

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

in the matter of: applications for resource consents, notices of requirement, wildlife approvals and archaeological authorities by the New Zealand Transport Agency Waka Kotahi to develop a section of a road (being SH1) and associated infrastructure between Te Hana and State Highway 15 (Port Marsden Highway).

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

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

Dated: 22 June 2026

Reference: Paula Brosnahan [REDACTED]
Rebecca Tompkins [REDACTED]

**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 relation to the Brynderwyn Hills section of the Alternative to the Brynderwyn Hills project (*Project*). It responds to the post-conference directions in the Panel Convener's Minute 3 dated 12 June 2026 (*Minute*). In particular, it:
 - 1.1 Seeks clarification in relation to the directions issued in relation to the Department of Conservation's (*DOC*) concerns with the application;
 - 1.2 Requests reconsideration of the indicative 90 working day decision-making timeframe;
 - 1.3 Addresses NZTA's position regarding panel composition; and
 - 1.4 Clarifies the position in relation to Te Rūnanga o Ngāti Whātua and Te Parawhau ki Tai cultural impact assessments (*CIA*) for the Project.

Clarification of directions in response to DOC

- 2 At paragraph 12 of the Minute, the Convener records DOC's concerns regarding the application. The Convener then directs DOC to set out its concerns in more detail on 19 June 2026, and NZTA to respond to DOC's concerns on 26 June 2026.¹
- 3 NZTA respectfully seeks clarification as to the intended purpose of these directions, in light of the Convener's statutory functions at this stage of the fast-track process. NZTA is concerned that requiring it to substantively respond matters raised by DOC at this stage of the FTAA statutory process, risks creating procedural complexity and unfairness.
- 4 DOC had an opportunity to provide feedback on the application during the completeness process.² Having considered that input (amongst other things), the Environmental Protection Authority (*EPA*) determined NZTA's substantive application to be complete and within scope.³ NZTA agrees with the Convener's observation that neither she nor the expert panel has jurisdiction to reconsider the EPA's completeness decision.⁴
- 5 The Convener has noted she intends to make her decision on both Panel membership and decision-making timeframes by 26 June 2026⁵ – the same date on which NZTA's response to DOC is to be

¹ Minute 3 of the Panel Convener dated 12 June 2026 (*Minute 3*).

² Memorandum on Completeness and Scope dated 30 April 2026 at Appendix 2, pages 59-66.

³ Decision on completeness and scope for the Alternative to the Brynderwyn Hills [FTAA2603-1178] under section 46 of the Fast-track Approvals Act 2024 dated April 2026.

⁴ Minute 3 at paragraph 14.

⁵ Minute 3 at paragraph 17.

filed. Accordingly, the Convener will not have the opportunity to consider NZTA's response in her decision-making.

- 6 NZTA further notes that the concerns outlined in DOC's original memorandum⁶ reflect differences in expert and legal opinion. These are matters that NZTA considers appropriate for the panel's examination (including requests for information, comments, responses to comments, expert engagement, etc).
- 7 In those circumstances, and with respect to the Convener, NZTA will need to carefully consider whether it should respond to DOC's concerns at this time. However, it will continue its ongoing engagement with DOC to seek to resolve these issues throughout the fast-track process.

Decision-making timeframes

- 8 NZTA acknowledges the Convener is considering imposing a 90-working day decision-making period, the maximum decision-making timeframe available under the FTAA.⁷ As previously indicated, NZTA is concerned that such a timeframe will not allow sufficient flexibility for NZTA (and potentially other parties) during the fast-track process.
- 9 NZTA has undertaken its own calculations of the likely timing implications of a 90-working day decision-making period. Assuming the panel commences its work on 30 June 2026 (as indicated in the Minute), and there are no suspensions during the process, the final decision would need to be issued on or before 17 December 2026.
- 10 That date is only one working day before the statutory shutdown period. While that would technically result in a decision being issued this year, it leaves NZTA with no ability to request a suspension of the process if required, without jeopardising NZTA's ability to obtain a decision this year and, in turn, its procurement programme.
- 11 While NZTA is hopeful suspension will not be needed, preserving that ability is important to ensure a fair and workable process (allowing additional time to respond to comments if necessary or to facilitate further engagement and resolution of issues with other parties during the fast-track process). NZTA observes that while only the applicant has the ability to request a suspension, projects processed under the FTAA to date have demonstrated that applicant-sought suspensions are often of assistance to and generally welcomed by other parties involved in the process (eg iwi, councils).
- 12 In our submission, a timeframe that leaves no practical contingency for the applicant is not the most proportionate or efficient process in the circumstances of this Project, particularly where the Project is being advanced under an expedited statutory pathway for nationally

⁶ Dated 5 June 2026.

⁷ Minute 3 at paragraph 5.

significant infrastructure and where the need for a decision this year is directly linked to procurement and resilience outcomes.⁸

- 13 NZTA therefore respectfully requests that the Panel Convener reconsider the proposed 90 working day timeframe and adopt a shorter period. NZTA considers that even a reduction of 10 working days would materially improve the workability of the process.
- 14 Accordingly, NZTA respectfully requests that the decision-making timeframe be set at no more than 80 working days from the close of comments. An indicative timetable based on an 80 working day period is set out in **Appendix A**.

Panel composition

- 15 NZTA notes the Convener's indication that the panel is likely to comprise a lawyer (chair), a planner and an ecologist, specifically Mr Graeme Ussher.⁹ NZTA has previously engaged Mr Ussher in his capacity as an ecologist on another project, and some differences of opinion and approach arose between Mr Ussher and NZTA. NZTA queries if Mr Ussher's appointment as a panel member will be sufficiently distinct from his background as an ecologist (that has worked for NZTA) to overcome potential process concerns.
- 16 NZTA would be happy to discuss this matter further with the Convener.

Cultural impact assessment material / iwi and hapū positions

- 17 NZTA respectfully seeks to clarify paragraph 15 of the Minute on the positions of different iwi / hapū groups in relation to CIA for the Project. NZTA's understanding, based on the Convener's conference is that:
 - 17.1 Counsel for Te Rūnanga o Ngāti Whātua does not have instructions on the preparation of a CIA; and
 - 17.2 Te Parawhau ki Tai's preference is that its CIA be provided before the panel commences its work.

Dated 22 June 2026



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

⁸ As outlined in NZTA's memorandum of counsel dated 11 June 2026.

⁹ Minute 3 at paragraph 11.

APPENDIX A – 80WD DECISION-MAKING TIMEFRAME

Indicative date/timing	Process step	Comments
30 June	Panel Commencement	
30 June – 15 July	Panel considering application RFIs and responses (as required)	<i>Accounting for Matariki on Friday, 10 July</i>
15 July	Panel request for comments	
15 July – 12 August	Comments period RFIs and responses (as required)	Decision 80WD after this point
12 - 19 August	Response to comments period	
3 December	Final Panel decision released	80WD after comments closes
<i>20 December - 10 January: RMA shutdown period</i>		