

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

in the matter of: notices of requirement and applications for resource consents, wildlife approvals and archaeological authorities by the NZ Transport Agency Waka Kotahi to develop the Brynderwyn Hills section of the Alternative to the Brynderwyn Hills Project, a state highway from the intersection of State Highway 1 and Baldrock Road in the south, through the Brynderwyn Hills to Waipū in the north.

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

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

Dated: 22 October 2026

Reference: Paula Brosnahan (paula.brosnahan@chapmantripp.com)
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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 NZ Transport Agency Waka Kotahi (*NZTA*) in response to the recent procedural memorandum filed by the Department of Conservation on behalf of the Director-General of Conservation (*DOC*), seeking directions for further involvement in the Panel-led process following NZTA's response to comments on the Application (*DOC's Memorandum*).¹
- 2 In substance, DOC seeks a further round of comment on NZTA's response to comments and any additional technical information and conditions provided as part of that response. DOC suggests that, absent further directions, it will not have an adequate opportunity to comment on that material and asks the Panel to provide for it to have further input and a further opportunity to comment, through a panel-directed process.
- 3 NZTA respectfully submits that:
 - 3.1 DOC has already had a full and fair opportunity to participate in the FTAA process, both as an administering agency under s51 and as a general commenter under s53, and will continue to do so throughout the remainder of the process;
 - 3.2 Creating an iterative or rolling process, whereby one party, DOC, is afforded an additional opportunity to provide comment on information provided by the applicant, would be inconsistent with the FTAA's purpose, procedural principles and existing process requirements and would be unfair to other parties;
 - 3.3 issuing any directions in response to the DOC Memorandum would be premature without the benefits of NZTA's response to comments; and
 - 3.4 where information is sought by the Panel from DOC or any other parties, NZTA, as the applicant, must be afforded a right of reply to such a request.

The FTAA provides a structured process for comments and requests for information

- 4 The FTAA establishes a streamlined process for determination of substantive applications, providing a structured process in which relevant administering agencies and invited parties provide comments, and the applicant is then able to respond to those matters. With respect, the Panel, not DOC is the decision-maker on

¹ Memorandum of counsel dated 20 October 2026 filed by the Department of Conservation on behalf of the Director-General of Conservation.

the Application. The comments and response to comments process under the FTAA exists to inform the Panel's decision-making.

- 5 To the extent the Panel, as the decision-maker on the Application, requires further information to make its decision, it can seek this information from relevant agencies, commenters and appointed specialists to inform that decision. That power rests with the Panel, not with administering agencies or commenters.
- 6 While the Panel must act in a manner that promotes the just and timely determination of the approvals sought,² that does not mean that every participant is entitled to repeated opportunities to comment on each further step. The FTAA's structured process (comments, followed by the applicant's response) allows all parties an equal opportunity to present their views to the Panel, and provides the Panel the ability to seek any further information it considers necessary to inform its decision. A further general round of comment, particularly if only afforded to one commenter, would be inconsistent with that objective, introducing unnecessary delay, cost, and procedural inefficiency (contrary to the procedural principles of the FTAA).³

DOC has, and will continue to have, a full and fair opportunity to participate

- 7 DOC has had substantial opportunity to engage in the process to date. Specifically, its participation through the existing statutory mechanisms (including its section 51 report and s53 comments on the Application, each of which were filed with technical expert materials).
- 8 During the suspension, NZTA engaged extensively and in good faith with DOC (meeting multiple times per week, with representatives from the parties' respective executives, officers and technical experts). That engagement was substantive and directed to addressing the issues DOC had raised in relation to the Application.
- 9 As part of that engagement process, NZTA provided information to DOC on potential mitigation options and management methods, seeking DOC's views and input into those proposals. That information was provided by NZTA to DOC as a draft, in good faith and for free and frank discussion, not as NZTA's final position. NZTA is continuing to work with DOC to refine and develop the proposed mitigation package. In the meantime, DOC has included that draft information as part of its comments and has provided expert opinion responding to that information. Accordingly, DOC's views with respect to that information is now before the Panel for consideration.
- 10 Much of the further information and refinement to the proposed mitigation package (which will be provided by NZTA to the Panel to

² Fast-track Approvals Act 2024 (FTAA), Sch 3, cl 10(1).

