

19 August 2026

North West Rapid Transit Expert Panel
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Environmental Protection Authority

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Kia ora Mujahid,

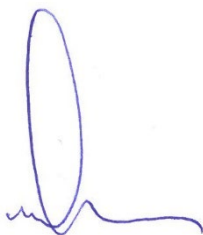
**RESPONSE TO INVITATION TO COMMENT UNDER SECTION 70 FAST TRACK APPROVALS
ACT – NORTH WEST RAPID TRANSIT**

Further to the invitation to comment received on 12 August 2026, Auckland Council (Regulatory) has reviewed the draft designation and resource consent conditions and sought specialist input and legal advice where required.

As requested in the Panel's Minute 18, suggested changes have been tracked in the condition sets, and reasons either added as 'comments' where brief, or in Attachment 1 of this letter where further explanation is considered necessary.

Discussions have also been held with NZTA which have resulted in alignment on some of the changes sought as referenced in the comments.

Kia pai tō rā



Warwick Pascoe | Principal Project Lead
Auckland Council | Premium Resource Consents



ATTACHMENT 1 – REASONS FOR REQUESTED CHANGES TO CONDITIONS

We start this section with a combined comment on condition 1A, which then splits out into respective comments on designations and resource consents separately.

Condition 1 A – Designation and Resource Consent Conditions

1. Council's position on the "no Condition 1" approach, as captured in Attachment 1 to the Joint Memorandum of Counsel dated 8 July 2026, differed between the designations and resource consents. It was agreed for the designations but not agreed for the resource consents. Council understands the Panel is not proposing a 'traditional' condition 1 for the consents and does not take that further, other than to note that the position was not agreed between NZTA and Council.

Council queries whether proposed condition 1A operates as the Panel intends. The second sentence of each condition deems work to be consistent with the Indicative Design drawings, but everything asked about that work relates to compliance with other requirements rather than to the drawings themselves.

For the designation, the question is whether the work complies with the balance of the conditions and has been through the outline plan process. For the consents, it is whether the work sits within the designation boundary and complies with the conditions and any certified management plan. Work satisfying those questions is deemed consistent without any comparison against the Indicative Design, however far it departs from the drawings.

A related point is that the second sentence sets out one route by which work will be treated as consistent, but says nothing about work that does not take that route. Work falling outside it, including because a single unrelated condition has not been met, would be subject to the bare obligation in the first sentence, measured directly against the drawings (which may be the Panel's intention).

It would assist if the Panel could confirm whether its intent is that future processes, being outline plans and management plans, have regard to the Indicative Design drawings, or that built work be measured against them.

If the Panel retains its current wording, Council suggests the following amendments:

- On the designation, "approved" does not reflect the territorial authority's role under s 176A of the RMA, which is to review an outline plan and, where it considers it appropriate to do so, request changes and make recommendations. It is the Requiring Authority which decides whether to accept those recommendations and issue a decision. Council suggests the trigger instead be tied to completion of the process, along the lines of:

"... and the outline plan process under s 176A of the RMA has been completed for those works, or the requirement for an outline plan has been waived under s 176A(3A)".

Council would read completion as meaning that it has had the opportunity to review the outline plan and make any recommendations, that the Requiring Authority has responded, and that any further statutory steps in respect of the outline plan have concluded.

- The Panel may wish to consider "generally consistent" in the first sentence, which may better reflect the less directive intent described at [688]. On officers' understanding of the case law, "generally" acts as a qualifier permitting minor variation to the activity described, but does not permit it to be undertaken in a materially different way (*Hood v Dunedin City Council* [2017] NZEnvC 42 at [39]–[40], a case concerned with the phrase "generally in accordance with"). The Environment Court described the purpose of the phrase as giving the applicant a little "wriggle room", but not so as to disadvantage a person who has chosen not to become involved based on the plans they were shown (*Hood* at [42]). Council notes that "consistent with" has itself been construed as a less directory requirement than "give effect to", with the High Court adopting the Oxford English Dictionary definition of "consistent" as "agreeing or according in substance or form; congruous, compatible" (*All Aboard Aotearoa Inc v Auckland Transport* [2022] NZHC 1620 at [123], in a different statutory context).

Potential alternative

2. If the Panel's intent is instead to secure a contextual link to the Indicative Design, the Panel may wish to consider an alternative approach which ties the drawings to the process by which works are authorised under each instrument (designations/consents), rather than imposing a standalone obligation measured against the drawings themselves.

