

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: 7 October 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 its notices of requirement and applications for resource consents, wildlife approvals and archaeological authorities (together, the *Application*) to develop the Brynderwyn Hills section of the Alternative to the Brynderwyn Hills project (*Project*).
- 2 This memorandum:
 - 2.1 provides an update on NZTA's current suspension period, and when it requests for processing of the Application to resume;¹ and
 - 2.2 responds to the Panel's request in Minute 11 on whether NZTA would like the Panel to progress the following matters during the suspension period (together, the *Ecological Request*):²
 - (a) *Publish Dr Neale's ecology advice on the fast-track website;*
 - (b) *Provide a list of issues the Panel intends the Applicant to address in relation to ecology, in advance of formalising a request that the Applicant commission a peer review report once processing resumes;*
 - (c) *Provide recommendations as to who the Panel considers would be a suitable peer reviewer on the basis that the Panel will require a reliable assessment to enable it to make findings on the ecological issues required to determine the application.*

UPDATE ON SUSPENSION AND REQUEST TO RESUME PROCESSING

- 3 NZTA appreciates the Panel's patience during the suspension period to allow it further time to engage with other parties in relation to the Project. Whilst NZTA will soon be ready to resume processing of the Application, it is conscious that other parties will need sufficient time to finalise and lodge their comments. Based on when the suspension began (11:59pm on Tuesday 11 August),³ commenters will have one working day after processing of the Application resumes to do so.
- 4 NZTA requests that the Panel ends the suspension period at 11:59pm on Monday 19 October. Resuming processing at this time

¹ Minute 10 of the Expert Panel dated 21 September 2026.

² Minute 11 of the Expert Panel dated 2 October 2026.

³ Minute 7 of the Expert Panel dated 11 August 2026.

would produce the following timeline for the remainder of the comment period:

- 4.1 Comments on the Application would be due on or before 11:59pm on Tuesday 20 October; and
- 4.2 NZTA's response to comments would be due on or before 11:59pm on Wednesday 28 October.⁴
- 5 This timeframe would provide commenters with 9 working days to finalise their comments on the Application (from the date of this memorandum).
- 6 NZTA acknowledges the Panel has indicated it would be unlikely to grant a further suspension until comments on the Application are received.⁵ NZTA wishes to clarify that it does not intend to seek a further suspension of Application processing before the close of comments. However, subject to the nature and scope of any remaining comments that may be lodged on the Application, NZTA may request a further suspension after comments have closed to enable it to provide a fulsome response to the matters raised. If necessary, NZTA may also request a further suspension to respond to the Ecological Request (or other RFIs), issued by the Panel.

RESPONSE TO MINUTE 11

- 7 Having carefully considered the Panel's Minute 11, NZTA respectfully requests that the Panel does not progress the Ecological Request either during the suspension period, or until it has received (and properly considered) the comments on the Application and NZTA's response to those comments.
- 8 Counsel submit that this approach would be more timely, efficient and cost-effective (and therefore aligned with the procedural principles of the FTAA) than progressing the Ecological Request before receipt of NZTA's response to comments for the following reasons:
 - 8.1 As outlined in previous correspondence, the Project is urgently necessary and NZTA has been directed to deliver the statutory approvals required for construction at pace.⁶ As is typical when a project develops at speed, NZTA has been continuing to undertake work following lodgement of the Application, including appointment of its own independent peer reviewers for the terrestrial and freshwater ecology assessments, additional on-site surveys, amendments to its

⁴ Five working days after comments on the Application were due (accounting for the weekend and Labour Day), as per s55(2) of the Fast-track Approvals Act 2024.

⁵ Minute 11 of the Expert Panel dated 2 October 2026 at paragraph 7.

⁶ Memorandum of counsel on behalf of NZ Transport Agency dated 11 June 2026 at [3]-[5]; Opening legal submissions on behalf of NZ Transport Agency dated 2 April 2026 at [7.4].

proposed mitigation package, engagement with stakeholders and review of cultural impact assessments. This additional information and feedback has been invaluable and helped NZTA to continue refining its proposed mitigation package for the Project. While NZTA appreciates that the Panel may have its own questions, it expects that many of the questions may be resolved as part of the further work NZTA has already undertaken without the Ecological Request needing to be made.

- 8.2 NZTA has already begun preparing responses to both the Department of Conservation's section 51 Report, and comments received from other parties on the Application. There is a high likelihood that issuing the Ecological Request now would require NZTA to prematurely rework its responses, particularly before it has had a chance to consider all comments (adding additional time and cost that would not have otherwise been incurred if the Panel had considered NZTA's responses at the outset).
- 8.3 If the Panel waits to progress these matters until after the response to comments period, it will be able to make more informed decisions about any residual issues that it wishes to raise with NZTA (having had the benefit of all comments and NZTA's response to these).

Request for directions

- 9 In light of the above, NZTA respectfully requests that the Panel:
 - 1.1 Recommences processing of the Application at 11.59pm on Monday 19 October 2026 (in accordance with s65 FTAA); and
 - 9.1 Does not progress the Ecological Request until after it has received and considered NZTA's response to comments on the Application.

Dated: 7 October 2026



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