWRT* or *Project*).
- 2 These submissions respond to the Panel's third request for information in Minute 7 dated 19 May 2026 (*RFI#3*), in which the Panel sought NZTA's position on:¹
 - a. The relevance of the test for adequacy of the alternatives assessment under the FTAA, and how it is to be applied in the context of the FTAA; and
 - b. In the FTAA context, what relevance, if any, does the impact on private land have upon that test of adequacy, in light of *Basin Bridge* and *Queenstown Airport*;
 - c. What parts of the application materials and in particular evidence does the Applicant rely on to address these considerations so that the Panel can be satisfied the consideration of alternatives was, in the circumstances, adequate.

ALTERNATIVES ASSESSMENTS UNDER THE RMA

- 3 As set out in NZTA's legal submissions filed with the Application, NZTA does not have an interest in the land sufficient for undertaking the work.²
- 4 Under s171(1)(b) of the Resource Management Act 1991 (*RMA*) it is necessary for a decision-maker to have particular regard to "*whether adequate consideration has been given to alternative sites, routes or methods for undertaking the work*" when considering a notice of requirement.

¹ RFI #3, paragraph 10.

² Legal submissions on behalf of NZTA dated 15 December 2025, paragraph 91.

- 5 The key RMA principles relevant to the inquiry under s171(1)(b) are:³
- 5.1 The decision-maker does not hold the policy function of deciding the most suitable route. The Requiring Authority has this ultimate responsibility.
 - 5.2 The focus is on the process, not the outcome. This focus involves ensuring the requiring authority has made sufficient investigations and more than cursory consideration of alternatives proposed, without acting arbitrarily.
 - 5.3 The word 'adequate' means sufficient or satisfactory and does not require an exhaustive process. There is no requirement to eliminate speculative or suppositious options.
 - 5.4 There is no requirement to select the 'best' alternative. There may be other alternatives considered by some (including commenters) to be more suitable.
 - 5.5 The consideration of alternatives needs to be more careful where there is a greater impact on private land.⁴
 - 5.6 Part 2 RMA matters should be infused into the assessment of alternatives.
- 6 Based on established caselaw under the RMA, it is further submitted that the adequacy of an alternatives assessment is not a legal threshold that must be met in order for a NOR to be confirmed. The adequacy (or inadequacy) of the assessment is a matter to have particular regard to along with other s171 decision-making considerations.⁵

³ Legal submissions on behalf of NZTA dated 15 December 2025, paragraph 91. See also *Pukekohe East Community Society Incorporated v Auckland Council* [2017] NZEnvC 27, at [21] and [22].

⁴ Case law on s171(1)(b) RMA previously indicated that the consideration of alternatives should be more careful where it is likely the work will have a significant adverse effect on the environment. In August 2025, s171(1)(b) RMA was amended so that the alternatives test only applies if the requiring authority does not have an interest in the land sufficient for undertaking the work, and not when the work will have a significant adverse environmental impact. Accordingly, we consider the prior case law is no longer relevant.

⁵ The requirement to 'have particular regard' to a matter requires the careful consideration of that matter separately from other relevant considerations but does not set an absolute requirement or standard. See *NZ Fishing Industry Assn Inc v Ministry of Agriculture and Fisheries* [1988] 1 NZLR 544 (CA) at 551 and *Donnithorne v Christchurch CC* [1994] NZRMA 97 (PT).

THE RELEVANCE OF PRIVATE LAND IMPACTS IS CIRCUMSTANCES DEPENDENT

- 7 In Minute 7, the Panel refers to the *Queenstown Airport*⁶ decision and the *Basin Bridge*⁷ decision.
- 8 The *Queenstown Airport* decision provides:⁸
- [Section 171(1)(b)] presupposes that where private land will be affected by a designation, adequate consideration of alternative sites not involving private land must be undertaken by the requiring authority. Furthermore, the measure of adequacy will depend on the extent of the land affected by the designation. The greater the impact on private land, the more careful the assessment of alternative sites not affecting private land will need to be.
- 9 Further, the Court in *Basin Bridge*, held that a “more careful consideration of alternatives may or may not be required: it will be very much circumstances dependent”.⁹
- 10 For this Project, in relation to private land, the consideration of alternatives is constrained by the feasible options available. Impacts of the Project on private land are unavoidable. The Project is a rapid transit busway connecting Brigham Creek and Auckland city centre. At a high level, the alternative alignment options were to locate the Busway either within the existing SH16 corridor, or on either side of SH16.¹⁰
- 11 As discussed below, a busway located within SH16 would reduce the level of private property required, but did not meet the critical success factors. An alignment alongside SH16 was therefore chosen. NZTA undertook a careful consideration of alternative options within that alignment, and adequately considered the extent of impacts on private land as part of that process, as described in the evidence of Ms Karyn Sinclair.

⁶ *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2013] NZHC 2347 (“*Queenstown Airport*”).

⁷ *New Zealand Transport Agency v Architectural Centre Inc and Ors* [2015] NZHC 1991 (“*Basin Bridge*”).

⁸ *Queenstown Airport*, at [121].

⁹ *Basin Bridge*, at [142].

¹⁰ Part 4 – RMA 1991 Approvals, section 3.3.1.6.