Because the designations and the consents are administered through different processes, the two conditions would need to be framed differently.

For the designations, the natural vehicle is the outline plan process, so that any outline plan submitted under s176A of the RMA identifies any material departure from the Indicative Design drawings and explains how the effects of that departure remain within the envelope of effects secured by the conditions.

There is no equivalent process for the consents, where the drawings would instead need to be linked to the management plans certified under the conditions, recognising that those plans are topic-specific and would only address departures relevant to the matters each plan covers.

This would preserve the linkage identified at [687] and [688] of the draft decision without creating a freestanding compliance obligation measured against drawings that are by design indicative. Council would be happy to assist the Panel with drafting along these lines if that would be of assistance.

DRAFT DESIGNATION CONDITIONS

3. AC designation planners have inserted tracked comments into the document titled 'Auckland Council Comments on Panel Draft Designation Conditions (19.08.2026)', included as Attachment 2 to this letter.

These comments on the designation conditions are summarised as follows:

- Require 12 separated sets of designation conditions to form part of the Panel's condition.
 - Administrative [Notice of Requirement(s) overview]: a note with respect to splitting of conditions.
 - Condition 1A Consistency with drawings: Request inclusion of "generally" to the wording "in a manner consistent with" to be "...in a manner generally consistent with...". Request amendment to clarify outline plan of works process, see explanation under paragraphs 1 and 2 of this attachment (above).
 - Condition 3 Outline Plan(s) and Management Plans: AC comment on management plans removed.
 - Condition 15B Height-in-relation-to-boundary: insertions to clarify wording.
 - Condition 23 Built Heritage Construction Management Plan: to include reference to outline plan process.
 - Condition 26 Landscape Planting: to simplify wording of sub-clause (g).
 - Condition 27 Tree Protection Methodology: to include reference to outline plan process.
 - Condition 27A Geotechnical Management Plan: Comment clarifying development engineer's intent in referencing two example areas in memo, with a request that the condition apply to all designation areas (see explanation below). Also, request a link that the management plan be provided at time of outline plan.
 - Watercare Services Limited – see Attachment 4 to this letter
4. The following points expand on selected AC comments on draft designation conditions and additional matters.

12 Separated Sets of Designation Conditions

5. The council requests that the designation conditions be separated into the 12 respective designation-specific sets as part of the Expert Panel's final decision. If the conditions remain consolidated, Council will be obliged to incorporate them into the AUP in that form, requiring subsequent administrative amendments to separate the conditions across the relevant designations. This would add unnecessary complexity, time and cost to plan implementation.
6. Council's planning technical team would welcome the opportunity to undertake a final administrative review of the 12 sets of designation conditions prior to release of the final decision, to identify any formatting or templating issues that may otherwise delay incorporation into the AUP

Watercare Services Limited – Water and Waste Water Management Plan

7. Watercare Services Limited have provided comments with regard to their original management plan condition sought, this is included as Attachment 4 to this letter.

AC comments on Panel Draft Designation Conditions:

8. Transport Conditions [16A; 16D; 16E; 16F] - Amendments and additional conditions to manage transport effects raised by other invited parties:

- AC note the panel's inclusion of conditions [16A; 16D; 16E; 16F]
- AC does not comment on the inclusion of these conditions as they relate to matters raised by other invited parties. We consider this a matter between those parties, NZTA and AT (through NZTA) to comment on as NZTA is the Requiring Authority that will be obligated to comply with the conditions.

9. Condition 27A Geotechnical Management Plan:

i. Designations subject to Designation Condition 27A:

