

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: 9 July 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 introduces NZTA's response to Auckland Council's (*Council*) comments on the Application, which were lodged on 2 June 2026 (*Council comments*). It also addresses NZTA's position following facilitated discussions between NZTA and Council.

STATUS OF THE COUNCIL COMMENTS

- 3 Following receipt of the Council comments, NZTA sought a suspension of the Application to allow time to work collaboratively with Council to see if the parties could assist the Panel by narrowing the issues between them.¹
- 4 As the Panel is aware, NZTA and Council participated in facilitated discussions on 23, 24 and 30 June.
- 5 The joint memorandum of counsel dated 26 June 2026 provided an interim report on the outcome of the facilitated discussions. The joint memorandum of counsel dated 8 July 2026 (*8 July Joint Memo*) then identified the topics/conditions that are now agreed between NZTA and Council, and the topics/conditions that remain outstanding between the parties.
- 6 Council lodged suggested designation and consent conditions on 8 July 2026 (*Council Conditions*), which include the agreed conditions and clarify Council's position in relation to the outstanding matters.
- 7 As recorded in the 8 July Joint Memo, NZTA and Council have agreed a number of matters that were raised in the Council's comments. Accordingly, NZTA has adopted the following approach for its response to the Council comments:
 - 7.1 *In relation to the agreed topics/conditions:* The 8 July Joint Memo supersedes the Council comments.² NZTA therefore does not respond to Council's original comments/evidence. However, if the Panel is of a mind to explore these agreed matters, NZTA reserves its right to provide further information to the Panel and can provide responses within 1 working day if requested by the Panel.

¹ Memorandum of Counsel dated 8 June 2026, paragraph 12.

² 8 July Joint Memo, paragraph 5.

- 7.2 If the Panel has any queries in relation to the agreed topics/conditions, NZTA invites the Panel to issue a request for further information.
- 7.3 *In relation to the outstanding topics/conditions:* This memorandum (and appendices) provides NZTA's detailed response to these aspects of the Council comments.

RESPONSE TO THE COUNCIL COMMENTS

- 8 NZTA's detailed response consists of:
- 8.1 The sections of this memorandum (below) addressing the 'no Condition 1' or 'effects envelope' approach and the Local Board views provided as part of the Council's comments.
- 8.2 Response tables that address:
- (a) **Appendix A:** the Council comments by topic relating to the NORs. Part 1 addresses the resolved topics and Part 2 addresses the unresolved topics;
 - (b) **Appendix B:** the Council comments by topic relating to the consent applications. Again, Part 1 addresses the resolved topics and Part 2 addresses the unresolved topics; and
 - (c) **Appendix C:** a table that addresses the Local Board views attached to the Council comments.
- The tables use the defined terms as set out in the Application.
- 8.3 Statements of evidence from:
- (a) Greg Sheppard (groundwater) (**Appendix D**);
 - (b) Andrew Blayney (terrestrial ecology) (**Appendix E**);
 - (c) Karyn Sinclair (planning) (**Appendix F**).

RESPONSE TO COUNCIL COMMENTS ON THE 'EFFECTS ENVELOPE' APPROACH

Council supports the approach for the designations, but not for the resource consents

- 9 The Council agrees the 'effects envelope' approach is appropriate for the designations.
- 10 For the resource consents, the Council says "*provided the outstanding issues with the detailed resource consent conditions can be resolved, such an approach is potentially acceptable*" in the

Council Conditions.³ The Council does not identify the circumstance(s) in which the 'effects envelope' approach would not be acceptable even if the consent conditions were resolved, and does not explain why it would not be acceptable.

- 11 This section therefore addresses the 'effects envelope' approach in relation to the consents only.

NZTA has provided extensive analysis of the 'effects envelope' approach

- 12 The 'effects envelope' approach is critical to delivery of the Project.⁴ It is not unusual as NZTA has secured and successfully implemented such approvals in the past. The Council has direct and recent experience with this approach from previous NZTA projects in the region, particularly the Pūhoi to Warkworth project.⁵
- 13 NZTA also provided a comprehensive analysis of the 'no Condition 1' or 'effects envelope' approach in its legal submissions lodged with the Application⁶ and in its response⁷ to the Panel's first request for information as set out in Minute 3 dated 5 May 2026 (RFI#1).
- 14 Together, the analysis and experience referenced above demonstrate that the 'effects envelope' approach is both appropriate and effective.

