
Under	the Fast-track Approvals Act 2024 ('FTAA')
In the matter of	a substantive application under the FTAA for an alteration to an existing designation, resource consents, a wildlife approval, archaeological authorities and a complex freshwater fisheries activity, to construct, maintain and operate the Belfast to Pegasus Project
By	New Zealand Transport Agency Waka Kotahi Applicant

Memorandum of Counsel on behalf of New Zealand Transport Agency Waka Kotahi regarding the Applicant's response to draft conditions

Dated 3 July 2026

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To the Expert Panel

- 1 This memorandum is filed on behalf of the New Zealand Transport Agency Waka Kotahi ('**NZTA**') in relation to NZTA's application for approvals ('**Application**') to construct, operate and maintain the State Highway 1 North Canterbury – Woodend Bypass Project (Belfast to Pegasus) (the '**Project**').
- 2 This memorandum accompanies and forms part of NZTA's comments on the Panel's draft conditions for the Project. In particular, this memorandum:
 - a Describes the format of NZTA's comments on the draft conditions;
 - b Outlines the legal framework for the imposition of conditions under the FTAA;
 - c Discusses the Panel's removal of the phrase 'where practicable' in the conditions; and
 - d Discusses issues of scope.

Format of NZTA's comments on draft conditions

- 3 NZTA has prepared an updated set of conditions, which are at **Attachments 1 - 4** of this memorandum. The changes now sought by NZTA are shown using blue underline and ~~strikethrough~~. The red underline and strikethrough used by the Panel has been retained, so the Panel is able to see the full extent of NZTA's changes against its amendments.
- 4 For the avoidance of doubt:
 - a NZTA does not seek any changes to the conditions on the archaeological authorities;
 - b NZTA has shown only minor suggested amendments to the Wildlife Act approval, but continues to oppose the imposition of all standard terms and conditions (Schedule 2).
- 5 The reasons for the changes are provided in comment boxes. NZTA has also prepared Statements of Evidence ('**SOE**') to support its comments on the draft conditions, where further explanation is required than could be shown in comment boxes. The following SOE are provided:
 - a A joint SOE from Fiona McIntosh, Patrick Lees and Jamie MacKay on the draft conditions relating to ecological offsetting;

- b A second SOE from Jason Pene on conditions relating to air quality;
- c A third SOE from David Delagarza on stormwater conditions; and
- d A second SOE by Paul Walker on conditions relating to contaminated land.

Legal framework for imposition of conditions under the FTAA

- 6 NZTA's comments on the conditions identify changes that are necessary to ensure the conditions comply with the FTAA requirements for imposition of conditions. The FTAA requires that:
- a The Panel must not set a condition that is more onerous than is necessary to address the reason for which it is set.¹ NZTA's evidence and comments highlight instances where conditions imposed by the Panel do not comply with this requirement. For example:
 - i The conditions which impose the 'available' offsetting area as a 'minimum' have the potential to require significantly more offsetting than is required to achieve no-net-loss, and are not justified by the significance of effects or planning documents. The 'available' area was provided solely to demonstrate that there is sufficient space in the corridor to achieve a no net loss outcome;
 - ii Some of the contaminated land conditions restrict the reuse of soil on site in a way which is disproportionate to the risk posed by this reuse;
 - iii The Panel's deletion of the term 'where practicable' in many locations imposes a degree of stringency which is not justified by the environmental risk managed by the particular conditions. This matter is discussed further below, and in the Third SOE of David Delagarza;
 - b The Panel must apply the relevant provisions of the Resource Management Act 1991 when imposing conditions on the resource consents and designation,² but must give the greatest weight to the purpose of the FTAA.³ The Resource Management Act 1991⁴ only allows conditions to be imposed when:
 - i The applicant agrees; or

¹ Section 83 of the FTAA.

² Clauses 18 and 25 of Schedule 5 to the FTAA.

³ Clauses 17 and 24 of Schedule 5 to the FTAA.

⁴ Section 108AA.

- ii The condition is directly connected to an adverse effect of the activity on the environment; or
- iii The condition relates to administrative matters that are essential for the efficient implementation of the resource consent.

NZTA's evidence and comments highlight instances where changes made by the Panel do not comply with this requirement. In particular, some of the changes made by the Panel to the existing designation conditions are not directly connected to the activities to be authorised by the notice of requirement. These issues of scope are discussed below;

- c The Panel may set conditions on a wildlife approval if the Panel considers those conditions necessary to manage the effects of the activity on the protected wildlife,⁵ but must give the greatest weight to the purpose of the FTAA;⁶
- d The Panel may set conditions on archaeological authorities,⁷ but must give the greatest weight to the purpose of the FTAA;⁸ and
- e The Panel may impose conditions on a complex freshwater fisheries activity if the Panel considers those conditions necessary to manage the effects of the activity,⁹ and must give the greatest weight to the purpose of the FTAA.¹⁰ NZTA supports the Panel's draft decision to regulate freshwater fisheries activities using the regional consent conditions.

Panel's removal of the phrase 'where practicable' in the conditions

- 7 In many locations within the conditions, the Panel has deleted the phrase 'where practicable'. The Panel's draft decision states that these changes provide more certainty¹¹ or are to remove wording that the Panel considers subjective.¹²
- 8 NZTA seeks to retain the phrase 'where practicable' in conditions where strict compliance may not be practically or technically feasible. 'Practicable' is defined as 'capable of being put into practice or of being done or accomplished'.¹³ The phrase 'where practicable' does not give NZTA a discretion to disregard the

⁵ Clause 6 of Schedule 7 to the FTAA.