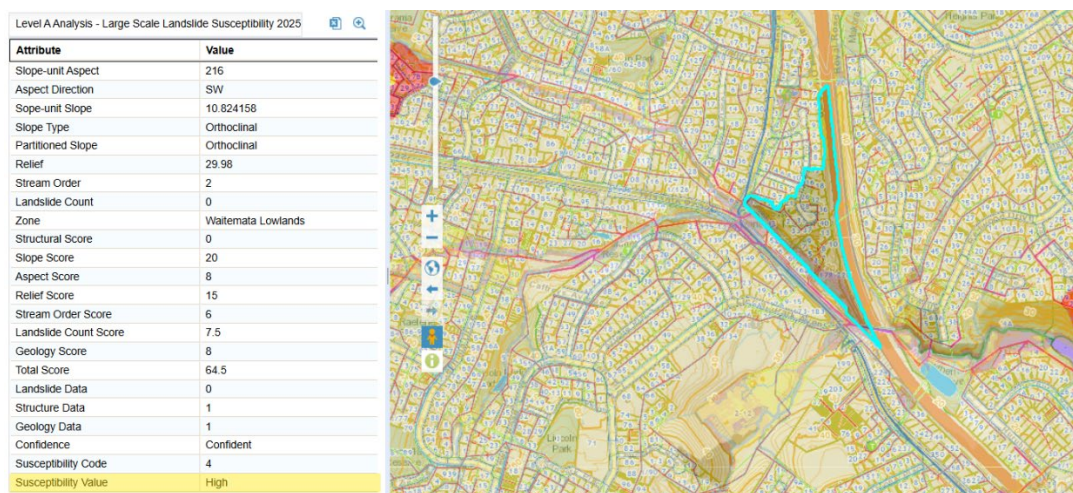
AC planners note the Panel has some concern with respect to AC's recommendation that the Geotechnical Management Plan condition 27A apply to all designations [p.244]. As a result, the Panel focused on those designation areas (Waterview interchange and Arch Hill Reserve) identified in Mr Hall's technical memo and conclude condition 27A should be limited to NoR 9 and 10.

The following comments are provided by Mr Hall with respect to paragraphs 244-248 of the draft decision:

"My report only provided example locations where the as yet undesigned works may result in geotechnical effects. It is not intended to be an exhaustive list, as I believe it is the applicant's role to identify and consider all actual and potential effects.

Given we are not reviewing the actual design, we cannot give due consideration of where all actual or potential effects may arise. Hence why I recommended that the condition be applied to all designations.

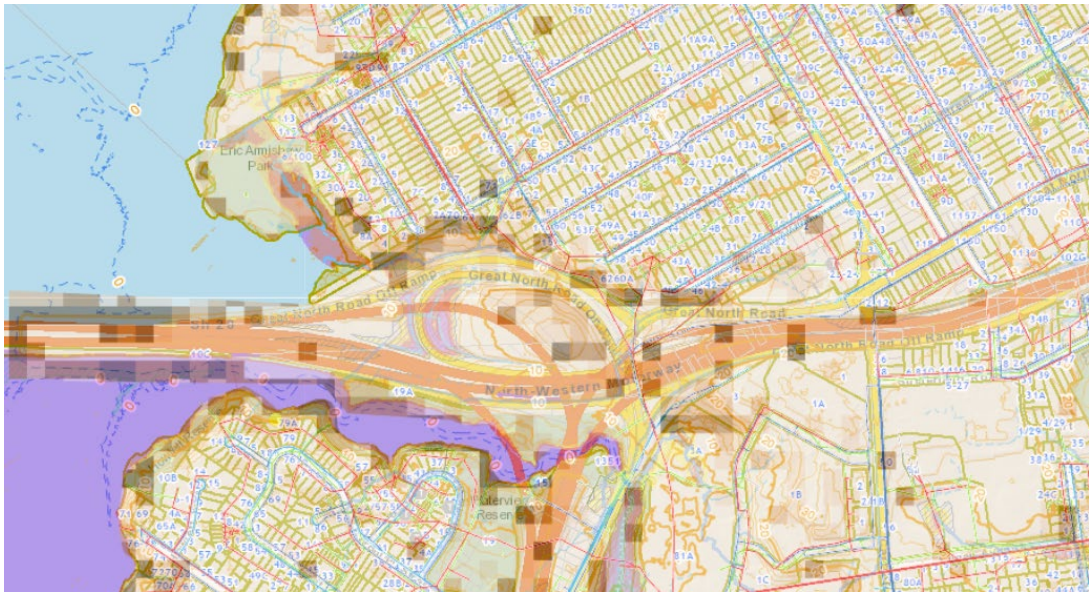
Also, I expect NZTA will have geotechnical input across all stages of the project, such that preparation of a GMP would be undemanding.



There are a large number of Shallow Landslide Susceptibility points across the alignment. As per my memo, these most likely reflect cuts and embankments along the existing motorway, or with respect to stream gullies, however it's again not for me to assess each of these to decide what effect the works may or may not have on adjacent land, buildings or infrastructure due to these potential hazards.

I believe limiting the GMP to only the Arch Hill Scenic Reserve is not appropriate, as the area of concern extends beyond only the reserve.

At the Waterview interchange, there is evidence of geotechnical hazards and steeper slopes, as per Council's GIS below. However, whether this is of any concern would only become apparent with the detailed design. This could be a location where a Geotechnical Risk Review at design stage would resolve the issue [as to whether a full Geotechnical Management Plan is required], and we can easily move forward.



