

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 and Applicant

Memorandum of counsel on behalf of the New Zealand Transport Agency Waka Kotahi

Dated: 8 June 2026

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MEMORANDUM OF COUNSEL ON BEHALF OF NEW ZEALAND TRANSPORT AGENCY WAKA KOTAHI

- 1 This memorandum is filed on behalf of the New Zealand Transport Agency Waka Kotahi (NZTA) in relation to its notices of requirement (NORs) and applications for resource consents and archaeological authorities (together, *Application*) for the North West Rapid Transit Project (NWRT or *Project*).
- 2 This memorandum:
 - 2.1 outlines NZTA's concerns with the Auckland Council (*Council*) comments; and
 - 2.2 requests a brief suspension of the Application.

NZTA'S CONCERNS WITH THE COUNCIL COMMENTS

- 3 NZTA is concerned that the Council comments do not align with NZTA's understanding of the Council position and will not assist the Panel to make a good decision
- The Council comments do not align with the Council position**
- 4 The Project is a strategic priority for both NZTA and Council. The Project is supported by the Government Policy Statement on Land Transport 2024-2034, Auckland Regional Transport Plan 2024-2034, Auckland Rapid Transit Pathway,¹ the Auckland Deal,² and Auckland Council Transport Policy Statement.³ Neither the extent nor the substance of the Council comments are consistent, in NZTA's view, with the priority and support given to the Project by Council.
- 5 NZTA has engaged extensively with Council throughout the Project development, including with the Mayor and Councillors, Executive Leadership Team, Property / Land Advisory Team, Growth Transport and Infrastructure, Healthy Waters, Service Investment and Programming Policy Department, Tātaki Auckland Unlimited and Auckland Urban Development Office. Council is represented on the Project Steering Committee and has been involved in the Project's Urban Integration Working Group and Transport Operations Working Group.⁴

¹ Part 3 – Project Benefits, section 4.

² The Auckland Deal, which includes a commitment from Central Government and Council to "*progress the delivery of Auckland's Rapid Transit Network, including as initial priorities progressing the Northwest Busway...*" with an overarching principle that each party will "*seek to achieve value for money in relation to the Initiatives being progressed*": Auckland Deal, clause 1.5 and Schedule 1(4) and clause 2.2(d).

³ See www.aucklandcouncil.govt.nz/content/dam/ac/docs/plans-projects-policies-reports-bylaws/auckland-council-transport-policy-statement-2026.pdf, page 27.

⁴ Part 2 - The Project, section 6.3.1.

- 6 Throughout that engagement, Council support and encouragement has been welcomed by NZTA and the Project team. Against that background, the comments received from Council appear to reflect the views of a part of the Council and not the Council as a whole.

The Council comments do not assist the Panel

- 7 Turning to the substance of the Council comments, NZTA considers they do not bring a proportionate or contextual eye to bear on the nature, extent or significance of this Project's environmental effects. As set out in the legal submissions lodged with the Application:

...the Project's impacts will be quite different from those associated with many NZTA projects, for two reasons:

46.1 First, the Project will be located adjacent to, and in some locations within, the existing SH16 – its impacts are therefore more akin to a road widening project, than a project creating a new road corridor.

46.2 Secondly, the Project is situated in a highly modified urban environment (ie a 'brownfields' location). The Project Area has already been subject to significant modification, both in built form and landform modification – any remaining natural values are very limited. Consequently, many of the impacts that are typically important to decision-making on NZTA projects, such as landscape/visual and ecology impacts, are less important for this Project.

- 8 The Council comments mention the significant national and regional benefits the Project will bring to Aucklanders only in passing. The alignment those benefits have with Council's own goals and priorities does not appear to have been given due weight. This approach contrasts with the Council's public statements in support of the Project, including the following statement from Mayor Wayne Brown:⁵

Auckland Mayor Wayne Brown, speaking at the standup, said doing the work bit by bit was a smart plan.

"There's not endless money in this country and I'm interested in keeping the cost down. We're going to save money this time."

The project would help growth in the north west of Auckland, Brown said: "It's what Aucklanders have been asking for, it's what I've been advocating for on their behalf, and it's a signal that Wellington is listening to Aucklanders' needs."

⁵ Radio New Zealand 'Chris Bishop makes announcement on Auckland's Northwest Rapid Transit' dated 23 April 2025, available [here](#). See also: Radio New Zealand 'Auckland mayor glad government is 'finally listening' on transport' dated 17 August 2023, available [here](#) (which sets out the views of Mayor Wayne Brown, Waitākere Councillor Shane Henderson and Henderson-Massey Local Board chairperson Chris Carter); and the support for the Project set out in many of the Local Board resolutions (Council comments, Appendix 2).

- 9 The Council comments appear to have been formulated as if they were a s42A RMA report, rather than a comment prepared in accordance with the FTAA framework. The contrast between the Council's functions under the RMA and FTAA was highlighted in the first decision under the FTAA (*Ports of Auckland*):⁶

[95] Our principal point is that unlike section 42A reports prepared under the RMA, it is the Council, not individual Council specialists, who are invited to comment under section 53 FTAA. In that regard, while comments from technical specialists will obviously inform the Council's comments, the opinions of those specialists need only be provided to the extent they inform the comments Council wishes to bring to our attention.