⁶ Clause 5 of Schedule 7 to the FTAA.

⁷ Clause 5 of Schedule 8 to the FTAA.

⁸ Clause 4 of Schedule 8 to the FTAA.

⁹ Clause 6 of Schedule 9 to the FTAA.

¹⁰ Clause 5 of Schedule 9 to the FTAA.

¹¹ Draft decision, paragraph 580(h).

¹² Draft decision, paragraph 580(j).

¹³ Merriam-Webster Dictionary.

requirement imposed by a condition, but instead establishes a high threshold for considered departure from that requirement.

- 9 The concept of ‘practicableness’ is used in the RMA as part of the defined term ‘best practicable option’:¹⁴

best practicable option, in relation to a discharge of a contaminant or an emission of noise, means the best method for preventing or minimising the adverse effects on the environment having regard, among other things, to—

(a) the nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects; and

(b) the financial implications, and the effects on the environment, of that option when compared with other options; and

(c) the current state of technical knowledge and the likelihood that the option can be successfully applied.

- 10 Caselaw also provides the following guidance:

- a What is ‘practicable’ must be assessed in the particular context in which the issue is raised:¹⁵

In some contexts, the focus is on what is able to be done physically; in others, the focus is more on what can reasonably be done in the particular circumstances, taking a range of factors into account.

- b Reasonableness and proportionality are concepts which apply to the consideration of ‘practicableness’.¹⁶

- c The word ‘practicable’ imports a stricter or higher standard than the words ‘reasonably practicable’.¹⁷

- 11 Therefore, the inclusion of ‘where practicable’ in the conditions does not allow unconstrained flexibility, but rather reflects a well-understood concept of practicableness to ensure that conditions are workable and can be implemented in a manner that appropriately reflects the practical constraints and characteristics of the surrounding environment.

¹⁴ RMA, s 2.

¹⁵ *Wellington International Airport Ltd v New Zealand Air Line Pilots’ Association Industrial Union of Works Inc* [2017] NZSC 199 at [65], applied in *OJI Fibre Solutions (NZ) Ltd v Waikato Regional Council* [2025] EnvC 170 at [505].

¹⁶ *OJI Fibre Solutions (NZ) Ltd v Waikato Regional Council* [2025] EnvC 170 at [506].

¹⁷ *Wellington International Airport Ltd v New Zealand Air Line Pilots’ Association Industrial Union of Works Inc* [2017] NZSC 199 at [45], applied in *OJI Fibre Solutions (NZ) Ltd v Waikato Regional Council* [2025] EnvC 170 at [506].

- 12 The phrase 'where practicable' is used judiciously within the conditions proposed by NZTA to provide necessary scope to address situations where strict compliance is not possible or appropriate. For example:
- a In condition C2.11, which relates to stream realignment, the use of 'where practicable' is required as not all realigned stream lengths will be able to achieve every outcome specified in the condition. For example, a particular stream may not be able to provide permanent fish passage if it is intermittent;
 - b In condition O3.8, which relates to operational stormwater design, the use of 'where practicable' is required as there are limited locations where it is impracticable to treat all run-off, such as where the project interfaces with existing roadway infrastructure.
- 13 The reasons for including 'where practicable' in particular conditions are discussed in greater detail in the Applicant's updated set of conditions. Mr Delagarza also addresses the need to retain 'where practicable' in the stormwater conditions in paragraphs 3.12 to 3.20 of his SOE.

Panel has no scope to impose conditions on effects authorised by existing designation

- 14 Certain effects, such as construction effects, operational noise and vibration effects, and heritage effects are already authorised by the existing designation. These matters sit outside the scope of the designation alteration currently sought by NZTA. Changes to these conditions are therefore only permitted by section 108AA of the Resource Management Act 1991 if NZTA (as applicant) agrees to them, or they relate to administrative matters that are 'essential' for efficient implementation.
- 15 NZTA has carefully reviewed the conditions on the draft decision which it considers are outside the scope of the current notice of requirement. In some instances, NZTA agrees with the changes made by the Panel – for example, changes which provide a purpose for management plans, where no purpose previously existed.
- 16 However, in other instances, NZTA does not agree with the changes made by the Panel – for example, changes to delete the qualifier 'where practicable'. In those instances, the Panel has no discretion to make the changes proposed, as the changes relate to effects that are already authorised, NZTA does not agree to the change, and the change does not relate to essential administrative matters.

- 17 Further explanation of the changes opposed by NZTA, including the reasons for that position, is included in the comment boxes accompanying the designation conditions.

Dated 3 July 2026

A handwritten signature in blue ink, appearing to read 'Nicky McIndoe' or 'Liam Bullen', with a stylized, cursive script.

Nicky McIndoe / Liam Bullen

Counsel for the New Zealand Transport Agency Waka Kotahi

Attachments:

Attachment 1 – Resource consent conditions

Attachment 2 – Designation conditions

Attachment 3 – Archaeological authorities

Attachment 4 – Wildlife Act approval

Attachment 5 – Joint statement of evidence of Fiona McIntosh, Patrick Lees and Jamie MacKay (ecology)

Attachment 6 – Second statement of evidence of Paul Walker (contaminated land)

Attachment 7 – Second statement of evidence of Jason Pene (air quality)

Attachment 8 – Third statement of evidence of David Delagarza (stormwater)