NZTA considers its consent conditions are appropriate to support the 'effects envelope' approach

- 15 In addition, and as a result of the facilitated discussions with Council, NZTA proposes amended or additional consent conditions to further secure the envelope of effects that has been assessed for the Application and to ensure appropriate mitigation outcomes regardless of the final design.⁸ These conditions (relating to erosion and sediment control, contaminated land, native birds and groundwater) are agreed with Council, with the exception of groundwater.
- 16 NZTA does not consider amended or additional consent conditions are required to support the 'effects envelope' approach in relation to the topics that are not yet resolved with Council. Those topics are as follows:

³ Auckland Council Memorandum of Counsel dated 8 July 2026, Annexure B, Comment on Condition 1.

⁴ Legal Submissions, paragraph 116: "*The 'no Condition 1' approach has significant advantages. It will allow the final design and construction methodology to respond appropriately to the environment that exists at the time and to adopt advances in technology. It also provides opportunity for innovation and cost savings for the Crown*".

⁵ Ara Tūhono – Pūhoi to Wellsford Road of National Significance: Pūhoi to Warkworth Section and Ara Tūhono - Warkworth to Wellsford.

⁶ Legal submissions lodged with the Application dated 15 December 2025.

⁷ Memorandum of counsel dated 19 May 2026.

⁸ Appendix A to the Memorandum of Counsel dated 7 July 2026.

- 16.1 *Works in Watercourses*: The Council originally sought “Final Outfall Design”, “Final Culvert Design” and “Final Bridge Design” conditions, and now seeks a Streamworks Method Design Statement condition. As explained in Appendix B,⁹ NZTA considers a number of matters in that condition are impractical or otherwise not appropriate, and that they are unnecessary to secure the effects envelope. NZTA considers its proposed conditions will appropriately constrain the envelope of effects and certification of technical *designs* (as contrasted with measures that manage effects) is “more onerous than necessary”.
- 16.2 *Terrestrial Vegetation*: Council seeks amendments to Condition 14 to require replanting of non-native vegetation and use of a Biodiversity Offset Accounting Model. As explained in Appendix B,¹⁰ NZTA and its expert do not consider replanting of non-native vegetation to be appropriate or necessary to mitigate the Project’s effects. Further, given the low level of terrestrial vegetation effects, NZTA considers modelling is not necessary to determine appropriate replanting amounts, and the simpler ratio approach adopted in the proposed conditions is pragmatic and proportionate to the circumstances.
- 16.3 *Freshwater Ecology*: Council agrees that the Project’s freshwater ecology effects will be low to very low, but nevertheless seeks that freshwater mitigation is determined through offsetting/compensation modelling and that NZTA prepare a Native Fish Capture and Relocation Plan for Council certification. As explained in Appendix B,¹¹ given the low level of freshwater ecology effects, NZTA and its expert consider modelling is not necessary, and the simpler ratio approach adopted in the proposed conditions is appropriate. Fish salvage and relocation will be managed by NZTA’s proposed outcomes-based consent condition and, in any case are well-understood practices so a management plan approach is unnecessary.
- 16.4 *Coastal*: Council seeks an underwater noise condition. As explained in Appendix B,¹² NZTA and its experts do not consider this condition is necessary or justifiable given there is no evidence of marine mammal presence and the works and potential impacts within the CMA are limited in extent.
- 16.5 *Groundwater*: Council seeks groundwater conditions (including a requirement for a Groundwater Settlement Monitoring and Contingency Plan) but has not proposed wording for those

⁹ Appendix B, page 5.

¹⁰ Appendix B, page 6.

¹¹ Appendix B, page 5.

¹² Appendix B, page 2.

conditions.¹³ As explained in Appendix B,¹⁴ NZTA intends to propose consent conditions that appropriately constrain the envelope of potential groundwater effects. NZTA considers additional conditions of the type suggested by Council are out of proportion to the potential groundwater effects and would be more onerous than necessary to manage those effects.

