

BEFORE THE PANEL CONVENER

IN THE MATTER of the Fast-track Approvals Act 2024 (**FTAA**)

AND

IN THE MATTER of an application by New Zealand Transport Authority
under section 42 of the FTAA for the Alternative to the
Brynderwyn Hills – Brynderwyn Hills Section

APPLICATION NO. FTAA-2603-1178

**MEMORANDUM FROM THE DIRECTOR-GENERAL OF CONSERVATION
RESPONDING TO MINUTE 2 OF THE PANEL CONVENER**

5 June 2026

Department of Conservation Project Lead: Jenny Clafferty –jclafferty@doc.govt.nz

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Introduction

1. This memorandum has been prepared on behalf of the Director-General of Conservation (**D-G**) by the Department of Conservation (**DOC**). It responds to the second minute of the Panel Convener dated 21 May 2026 in respect of the Alternative to Brynderwyn Hills application – Brynderwyn Hills section (the “Minute”).
2. The Minute requests participants of the conference on 10 June 2026 to provide their views to assist the panel convener carry out their role to appoint panel members and set the timing for the panel decision. The particular matters to address are set out in Schedules 1 and 2 to the Minute. The Minute also sets out a range of matters that may be raised at paragraph [6].

Paragraph [6] of the Minute***Engagement***

3. Prior to lodgement the applicant shared high level and terrestrial ecology information on the project with DOC, including draft reports. The draft Assessment of Effects on Terrestrial Ecology stated that an Ecological Management Plan (EMP) would accompany the wildlife approval application. Very limited information in regards freshwater effects was shared.
4. Post-lodgement engagement has been limited. Post-lodgement, NZTA have advised that they are going to provide DOC with draft EMPs. To date these have not been received. At DOC’s request NZTA are currently arranging a site visit for some DOC experts.

Expertise being commissioned by the Department

5. DOC has the following in-house experts and external consultants engaged on this project:
 - a) Frogs, herpetofauna and avifauna – Rhys Burns (in-house).
 - b) Terrestrial Invertebrates (including snails) – Dr Jamie Stavie (in-house).
 - c) Bats – Tertia Thurley (in-house).
 - d) Vegetation – Tim Martin (external consultant).
 - e) Freshwater Ecology – Amber McEwan (external consultant).

- f) Terrestrial and Freshwater offsetting – Nick Goldwater (external consultant).
- g) Freshwater offsetting – Richard Storey (external consultant).
- h) Wildlife Approvals – Clara Wilson (in-house).
- i) Resource Management Planning – Leah McEnhill (in-house).

Principal Environmental Effects at Issue

- 6. Wildlife Approvals are being sought without sufficient information on what is proposed and the effects of what is proposed. The effects on Hochstetter’s frogs, at least, will be significant.
- 7. The significant volume of earthworks with over 6,800,000m³ of spoil to remain within the proposed designation corridor, and indicative only locations for where the spoil will be placed. The potential effects of this, including on freshwater and native vegetation are significant.
- 8. The approach taken to the assessment of the freshwater effects is unconventional and flawed in the view of DOC’s experts.
- 9. The approach proposed of an indicative only alignment, limited information on proposed mitigation and avoidance, and a limited environmental assessment of the whole designation corridor within which the application seeks for effects to be allowed makes it very difficult to understand what the effects might be.
- 10. As the application is for one piece of a longer road corridor (from Auckland to Whangarei) that cannot stand on its own, the cumulative/whole of project effects are not accurately understood.

Complexity of the application

Expert and evidential issues

- 11. With regard to the Wildlife Act 1953 (**Wildlife Act**) approvals sought, DOC considers there is a high degree of evidentiary complexity given the significant number of wildlife potentially affected by this application.
- 12. DOC also considers there are a number of evidential deficiencies with the current application, including those raised with the EPA when considering

completeness. These deficiencies impact on the likely legal issues addressed further below.