THE NATIONAL POLICY STATEMENT FOR INFRASTRUCTURE

- 12 Policy 4(2) of the National Policy Statement for Infrastructure 2025 (*NPS-I*) provides that decision-makers must:
- (a) recognise it is the role of the infrastructure provider to identify the preferred location for the infrastructure activity; and
 - (b) have regard to existing information and assessments undertaken by the infrastructure provider, including, but not limited to, information prepared using the Better Business Cases methodology developed by The Treasury New Zealand...
- 13 This policy reinforces the legal principle under s171(1)(b) RMA that NZTA as the requiring authority is responsible for identifying its preferred option for the Project and that a decision-maker cannot replace its view on the preferred option.
- 14 Ms Sinclair also confirms that NZTA's alternatives assessment process, in her opinion, followed the Better Business Cases methodology developed by The Treasury New Zealand.¹¹

MATERIALS AND EVIDENCE SHOWING ADEQUATE CONSIDERATION OF ALTERNATIVES

- 15 The following application materials and evidence addresses NZTA's assessment of alternatives:
- 15.1 Section 3.3.1 of Part 4 – RMA 1991 Approvals of the Application; and
 - 15.2 The evidence of Ms Karyn Sinclair dated 3 June 2026.
- 16 In our submission, that material demonstrates that NZTA undertook a comprehensive and iterative process of option development, evaluation and refinement over a number of years. Extensive consideration of alternative modes, corridors, alignments and station sites has occurred since the Project's inception through to lodgement of the Application.
- 17 In relation to the Panel's RFI#3 query on impacts on private land, NZTA considered the impacts of alternatives on private land as part of its alternative assessment process. As set out in Ms Sinclair's evidence, 'property' was one of the categories considered as part of

¹¹ Evidence of Karyn Sinclair dated 3 June 2026, at [54].

'Sieve 3' of the Investment Framework that guided the alternatives assessment undertaken for the Project. As she explains:¹²

Property impacts were evaluated using the following key considerations: number of impacted properties and landowners; property type; area impacted; impacts on planned/consented developments; landowner willingness to sell; and acquisition complexity.

- 18 Accordingly, we submit that NZTA's assessment of alternatives was (more than) adequate applying the RMA legal principles, including in relation to potential impacts on private land.

ALTERNATIVES ASSESSMENTS UNDER THE FTAA HAVE LESS WEIGHT

- 19 As set out above, we submit that NZTA has given adequate consideration to alternatives in accordance with s171(1)(b) RMA. For completeness, we address the relevance of alternatives assessment under the Fast-track Approvals Act 2024 (FTAA).
- 20 The adequacy of an alternatives assessment remains a relevant consideration, but has less weight in FTAA decision-making than in standard RMA processes.
- 21 The Panel is required to give "*greater weight*" to the purpose of the FTAA while also taking into account "*the provisions of Part 8 of the RMA*" (including s171(1)(b) RMA).¹³ The purpose of the FTAA is to "*facilitate the delivery of projects with significant national or regional benefits*".¹⁴ As set out in NZTA's legal submissions lodged with the Application, the Panel in the *Bledisloe North Wharf and Fergusson North Berth Extension* fast-track application considered, and gave guidance, on the "*greatest weight*" test.¹⁵ We do not repeat that material here.
- 22 We submit that the Panel must:
- 22.1 consider the adequacy of NZTA's consideration of alternatives based on s171(1)(b) RMA and related case law as applied to the relevant circumstances;
 - 22.2 separately assess the Project against the purpose of the FTAA; and then

¹² Evidence of Karyn Sinclair dated 3 June 2026, at [11].

¹³ Clause 24(1)(a) of Schedule 5 of the FTAA. The legal submissions lodged with the Application dated 15 December 2025 also address the FTAA decision-making framework at paragraphs 30-40. We do not repeat that content here.

¹⁴ FTAA, s3.

¹⁵ Legal submissions lodged with the Application at [36]-[39].

22.3 weigh those matters (and other relevant matters) in an overall balancing exercise, giving the greatest weight to the purpose of the FTAA.

- 23 As noted above, a notice of requirement cannot be declined under s171(1)(b) RMA just because another alternative is available or is preferred by other parties. Under the FTAA, the scope to decline a notice of requirement is still more limited.
- 24 As the Project is an eligible activity, and is consistent with the relevant Treaty Settlements, the Panel may decline approvals only where the adverse impacts are sufficiently out of proportion to the Project's regional or national benefits (even after taking into account conditions).¹⁶ As set out in the legal submissions lodged with the Application:¹⁷

...the Project will delivery profound and enduring benefits for Auckland and New Zealand, and the adverse impacts are limited and manageable through standard measures. In our submission, there is no credible or legal basis for declining the approvals sought.

- 25 Accordingly, we submit there is no scope for the Panel to decline the Application or to modify the Proposed Designation based on the adequacy of NZTA's alternatives assessment under the FTAA.

CONCLUSION

- 26 We therefore submit that the Panel can be satisfied that, in the circumstances of this Project, adequate consideration has been given to alternative sites, routes and methods for undertaking the work for the purposes of s171(1)(b) and for the purposes of the FTAA decision-making tests. The Panel cannot decline the NORs or modify the Proposed Designation on the basis of NZTA's alternatives assessment.

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3 June 2026

¹⁶ FTAA, s85(1) and (3).

¹⁷ Legal submissions, paragraph 13.