³ FTAA, s10(1).

assist its decision-making as part of NZTA's response to comments) has been prepared specifically in response to DOC's comments, concerns, and requests. That includes technical work undertaken during the suspension and refinements to proposed conditions. In those circumstances, it cannot fairly be said that DOC has been denied an opportunity to be heard, or that the process to date has failed to accommodate its concerns.

- 11 Further, DOC's memorandum overstates the extent to which it will have no further role in the process absent the directions it seeks.
- 12 DOC remains a participant in the broader FTAA process and may yet be involved if the Panel considers that any targeted further input is required on specific issues. In particular, if the Panel considers that any matter arising from NZTA's response to comments requires clarification or further testing, the Panel may address that through its own processes, including by issuing a targeted request for information (either from NZTA or from another party, including DOC) or seeking expert input on discrete matters.
- 13 In our submission that is the appropriate mechanism for any further engagement, rather than conferring on DOC (as a commenter) a general right to lodge a further round of submissions or evidence in response to NZTA's response to comments.
- 14 In addition, if the Panel were minded to grant the Application and issue draft conditions, the statutory process provides for all commenters to comment on those draft conditions.⁴ That step is a further safeguard within the FTAA process. Accordingly, there is no procedural gap or unfairness that requires the directions sought by DOC.

Issuing directions at this stage would be pre-mature

- 15 At this stage, any directions of the kind sought by DOC would be premature, particularly in the absence of the Panel first having the benefit of NZTA's s55 response. Until that material is before the Panel, and its scope and content can be assessed, there is no proper basis to conclude that any further process is required.
- 16 NZTA's response to comments are due next week. There would be no delay to the process or undue circumstances for DOC resulting from the Panel waiting for a week to consider NZTA's response to comments.
- 17 If, after considering NZTA's response, the Panel considers that further input from DOC is necessary to assist it in determining the Application, any such input should be limited to those specific matters the Panel considers necessary for its decision, rather than providing DOC with a general further opportunity to comment on NZTA's responsive material.

⁴ FTAA, s70(1).

NZTA should be afforded a right of reply

- 18 Procedural fairness requires that NZTA, as applicant, be afforded the final right of reply on its application, particularly where it bears the burden of advancing and supporting a complex proposal. Additionally, NZTA's s55 response will be directed to matters raised by multiple agencies and other participants.
- 19 While natural justice is an aspect of the Panel regulating its own procedure, the content of natural justice must be assessed in light of the FTAA framework. It does not require an open-ended or iterative process in which parties continue responding to one another's material. Rather, it requires that parties have a reasonable opportunity to present their views and that the Panel has sufficient material before it to make its decision and sufficient time in which to reach that decision. Those requirements have been met here. DOC has had ample opportunity to present its position, and will continue to do so through the remaining steps of the FTAA statutory process.
- 20 If the Panel considers that some further process is necessary in relation to any specific matter arising from NZTA's s55 response (or the Panel's consideration of the Application more broadly), NZTA submits that:
- 20.1 any such process should be tightly confined to clearly identified issues on which the Panel considers it requires further assistance;
 - 20.2 any such process should be timebound, so as to ensure the Panel retains sufficient time to consider the information before it and to make its decision on the Application;
 - 20.3 any such process should occur only at the Panel's direction, rather than by way of a general further right of response for DOC;
 - 20.4 any opportunity afforded to DOC should apply on an even-handed basis and not privilege DOC over other participants; and
 - 20.5 the Panel must afford NZTA the right to respond to any further material sought by the Panel from DOC.
- 21 The above approach would preserve both fairness and procedural efficiency, while ensuring the Panel receives any truly necessary assistance on identified matters.

Request for directions

- 22 Accordingly, NZTA respectfully requests that:
- 22.1 the Panel does not issue further directions in response to DOC's Memorandum; and

22.2 to the extent that it considers any further inputs from DOC or its technical experts would be of assistance for its decision-making, that NZTA as applicant is afforded sufficient opportunity to respond to such information.

Dated: 22 October 2026

A handwritten signature in blue ink, appearing to be 'Rto' with a long horizontal stroke extending to the right.

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