

under: the Fast-track Approvals Act 2024 (*FTAA*)

in the matter of: applications for resource consents, notices of requirement, wildlife approvals and archaeological authorities by the New Zealand Transport Agency Waka Kotahi to develop a section of a road (being SH1) and associated infrastructure between Te Hana and State Highway 15 (Port Marsden Highway).

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

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

Dated: 14 July 2026

Reference: Paula Brosnahan (paula.brosnahan@chapmantripp.com)
Rebecca Tompkins (rebecca.tompkins@chapmantripp.com)

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

- 1 This memorandum is filed on behalf of the NZ Transport Agency Waka Kotahi (*NZTA*) in relation to its substantive application for notices of requirements (*NORs*), resource consents, archaeological authorities, and wildlife approvals (collectively, the *Application*) for the Brynderwyn Hills section of the Alternative to the Brynderwyn Hills project (*Project*).
- 2 The purpose of this memorandum is to provide procedural suggestions to assist the Panel in its consideration of the *Application*. Specifically, this memorandum sets out NZTA's preferred approach for:
 - 2.1 The Panel's site visit;
 - 2.2 NZTA's preferred decision timeframe;
 - 2.3 The timing of requests for information (*RFIs*);
 - 2.4 Expert conferencing (if any);
 - 2.5 Alternative dispute resolution (if any);
 - 2.6 Cultural issues hui (if any); and
 - 2.7 Closing legal submissions and comments on the draft decision and conditions.
- 3 A table setting out NZTA's proposed process and timing is included as **Appendix A** to this memorandum.

SITE VISIT

- 4 NZTA understands the Panel is intending to undertake a site visit on or either 3, 5 or 6 August (date to be confirmed). NZTA looks forward to facilitating the visit and can make Project Team members available to accompany the Panel (if desired) to assist with orientation.
- 5 NZTA understands the Panel will advise if there are any specific locations it wishes to visit. If of assistance to the Panel in identifying locations of interest, NZTA can provide a list of locations that it recommends the Panel visit to the EPA's Application Lead.
- 6 NZTA will otherwise liaise with the EPA's Application Lead regarding arrangements for the Panel's site visit.

NZTA'S PREFERRED DECISION TIMEFRAME

- 7 As noted by the Panel during the overview conference, funding for Project procurement has not yet been secured. NZTA wishes to clarify that the absence of funding, at this stage, does not have any bearing on NZTA's desire to obtain the approvals for the Project this year.
- 8 For major projects it is standard practice to ensure consents have been obtained to provide certainty for future procurement and construction funding applications.
- 9 NZTA remains of a view, for the reasons set out in the memorandum of counsel dated 11 June 2026, that a decision on the Project approvals is needed this year, to secure procurement funding, complete procurement and ensure the Project is constructed before the current SH1 through the Brynderwyn Hills reaches the end of its useful life.

RFIS AND COMMENT PROCESSES

- 10 NZTA appreciates the Panel will need to ask and receive responses to RFIs in a timely manner. NZTA is happy to receive and respond to RFIs as required throughout the Application process.
- 11 However, NZTA wishes to ensure that the RFI process is procedurally efficient for all involved, and results in a reasonable number of comprehensive responses to assist the Panel in its consideration of the Application.
- 12 NZTA therefore seeks to avoid a situation where RFIs and comments 'cross over' one another. This situation could result in multiple and potentially repetitive responses to the same or similar points raised by both the Panel and commenters which the Panel and commenters will then have to navigate. It is also likely to result in more RFIs than would otherwise be the case, as the Panel may need to issue further RFIs following up on matters raised in the comments. Some RFIs and responses may also ultimately become redundant or unnecessary as they will be answered by responses to comments.
- 13 In the interests of procedural efficiency and clarity for all involved, and to ensure its responses to RFIs are as comprehensive and as helpful as possible for the Panel, NZTA asks that:
 - 13.1 RFIs not be asked during the comments period, except for on confined / limited matters (eg matters of factual clarification); and
 - 13.2 RFIs not be asked during the response to comments period.
- 14 This approach will mean the Panel will be able to consider comments and NZTA's responses to those comments collectively, and then issue RFIs informed by, and with the benefit of, those comments and responses.