13. In particular, the following information is not provided in sufficient detail:
 - a) Methods to avoid, remedy, or mitigate adverse effects (including offsetting or compensation). Only high-level mitigation measures are included and no draft EMP or detailed methodologies are provided. The application relies on the future development of management plans post approval. This information is necessary to assess the application against the purpose of the Wildlife Act.
 - b) Activity locations: Not all locations where wildlife handling, relocation, and release may occur are identified; proposed conditions allow for additional, unspecified release sites to be determined post approval.
 - c) Numbers of wildlife likely to be impacted and impacts to threatened, at risk, and data deficient species. Expected numbers of individuals affected are not clearly stated. By way of example, the application is going to have a significant impact on the native Hochstetter's frog. The impact could be as high as mortality of 40,000 frogs, and it is uncertain whether their relocation will be successful. The application does not set out how the residual unmitigated effects will be addressed, and the application does not demonstrate prioritising avoidance. Translocation for frogs is uncertain, being highly sensitive to disturbance and having specific habitat requirements. Similar issues arise with other protected wildlife.
 - d) Best practice wildlife methods: No draft EMPs or detailed methodologies are provided to demonstrate how best practice standards will be met for handling, salvage, and relocation.
 - e) Proposed pest management measures are not sufficiently described to enable assessment of potential benefits to wildlife.
14. In addition to the Wildlife Act matters, DOC considers there are evidential issues with the application based on a review by experts. These issues include:
 - a) DOC's experts have concerns with the level of information provided for such a large project. In particular, that a lack of robust assessment has likely meant values failing to be identified and accounted for in any effects

management. This will have flow on implications for whether there is sufficient information before the Panel to grant this application and whether it is possible to design appropriate management plans and conditions, that have meaningful and robust triggers.

- b) The expert view is the assessment of the ecological value of streams and magnitude of effects is based on an unconventional methodology and is not scientifically robust. This results in an unreliable effects determination. This is likely to impact on conditions relating to offsetting for these effects.
 - c) There is a lack of robust assessment of the aquatic values of wetlands.
15. Some of the key issues discussed below also contribute to the overall complexity of the application, given the potentially significant impact to flora, fauna and freshwater values. The freshwater ecological assessment in particular is considered in need of significant revision in order to form the basis of decisions by the Panel.

Potential legal issues

16. The above factual and expert issues impact on the legal complexity and consideration of conditions, and the need to ensure the conditions are robust and able to provide DOC with a suitable decision-making role concerning future decisions to mitigate the impacts on wildlife.
17. As the legal submissions for the applicant set out (2 April 2026), the Panel must take into account the purpose of the FTAA, as well as the specified matters under the RMA, Heritage NZ Pouhere Taonga Act 2014 and the Wildlife Act (para [38]).
18. It is acknowledged that the applicant is seeking as much flexibility as possible given the final design of the project might change within an overall envelope (designation corridor). However, DOC has concerns with the extent to which this approach has had an impact on the robustness of the application. For example:
- a) The envelope approach to the designation means there is little information on the actual or proposed effects on wildlife and, in light of that, measures to mitigate the impacts through conditions.

- b) The conditions are further addressed below. In short, the approach is to leave detail to be worked through later including not providing information on impacts to waterways or wetlands, rather the approach is for future work to ascertain and then deal with the potential adverse effects, after approvals are granted.
- c) The applicant describes the approach as a 'flexible consenting approach' (see paras [79] – [84] of their legal submissions). In addition to the lack of a condition 1 (that would require the project to be constructed and operated "in general accordance with" specified drawing and documents), the underlying issue is ensuring there is sufficient information on which to grant the approvals sought.
- d) The applicant's legal submissions confirm management plans are not currently prepared and will be prepared only once the final design is known (para [87]). This means a potential lack of baseline information impacting on the ability to develop management plans with measurable targets or triggers and enforceable thresholds.
- e) It is not clear whether the assessments have adequately accounted for potential cumulative effects, or effects of fragmentation. This issue arises given the fact that the entire alignment is being sought for approval in segments, without consideration of the overall impact of the proposal as a whole.
- f) The legal submissions consider there are only three potential wetlands that engage the NPS-Infrastructure and NPS-Indigenous Biodiversity, being wetland 24 and wetlands 8 and 16 if impacted by the alignment. Without further robust mapping, it is difficult to know the potential impact areas likely protected under the NPS-IB and other statutory instruments.
- g) The lack of information plays into the manner in which the different policies between the relevant national direction can be reconciled. This is noted generally at this point but will need closer scrutiny in due course given the number of provisions in the NPS-IB and NPS-FM that are relevant.