[96] In this instance, a number of the comments provided by Council's technical specialists were just that - "comments" - that were of a very general nature. It would have been of more assistance to us if the Council had curated those comments into a concise summary of the matters that the Council considered to be material to our decision-making and how Council proposed matters in contention could / should be addressed...

- 10 The Council comments also do not appear to have been correctly informed by the FTAA framework. For example, the Planning Memo asserts that the "*no more onerous than necessary*" test requires that "*the recommended conditions are traceable to adverse effects*". That is simply part of the standard RMA test, and does not reflect the modification the FTAA makes to that test.⁷ The NOR and consent conditions proposed in the Council comment reflect that mischaracterisation.⁸
- 11 Finally, the Council's comments do not acknowledge NZTA's role as a statutory agency that is responsible for deploying significant public funds to deliver significant public benefit.⁹ NZTA is not a profit-motivated private developer, relying on public infrastructure. It is a public agency providing infrastructure that central and local government agree meets a priority need for Auckland. As noted above, the Project will deliver infrastructure to support public transport services for Aucklanders desired by Council and AT.

SUSPENSION REQUEST

Suspension request

- 12 As a result of the concerns set out above, NZTA considers time is necessary to work with Council to ensure that alignment within the Council, and with NZTA, in relation to the Project is reflected in

⁶ Expert Panel decision on the Bledisloe North Wharf and Fergusson North Berth Extension, dated 21 August 2025.

⁷ Planning Memo, paragraph 259-260.

⁸ We note that consent conditions have been proposed by the Council technical specialists, but have not been addressed by the Council planners.

⁹ Statement of Evidence of Emma Fisk, dated 3 June 2026 (Attachment J to NZTA's response to the first tranche of comments), paragraphs 8-11.

coordinated comments that assist the Panel. Once that alignment is achieved, NZTA will look to organise a conference with Council (as suggested at paragraph 264 of the Council's planning memorandum) to address issues of mutual concern, and to discuss conditions.

- 13 Accordingly, NZTA requests that the Panel suspend processing of the Application in accordance with s64 FTAA.

Implications of suspension

- 14 The Panel Conveners' guidance on FTAA suspensions directs Panels to consider the implications of any suspension that may be granted, and sets out matters that should be addressed in a suspension request.¹⁰ These are addressed below.

Whether all tasks and workstreams that comprise "processing" need to be suspended:

- 14.1 NZTA's position is that not all tasks and workstreams need to be suspended, as set out below.

Whether there are previously scheduled tasks or procedural steps that should be permitted to proceed:

- 14.2 NZTA considers the suspension should not impact the deadlines for comments on the Application of 16 June for additional Westgate Shopping Centre invitees (Minute 6 and Minute 9) and 22 June for the Minister of Defence (Minute 9). Similarly, NZTA's deadline to respond to those comments (5 working days) should not be affected.
- 14.3 If the suspension extended those deadlines, those invitees would have more than 20 working days to comment on the Application – longer than other persons invited to comment. In our submission, that outcome would potentially create natural justice issues.
- 14.4 On the other hand, we submit that retaining the existing deadlines for comments is consistent with the time being granted to those invitees to ensure they had the legislated 20 working days to comment on the Application, not to comment on NZTA's response to other comments. NZTA should not be put to the task of responding to comments that address content in NZTA's response to comments from another party.
- 14.5 In addition, NZTA indicated in its memorandum of counsel dated 29 May 2026 that it would file legal submissions addressing legal issues that have arisen since lodgement by 22 June. Assuming the suspension request is granted, we now

¹⁰ Panel Conveners' guidance on suspensions under the Fast-track Approvals Act 2024, dated 24 October 2025, available [here](#).

intend to file these legal submissions at the resumption of the processing of the application.

What the cost recovery implications are of permitting some processing tasks or steps to proceed during a suspension:

- 14.6 NZTA agrees that costs can continue to be recovered by the EPA (in relation to the Panel's decision-making role and EPA's administrative role) during the suspension. NZTA also agrees that Council's reasonable costs during the suspension can be recovered in relation to any engagement with NZTA to address the matters raised in this memorandum. NZTA anticipates addressing this topic with Council also.

Whether the Panel wishes to continue with its evaluation or decision-making work during a suspension:

- 14.7 NZTA agrees to the Panel continuing with its evaluation of the Application during the suspension. However, we consider it would not be appropriate for the Panel to initiate any new procedural steps during the suspension (eg issuing a new request for information or directing expert conferencing or mediation).

- 14.8 We also note that the suspension may allow the Panel Chair additional time to resolve the matters raised in NZTA's 3 June 2026 memorandum.

Whether the EPA administration staff are able to continue supporting the Panel with administrative tasks:

- 14.9 NZTA agrees to the EPA continuing to support the Panel with administrative tasks during the suspension.

Request for directions

- 15 Accordingly, NZTA respectfully requests that the Panel direct:
- 15.1 processing of the Application be suspended in accordance with s64 FTAA from 9 June 2026 for 10 working days; and
- 15.2 NZTA file a memorandum on or before 23 June requesting that processing be resumed in accordance with s65 FTAA, or requesting a further suspension.

Dated 8 June 2026



Paula Brosnahan / Nicola de Wit
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