- ii. When would the Geotechnical Management Plan under Designation condition 27A be provided to Council:

Mr Hall provides the following comments:

“The information should be provided at the time of the OPW. It is unlikely that a related Engineering Approval would be required, as this would only cover works on Council or WSL assets, and Building Consents may not be required due to exemptions. Engineering Approvals and Building Consents are also under different legislation, and trying to mix and mingle between different legislation often does not ensure the requirements of each are met.

My understanding of OPW's is that we can only suggest changes, and if these [the OPW] are not followed then our only course of appeal is to apply to the Courts, which is a significant limitation on Council. Hence, we are looking to ensure effects are managed but not certifying or peer reviewing any Geotechnical Report under this process.”

- iii. AC designation planners conclude the following:

- Request designation condition 27A apply to all designations – AC engineer is willing to consider re-drafting of condition to enable a “geotechnical risk review” alternative pathway to enable the Requiring Authority at detailed design stage to confirm areas where full geotechnical management plan should not be required for a stage of works.
- Request designation condition 27A is amended to require the information be provided as part of the outline plan process. This was missed from AC's original drafting however

was anticipated to be provided to the Council through the wording of Mr Hall's assessment. Nonetheless, we consider it would inevitably be expected at the time of outline plan by the processing team as is relevant to inform the assessment of "any other matters to avoid, remedy, or mitigate any adverse effects on the environment" under 176A(3)(f) of the RMA.

Other – Draft Decision

10. Outline Plan(s) and Management Plans condition 3:

- AC note paragraph [247] of the Panel's draft decision refers to designation condition 3 as a certification condition. Designation condition 3 as adopted/drafted by the Panel, and as originally recommended does not include a certification requirement.
- Designation condition 3 identifies, without limitation, the management plans that may be required as part of an OPW submission. Council may review that information through the OPW process and provide recommendations to the Requiring Authority, which may choose whether or not to adopt those recommendations.

11. In relation to paragraph [p.323, bullet point 2]:

"...The Panel notes, by reference to publicly available maps relating to PC120, that the practical effect of the Applicant's HIRTB condition would appear limited to confined parts of the southern end of NoR 2, where it abuts Hobsonville Road and Orell Avenue (to the east) and Westgate Drive (to the west), where a height standard of 34.5m has been proposed. That is something of a moving target given that PC120 is about to be renotified (although we understand these heights are to be retained in the re-notified version)..."

- On 21 July 2026, the Policy, Planning and Development Committee resolved that Council amend PC120 to remove the additional 10 and 15 storey heights proposed for those walkable catchments located beyond 10 kilometres from the City Centre. The resolutions from this Committee giving directions to staff are publicly available. We also understand NZTA are going to clarify this original reference to a 30m HIRB was in error.

12. Explanatory note - design process and open space management:

- The Council notes the Panel's comment at [323] of the draft decision that the purpose of the relevant conditions is sufficiently clear on their face, and that the advice note to the Form and Landscaping Statement condition captures the intent of the Explanatory note. The Council respectfully invites the Panel to reconsider the deletion of the Explanatory Note for several reasons:
 - a. First, the note imposes no obligation and creates no cost. It is expressly explanatory, and the enforceable requirements sit in the designation conditions. No issue arises in terms of s83 of the Fast-track Approvals Act 2024 as the note is not a condition, and the Council does not seek that it be treated as one. No prejudice to the Requiring Authority arises from its retention.
 - b. Second, the note records why the design-related conditions take the form they do. As the Panel records at [319], the conditions addressing CPTED, height in relation to boundary and the Form and Landscaping Statement were advanced as a package, alongside

amendments to the Landscape Planting condition, in lieu of the Council's originally proposed Urban and Landscape Design Management Plan and Parks and Community Facilities conditions, and as part of a collaborative approach described in the Explanatory note as a preface to the conditions. The Council's agreement to the deletion of its open space condition suite was given on the same basis: see [484] of the draft decision. The Council acknowledges that the advice note to the Form and Landscaping Statement condition addresses collaboration. It does not, however, convey the “two complementary mechanism” structure, the relationship between the design-related conditions, or the open space element.