Conditions

19. In light of the above points, the proposed consent conditions are considered deficient at present (for the designation (NOR)/resource consents and Wildlife Act approvals):

- a) The general approach to effects management throughout the conditions is not sufficiently clear, with too much discretion left to conditions and to management plans that are yet to be developed, and unable to have appropriate levels given the factual deficiencies with the application.
- b) As noted above, DOC does not agree with the approach to not have a “Condition 1” – that is a condition requiring the proposed works be in general accordance with the application material. For such a wide designation corridor and only an indicative alignment, there are significant works required to execute the project and limited ecological assessment of the corridor.
- c) The certification of future management plans will have no measurable targets/triggers or enforceable thresholds etc, so NZTA could be compliant with conditions, regardless of the actual outcomes for wildlife.
- d) The assessment of effects is based on the indicative alignment, and the applicant’s intention is the outcome-focused proposed conditions will ensure effects are appropriately addressed regardless of the final location. It is difficult to determine whether the conditions will achieve this given the proposed “avoid areas” for example, have not been identified in the conditions.
- e) Requirements for specific wetlands and watercourses are also unclear as conditions currently state requirements for “watercourse [x]” and “existing wetlands [x] and [x]” etc. Again, requiring a decision to be made in a void of information,

Processes to resolve, narrow issues

- 20. DOC will work with the other parties to resolve or narrow issues as the Panel instructs.

Timeframes

- 21. DOC is prepared for s 51 and s 53 reporting on the application in accordance with timeframes set out in the Panel Convenor’s Minute. However, that is on the basis of the Department reporting on the application as it has been lodged.

22. If further information is to be provided by the applicant prior to then, the DOC's experts will require additional time to consider this. A difficulty for DOC is having to provide these reports within fixed statutory timeframes on a 'moving feast'.
23. That said, DOC considers that the level of information provided in the application is not sufficient for an Expert Panel to make an appropriately considered decision and that timeframes should be set to allow for this.
24. Moving beyond the reporting phase, the significance of the potential effects on both terrestrial and freshwater ecology are such that DOC considers that expert conferencing and a hearing may be necessary.

Approvals sought

25. DOC noted in its assessment of completeness to the EPA that no freshwater fisheries approvals have been applied for under the Freshwater Fisheries Regulations 1983; and that based on the application these approvals will be required before the project can commence. DOC cannot force the applicant to apply for relevant approvals. However, DOC is foreshadowing its view that they are required based on the nature of the application and activities being sought for approval.

Panel membership

26. In terms of the DOC's interests, key matters to be considered in this application are effects on absolutely protected wildlife, and conservation values and effects as part of the proposed resource consents (herpetofauna, invertebrates, biodiversity values and freshwater habitat).
27. Given the potentially significant adverse effects on both terrestrial and freshwater ecology, along with the unconventional approach taken to the assessment of wetlands and streams, these will be critical matters for the Panel to address. DOC recommends that Panel members with that expertise are appointed.
28. DOC recognises that matters outside of the DOC's interests may warrant appointment of additional members.

Procedural requirements

29. The DOC's representatives will be happy to elaborate further on any of the above points at the conference set for 10 June 2026.
30. DOC is willing to engage directly with the applicant and Panel as necessary to advance the progress of the application.



Jeremy Prebble
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