
MINUTE 3 OF THE EXPERT PANEL

Request for further information

North West Rapid Transit [FTAA-2511-1146]

5 May 2026

[1] This minute addresses issues relating to the Applicant's proposed approach to conditions, and in particular, it's proposal to not include what it refers to as the 'traditional condition 1' or general accordancy condition. For clarity, the Panel understands this reference to mean a condition such as that featuring in the recent Supporting Growth Alliance (**SGA**) Notices of Requirement for roading improvements in the Auckland region as heard during 2023-24, as follows:

Activity in General Accordancy with Plans and Information

- (a) Except as provided for in the conditions below, and subject to final design and Outline Plan(s), works within the designation shall be undertaken in general accordancy with the Project description and concept plan in Schedule 1.
- (b) Where there is inconsistency between:
 - (i) the Project description and concept plan in Schedule 1 and the requirements of the following conditions, the conditions shall prevail;
 - (ii) the Project description and concept plan in Schedule 1, and the management plans under the conditions of the

designation, the requirements of the management plans shall prevail.

[2] The legal submissions for the Applicant dated 15 December 2025 provides:

23. The Application presents an “Indicative Design” for the Project. An “Indicative Design” has been developed for consenting purposes, to enable an assessment of the Project’s potential effects and the development of an “effects envelope”. It is anticipated that delivery of the Project will be staged over approximately 20 years, with construction likely to begin in the west at Brigham Creek Rarawaru Station in 2027. The final design of each Project stage will be completed closer to construction and may be different from the Indicative Design. For this reason, NZTA seeks approvals that provide flexibility for the final design to be confirmed through the detailed design phase, while managing adverse impacts of the final design through the suite of outcomes-based Proposed Conditions to ensure those impacts remain within the effects envelope as consented. This ‘no Condition 1’ approach is addressed later in these submissions.

...

120. Legal advice obtained by the Panel that considered the RMA approvals for the Cambridge to Piarere[sic] also concluded that:

The proposed omission of ‘Condition 1’ is lawful and is an accepted approach for large scale infrastructure projects such as the C2P Project. However, if that approach is accepted, it will require a careful evaluation of the other conditions to ensure they are sufficient to avoid, remedy and mitigate any effects which might flow from changes arising out of this flexibility.

In particular, the Panel must be satisfied on the evidence that

regardless of the final route selection and construction methodology, the effects assessment stands, and the environmental bottom lines set out in the remaining conditions are achievable.

Condition 1 would be inappropriate for the Project

121. A 'traditional Condition 1' is unnecessary and would be inappropriate for the Project because the Project's potential effects have been assessed on the basis of the Indicative Design. Accordingly, the documentation does not purport to contain a confirmed design or construction methodology and as such, requiring the Project to be undertaken "in general accordance with" the Application would be inappropriate.

122. Additionally, the sheer volume of application material required for the Project would make a 'traditional Condition 1' difficult to implement (and enforce). It would require Council and contractors to go through the Application material in order to interpret and implement the designations and consents. That application material may be difficult, if not impossible, to locate in 20 or more years' time. Further, the requirement in a 'traditional Condition 1' for a Project to be undertaken "generally" in accordance with such documents adds another layer of uncertainty as to what aspects of the Application documentation must be complied with and to what extent.

Condition 1 is unnecessary to manage Project impacts

123. In developing the Application, the Project team has carefully ensured the assessment of effects considered both the Indicative Design, and potential amendments to the design that might occur within the Proposed Designation (ie 'sensitivity testing' was carried out in each of the technical assessments).

124. Further, the Proposed Conditions will secure the 'envelope of effects'

that has been assessed and provide for scalable, outcomes-based effects management that will appropriately mitigate the Project's effects regardless of design amendments and without the need to refer to specific supporting Application documents.

125. As such, in our submission, the 'no Condition 1' approach is the best and most appropriate approach for this Project.

[3] For transparency, it is noted that this Panel's chair was the author of the independent legal advice provided to the panel determining the resource consents and designations sought in respect of the Cambridge to Paipere State Highway upgrade, which is quoted in paragraph 120 of the Applicant's legal submissions. Those same considerations are 'in play' in relation to the current application before this Panel. In the absence of the certainty offered via a 'traditional Condition 1' and the anchoring of the effects assessment it affords, there is a risk that what is ultimately delivered is not what was proposed, and not what the effects assessment was predicated on.

[4] While lawful, the absence of the traditional Condition 1 may not always be appropriate, particularly when the receiving environment is highly sensitive to changes or variations in the final built form, which could be the case within what could be described in the present case as a highly populated 'brownfields' urban environment. Accordingly, the Panel signals to the Applicant that this issue will require further work to resolve.

[5] In this regard, the Panel would be assisted by further analysis from the Applicant which tracks each individual effects assessment through to the relevant condition(s) which achieve, as the Applicant describes it,

‘outcomes-based effects management that will appropriately mitigate the Project’s effects regardless of design amendments and without the need to refer to specific supporting Application documents.’ It appears that the Applicant’s proposed conditions are a combination of quite specific conditions addressing an identified issue or effect (e.g., effects on access to two supermarkets), and general conditions requiring management plans which provide a ‘catch all’ mechanism for effects management.

[6] For the Panel to fully evaluate the efficacy of the Applicant’s approach to conditions, a close tracing through of the relationship between the indicative design, the effects assessments and what the Applicant describes as the ‘sensitivity testing’, and the proposed conditions, is necessary.


[7] Accordingly, under section 67 of the FTAA, the Panel requests that the Applicant provide it with a planning/legal assessment which:

- (a) References each individual effects assessment and identified effect;
- (b) Shows how that effect was subjected to the ‘sensitivity testing’;
- (c) Cross references that identified effect with the proposed condition(s) which address it;
- (d) Identifies how the condition(s) establishes a clear ‘environmental bottom line’ or performance standard in relation to the effect; and
- (e) Addresses any further relevant analysis to support its ‘outcomes-based effects management’ technique.

[8] The Panel requests that this information be provided by 5pm 19 May

2026.

[9] The Panel acknowledges that counsel for the Applicant has previously requested that any requests for information from the Panel be deferred until the commenting period on the Application has ended (paragraphs 14-19 of counsel's 9 April 2026 memorandum). However, that is some weeks away, and the Panel wishes to bring this matter to the Applicant's attention sooner rather than later, given the time constraints that the Panel is required to work to under the FTAA. In this regard, the Panel also signals that it will be issuing a further request for information relating to other specific matters shortly.

A handwritten signature in black ink, appearing to read 'Lachlan Muldowney', is centered on the page. The signature is fluid and cursive, with a long horizontal stroke at the end.

Lachlan Muldowney

North West Rapid Transit Expert Panel Chair