- c. Third, the Panel has elsewhere given weight to the combination of a 25 year lapse period and the absence of a traditional "in accordance with" condition as reasons to build durable process into the conditions: see e.g. [195] and [707]. The same considerations support retaining a short statement of the framework's structure for the benefit of Council officers assessing outline plans, and delivery teams and contractors reading the conditions, including in 10 or 20 years' time, without the background the parties presently share.

DRAFT RESOURCE CONSENT CONDITIONS

13. AC resource consents planner has inserted tracked comments into the document titled 'Auckland Council Comments on Panel Draft Resource Consent Conditions (19.08.2026)', included as Attachment 3 to this letter. These comments on the resource conditions are summarised as follows:

- Commentary on initial NZTA feedback to Conditions 2 and 22A.
- Condition 1A Consistency with drawings: Request inclusion of “generally” to the wording “in a manner consistent with” to be “...in a manner generally consistent with...” see explanation under paragraphs 1 and 2 of this attachment (above).
- Conditions 23 and 24: amend to enable sufficient time for technical peer review, and consistency with Chapter E7 Unitary Plan scope of “buildings, structures and services”
- Additional Groundwater Conditions: to assist the Panel relative to the absence of an alternative suite of conditions.

14. With the exception on commentary on Condition 1A, which is set out in the first instance, the following points expand on selected AC comments on draft conditions and additional matters.

15. Conditions 2 and 22A:

- a) Condition 2 - NZTA has provided feedback seeking the amendment of (a)(i) as follows: “*be prepared ~~and implemented~~ in accordance with the relevant condition.*”

This is supported for the reasons given, that is: “*NZTA considers these words are not required in light of the Panel's addition of Condition 2(d).*”

- b) Condition 22A - NZTA has provided feedback seeking the amendment of this condition as follows.

Review condition

Under section 128 of the RMA the conditions of this consent may be reviewed by the Council at the Consent Holder's cost:

- (a) At any time within six months of commencing work on a stage of the Project; or
- (b) Otherwise, every two years on the anniversary of the grant of consent,

to deal with any adverse effect on the **coastal** environment which may arise or potentially arise from the exercise of this consent and which it is appropriate to deal with at a later stage. **This includes but is not limited to potential adverse effects on the coastal environment or surrounding structures.**

Having also reviewed AC specialist input and noting the extent in Schedule B to which the coastal permits can be exercised, these amendments are supported for the following reasons given by NZTA:

- a. *"NZTA notes that the Panel's draft decision says: "the proposed condition in this case is specific to effects on the coastal environment and surrounding structures" (paragraph 473). The draft condition is inconsistent with this statement. NZTA has proposed amendments to limit this condition to effects on the coastal environment.*
- b. *NZTA proposes deletion of "surrounding structures" as it is unclear why the Panel considers it might be necessary for the Council to review effects on surrounding structures given they are owned by NZTA."*

16. Groundwater Conditions [23] - Amendments and Additional conditions

- a) Condition 23 - In the absence of design drawings, as noted in paragraph 249 of the Draft Decision, or detailed design information, any summary technical note prepared under Condition 23(b) to address groundwater and settlement effects will require technical peer review. A minimum review period of 20 working days prior to construction is therefore warranted, consistent with the certification process in Condition 3.
- b) Condition 23 - Mr Simonds of Fraser Thomas Ltd, the AC's groundwater specialist, has recommended including the term "structures" within Condition 23. The reference to structures, alongside buildings and network utilities, is consistent with the term "buildings, structures and services" used in the Auckland Unitary Plan.
- c) Additional conditions - In relation to paragraph 250 of the Draft Decision and the discussion of alternative conditions, Mr Simonds has recommended seven additional conditions to assist the Panel in ensuring that settlement risks are appropriately identified and managed. These conditions are based on those agreed with Watercare Services Ltd for the Motions Collector Project (BUN60455222 / WAT60455334), a major wastewater pipeline extension to the Central Interceptor. Conditions 23 and 24 alone are considered inadequate.

17. Administration Matters

- a) It is noted that the definition of Site is reliant on a 'Schedule A' reference to the extent of coastal permits. This schedule is currently referred to as 'Schedule B'. AC highlights that in the event that Schedule A Indicative Design West and Indicative Design East is maintained, this definition will need to be amended accordingly.
- b) Condition 2b - To ensure that the summary technical notes required by Conditions 9, 11, 12, and 23 may be submitted as each stage is progressed to enable construction, AC recommends that Condition 2(b) be amended as follows:
 - (b) The Consent Holder may prepare management plans or plans or summary technical notes in parts or in stages to address specific activities or to reflect the staged implementation of the Project.