

BEFORE THE PANEL CONVENER

IN THE MATTER of the Fast-track Approvals Act 2024 (**FTAA**)

AND

IN THE MATTER of an application by New Zealand Transport Authority
under section 42 of the FTAA for the Alternative to the
Brynderwyn Hills – Brynderwyn Hills Section

APPLICATION NO. FTAA-2603-1178

**MEMORANDUM FROM THE DIRECTOR-GENERAL OF CONSERVATION
SEEKING DIRECTIONS FOLLOWING UPLIFTING OF FIRST SUSPENSION**

20 October 2026

Department of Conservation Project Lead: Jenny Clafferty – [REDACTED]

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[REDACTED]	

Introduction

1. This memorandum is provided on behalf of the Director-General of Conservation (**D-G, or the Department**). It seeks directions from the Panel that the Department be afforded the opportunity to engage further in the Panel-led process before the Panel issues its draft decision on the application.

Opportunity for further engagement is sought

2. The Department seeks an opportunity for further engagement in the Panel-led process, in accordance with the requirement that the Panel determine the application in a just, as well as timely, manner.
3. As outlined in its 7 October 2026 memo to the Panel, the Applicant will be filing, via its section 55 response, new information (including updated proposed conditions) arising from further technical work and the parties' good faith engagement during the Panel's suspension.
4. The Department is concerned that without directions to engage further, or a request for information (RFI) to it by the Panel, the Department will have no opportunity to provide expert technical advice to the Panel on this new information. The Department does not make the below points lightly. This request is made against the backdrop of a project that has very serious potential effects to ecological values, perhaps most notably the predicted loss of tens of thousands of Hochstetter's frogs. The Fast Track Approvals Act 2024 should not be used in a manner that avoids the Panel ultimately receiving the best available information before deciding if the project adequately addresses the significant negative adverse effects in order to be granted.
5. The information the Department and its technical advisers have been able to comment on to date is incomplete and, with respect, has been substantially incomplete from the point of filing (a point raised in concern by the Department when attending the first Panel Convenor conference to set the Panel up). Given the recent lengthy suspension, the Department expects the additional information the Applicant will provide in its section 55 response will be substantial, yet there has been no opportunity to comment on the material once filed with the Panel. The Department does not consider it a just process if there is no opportunity for the Department to engage further with the material for the benefit of the Panel, including the updated proposed

conditions the Applicant has indicated it is filing as part of its section 55 response.

6. By way of example:

- a) The Department is expecting the Applicant to put forward new information on additional release sites for Hochstetter's frogs, as a result of further work done during the suspension. That work has been assisted by Dr Burns who is the Department's expert technical adviser on Hochstetter's frogs, and who has provided a statement of advice as part of the Department's section 53 comments.¹
- b) The location of the Hochstetter's frog release sites (including maps) is information that was required to be included in the Applicant's application under clause 2(1)(h) of Schedule 7 to the Act. Had this information been included in the application, Dr Burns would have had the opportunity to include expert advice on the suitability or otherwise of these sites in his report under section 51 and/or section 53 of the Act.
- c) There is also outstanding information on spoil management and alternative methods for treating waterways within the indicative alignment, and the implications of those different methods, which the Department requested during the suspension. The Applicant has advised the Department that this information will be provided as part of its section 55 response.²

7. The Department has therefore been unable to comment on the above information, as well as the significant amount of other missing information detailed in the Department's technical experts' reports forming part of its section 53 comments.

8. In addition, as the Applicant has not shared any updates to its proposed conditions to date. The Department's anticipates that many of its comments on the proposed conditions as set out in its section 53 comments and the attached technical reports will either be redundant, or will not address matters

¹ Dr Burns has also provided an earlier statement of advice as part of the Department's section 51 report. A further statement of advice is appended to the Department's section 53 comments.

² This includes factual information included in the Opening Legal Submissions on behalf of the Applicant at [30] which is not currently before the Panel, and which the Department has requested, but not received, from the Applicant.

covered off in the new information the Applicant is going to provide in its section 55 response.

9. A substantial amount of new material is therefore expected to be provided by the Applicant after the parties' opportunity to comment has been exhausted. The Department anticipates, as indicated by the Panel earlier, that a further RFI may follow receipt of the Applicant's section 55 response and after the Panel's independent advisers' technical reports on hydrogeological, freshwater ecology and stormwater matters have been made available.
10. As matters stand however, the Department's only formal opportunity to input into the Panel-led process from here relates solely to commenting on the Panel's draft conditions issued with its draft decision (assuming a decision to grant is made).

No assurance of further engagement in the Panel process

11. During the suspension the Department sought assurances from the Applicant that it will ensure the Department has the opportunity for further engagement with the Panel in respect of the new information it is going to provide as part of its section 55 response.
12. While acknowledging the Department's concerns, the Applicant has committed only to representing the Department's position to the Panel in light of further offline engagement where it considers appropriate. For example, where the Department and the Applicant continue to engage on specific wording changes, the Applicant would submit any agreed changes to the Panel.
13. For large projects such as this one, with the very significant adverse effects, the Department's usual experience is that there is an open iterative process. This approach is not proposed here.

Request for directions (or RFI) enabling further engagement

14. Clause 10 of Schedule 3 to the FTAA requires the Panel to regulate its own procedure as it thinks appropriate, without procedural formality, and in a manner that best promotes the just, as well as timely, determination of the approvals sought in a substantive application.
15. The requirement for a just process incorporates the element of natural justice.

16. The Department seeks the opportunity to directly engage with the Panel following the provision of the information and further steps set out in paragraphs 5 to 11 above. This includes the ability at the very least to provide comments on the Applicant's updated proposed conditions, before the Panel finalises its draft conditions.
17. The Department would also be agreeable for its technical advisers to engage in expert conferencing or hot tubbing if the Panel considered this to be of benefit.



Shona Bradley /Jeremy Prebble
Counsel for the Director-General of Conservation

20 October 2026