EXPERT CONFERENCING

- 15 NZTA is open to the Panel directing expert conferencing or facilitated meetings between the parties if it considers it would assist the process.
- 16 If the Panel wishes to engage expert conferencing, NZTA respectfully requests that any conferencing:
 - 16.1 Be scheduled in the period immediately after responses to comments, while the Panel is considering comments and responses and whether further RFIs are required. The Panel could then consider joint witness statements at the same time as any responses to further RFIs. This scheduling would allow time for the Panel to consider those statements and RFI responses, and issue another round of RFIs prior to releasing its draft decision, should the Panel wish to do so. See the indicative process and timing suggestions included in **Appendix A**;
 - 16.2 Have a clear, agreed agenda, confined to appropriate matters of technical expert opinion as relevant to the participants' areas of expertise, prepared by the participants in advance of the conferencing;
 - 16.3 Involve the appropriate expert participants only (ie objective, appropriately qualified and independent experts) with clear parameters as to their areas of expertise and agenda items of relevance;
 - 16.4 Include a requirement for participants to prepare and lodge a 'will say' statement in advance of the conferencing (unless expert evidence/statement has already been lodged);
 - 16.5 Include a requirement for joint witness statements to be signed during the conferencing by the participants. The joint witness statements should clearly set out the points of agreement and points of disagreement, and reasons, in order to assist the Panel in its decision-making role; and
 - 16.6 Have an independent third-party facilitator.
- 17 NZTA considers the above requirements will ensure an efficient conferencing process, in compliance with the Environment Court Practice Note 2023, and increase the likelihood of a clear conferencing outcome of most benefit to the Panel.

ALTERNATIVE DISPUTE RESOLUTION

- 18 NZTA is open to the Panel directing mediation if it considers it would assist the process.
- 19 In the event the Panel directs a mediation, NZTA respectfully requests that the Panel does not combine expert conferencing and any mediation. NZTA's experience is that sessions that attempt to

combine these different purposes result in inefficiency and confusion around outcome, process, and party attendance.

- 20 NZTA also requests that any mediation:
- 20.1 Be scheduled after any joint witness statements and responses to further RFIs are available;
 - 20.2 Have a clear, agreed agenda prepared in advance of the session, by the participants;
 - 20.3 Be attended by the parties' representatives (including because cost is a fundamental component to be considered before any conditions could be agreed), their legal counsel and planning experts only; and
 - 20.4 Have an independent third-party facilitator.
- 21 NZTA considers the above requirements will ensure an efficient mediation and increase the likelihood of providing clear outcomes that benefit the Panel.

CULTURAL ISSUES HUI

- 22 NZTA understands that the Panel is considering a cultural issues hui. NZTA will accept the Panel's decision in this regard and agrees there may be benefit in such a hui, including to assist the Panel in understanding any potential overlap in areas of interest.
- 23 However, NZTA considers that a decision on whether or not a cultural issues hui should be held would best be made after the completion of the comments and response to comments period.

CLOSING LEGAL SUBMISSIONS AND COMMENTS ON THE DRAFT DECISION AND CONDITIONS

- 24 To assist the Panel, NZTA intends to provide closing legal submissions to the Panel prior to the release of its draft decision and (assuming the Panel is minded to grant the Application), conditions under s70.
- 25 NZTA wishes to provide its closing submissions at the appropriate time so as to best inform the Panel's decision-making and draft conditions. To this end, NZTA would welcome any indication of timing of the Panel's draft decision and draft conditions, when the Panel is in a position to do so.

CONCLUSION

- 26 NZTA wishes to extend its thanks to the Panel for the opportunity to provide suggestions as to the processing of the Application, and looks forward to receiving the Panel's directions in due course.

Dated 14 July 2026

A handwritten signature in blue ink, appearing to read 'Rto', is positioned above a horizontal line.

Paula Brosnahan / Rebecca Tompkins
Counsel for the NZ Transport Agency Waka Kotahi

APPENDIX A – SUGGESTED PROCESS AND TIMING

Indicative date/timing	Process step	Comments
30 June	Panel commenced work	
30 June – 15 July	Panel considering application. 7 July: Project Overview Conference. First tranche of RFIs and responses (as required) – limited in nature so as to not cut across comments/response process. Panel considering responses to first tranche of RFIs.	<i>Accounting for Matariki on Friday, 10 July</i> Pre-comment RFIs collectively referred to as “first tranche” – anticipated to be multiple RFIs at different times in the process.
15 July – 12 August	Comments period. Second tranche of further RFIs.	Decision 90WD after this point. During the comment period, RFIs collectively referred to as “second tranche” – anticipated to be multiple RFIs at different times in the process. Limited in nature so as not to cut across comments. Panel consideration of responses to RFIs to continue throughout this period.
12 August	Comments close.	
13 - 19 August	Applicant response to comments period. No further RFIs during this period.	
19 August	Applicant response to comments provided.	

Indicative date/timing	Process step	Comments
20 August – 6 November	Panel considers comments and Applicant response to comments. Third tranche of RFIs asked and responded to. Expert conferencing (if required). Mediation (if required).	Post-comment RFIs collectively referred to as “third tranche” – anticipated to be multiple RFIs at different times.
6 November – 26 November	Fourth tranche of RFIs asked and responded to. Closing legal submissions lodged.	Post expert conferencing/mediation RFIs collectively referred to as “fourth tranche” – anticipated to be multiple RFIs at different times. Closing legal submissions – date TBC.
TBC – 26 November	Draft decision and conditions released.	
TBC – 4 December	Participant comments on draft conditions.	
TBC – 11 December	NZTA response to comments on draft conditions.	(Response to comments due five working days after participant comments on conditions due).
17 December	Final Panel decision released.	90WD after comments closes.