- 17 Accordingly, NZTA maintains that the 'effects envelope' approach is appropriate, for the reasons set out in its legal submissions filed with the Application and in its response to RFI#1, and on the basis explained above.
- 18 For completeness, NZTA also responds to the Council's Technical Specialist Memo – Environmental Monitoring¹⁵, which says *"[i]ncluding the relevant plans and supporting documentation is important because it fixes the precise scope of what has been approved, ensuring that the activity carried out on the ground aligns with the proposal and the effects that were assessed and relied upon in granting the approval"*. That position is restated in the Memo author's email response to NZTA's response to RFI#1,¹⁶ and demonstrates that the author does not understand the 'no Condition 1' or 'effects envelope' approach.
- 19 NZTA considers it is not necessary to have "approved plans and methodology" to verify compliance where outcomes-based conditions are imposed. In fact, as NZTA explained in its RFI#1 response¹⁷, assessing compliance against a traditional 'Condition 1,' which generally includes Indicative Design drawings, would be very difficult, if not impossible. Further, NZTA's experience is that the use of 'no Condition 1' for the Puhoi to Warkworth project did not create any compliance or monitoring issues.
- 20 Accordingly, we submit that the Technical Specialist Memo – Environmental Monitoring should not be given any weight by the Panel in relation to the 'no Condition 1' or 'effects envelope' approach.

RESPONSE TO LOCAL BOARD VIEWS ATTACHED TO THE COUNCIL COMMENTS

- 21 Local Boards cannot comment on the Application in their own right, but were invited by Council officers to submit their views on the Application. Those views are summarised in the Council Planning Memorandum and provided in Appendix 2 to the Council comments. The Local Board views were not discussed during the facilitated

¹³ Memorandum of Counsel for Auckland Council dated 8 July 2026, paragraph 6.

¹⁴ Appendix B, page 3.

¹⁵ Appendix 23 to the Council comments.

¹⁶ Appendix 25 to the Council comments.

¹⁷ Memorandum of counsel dated 19 May 2026 at [27].

discussions because Council officers advised that they were not able to speak to those views. Accordingly, and with respect, the status of the Local Boards' views is unclear. In our submission, the Panel should consider those views only to the limited extent they have been explicitly adopted (not just summarised) by the Council in conditions it has proposed, and so far as relevant to the scope of the Project and its effects.

- 22 At a high level, we consider the Local Boards' views can be categorised and considered as follows:

22.1 *Support for the Project:* All of the Local Boards have indicated their support for the Project (albeit conditional on the other matters they have raised);

22.2 *Out-of-scope Requests:* The Local Boards request a number of works or outcomes that are beyond the scope of this Project and the Panel's jurisdiction (eg concurrent delivery of SH16/SH18 connection, extension of Northwestern Cycleway, additional Rosebank station, broader outcomes for urban regeneration around stations, etc). These requests are irrelevant to the Panel's determination on the NORs and applications before it.

22.3 *Environmental Effects:* The Local Board comments address construction, noise and vibration, coastal/estuarine, and built heritage effects. To the extent relevant, these matters have been addressed in NZTA's response to the Council's comments.

22.4 *Design Details:* NZTA and Council have agreed matters of design will be addressed through collaborative discussions outside this consenting process.

22.5 *Land Acquisition (Including in relation to parks):* These views are irrelevant to the Panel's determination on the Application before it.

22.6 *Lapse:* This matter has been comprehensively addressed in NZTA's response to RFI#2¹⁸ as well as NZTA's responses to comments. We also note that Council has agreed that a 25-year lapse period for the approvals sought is appropriate for this Project and does not seek alternative conditions relating to that lapse period.¹⁹

- 23 **Appendix C** provides NZTA's detailed responses to the Local Board views attached to the Council comments.

¹⁸ Memorandum of Counsel dated 21 May 2026.

¹⁹ 8 July Joint Memo, Attachment 1, page 1.

NEXT STEPS

- 24 As set out in the 8 July Joint Memo, NZTA will:
- 24.1 respond to any comments lodged by the additional Westgate invited commenters within 5 working days of the deadline for those comments (ie 24 July); and then
 - 24.2 file legal submissions addressing legal issues that have arisen since lodgement, together with updated proposed designation and resource consent conditions.

Dated 9 July 2026

A handwritten signature in blue ink, appearing to read 'PdW', is positioned above the printed name and title.

Paula Brosnahan / Nicola de Wit
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