Before an Expert Consenting Panel

under: the Fast-track Approvals Act 2024

in the matter of: applications for 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 Waipu in the north.

applicant: **New Zealand Transport Agency**

Requiring Authority and Applicant

Legal submissions on behalf of the New Zealand Transport Agency Waka Kotahi

Dated: 28 October 2026

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LEGAL SUBMISSIONS ON BEHALF OF NEW ZEALAND

TRANSPORT AGENCY WAKA KOTAHI

Introduction

1 These submissions support the New Zealand Transport Agency Waka Kotahi (*NZTA*)[1] response to comments received on the 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*), a state highway from the intersection of SH1 and Baldrock Road in the south, through the Brynderwyn Hills to Waipu in the north.

2 The Project provides solutions to significant problems hampering the safety, connection and growth of Northland and the rest of New Zealand. If not delivered, these problems will get substantially worse in the near future, and will detrimentally impact lives. The Project has significant national and regional benefits and is required urgently. On these points, the parties agree. The Project also has significant environmental effects, which will require significant management and mitigation.

3 In many respects, the parties agree on the appropriate mitigation to manage these effects. There are, of course, some areas of disagreement as to what is appropriate mitigation and how that mitigation should be facilitated through the proposed conditions.

4 NZTA submits that the question before the Panel is not whether the Application should be granted, but on what conditions that grant should be made. Where there is disagreement between the parties, NZTA submits the Panel's task is to ensure the mitigation imposed through those conditions is no more onerous than necessary to manage effects whilst facilitating the delivery of this crucial Project.

Approach to submissions

5 NZTA appreciates the Panel has a large volume of information before it, much of which is technical in nature. With that in mind, these submissions are intended to assist the Panel in navigating the information before it by identifying which of the Project's effects remain in contention and the parties' positions in respect of each of those effects.

6 We understand the Panel is considering further procedural steps (including requests for additional information and potential expert caucusing and/or mediation) to assist it in considering the Application.[2] We expect those processes will further refine the parties' positions and issues before the Panel. As such, we do not provide a full legal analysis of the parties' positions against the FTAA framework at this stage. We anticipate doing so by way of closing

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[1] NZTA is the statutory body responsible for operating the state highway network. Land Transport Management Act 2003 (*LTMA*), s95(1)(h).

[2] Minute 14 of the Expert Panel.

submissions, to be lodged following completion of any further procedural steps.

7 These submissions are provided in advance of any further processes occurring as part of the fast-track process. They therefore represent a 'snap shot' of where things are at this time.

PART 1: NZTA'S APPROACH TO THE PROJECT

The cost of consenting infrastructure and why the trajectory must change

8 As outlined in the opening legal submissions, the Project is the next stage and a critical component of the Northland Corridor, three Roads of National Significance that together provide a programme of State Highway 1 improvements to give Northland a safe, resilient and reliable connection to Auckland and the rest of New Zealand.

9 The Northland Corridor is essential, nationally significant infrastructure, needed to provide a safe and reliable transport connection between Northland and the rest of the country and to improve the economic performance of Te Tai Tokerau - one of New Zealand's poorest performing regions. The Project is a critical component of that Corridor.

10 The Corridor began with Ara Tūhono – Pūhoi to Warkworth (*P2W*), continued with Warkworth to Te Hana (*WW2TH*), and now continues with the Project.

11 As a whole, the Corridor illustrates how environmental consenting condition requirements and complexity have grown over the course of the last ten to fifteen years, and how that growth has not necessarily been matched by clear environmental gain.

12 The story of the Corridor is a snapshot of the larger infrastructure story that has played out across New Zealand. That story is a tale of lengthy and complex consenting processes and condition requirements causing great expense to and hindering the timely delivery of urgently needed infrastructure, which is hampering the growth, well-being and future resilience of the country. It is an example of why the FTAA was enacted.

13 P2W was consented under the RMA by a Board of Inquiry in 2014. It was consented on a flexible basis, with outcomes-focussed conditions setting the environmental results that were to be achieved, while preserving the ability for the contractor and delivery team to innovate and work out how best to achieve those results.

14 The P2W consenting approach worked. The project was delivered at a cost of about $1.2 billion[3] for 16km of new highway (ie approx. $75M per km) and as explained by Mr Innes and Mr Ireland, it

[3] At 2025 cost levels.

achieved good environmental outcomes and was delivered without any environmental or non-compliance incidents.

15 NZTA sought the same approach for the next stage of the corridor, WW2TH, another large earthworks project with similar environmental management and constructability challenges, which was consented under the RMA through a council hearing in 2021. However, during the consenting process (both in the council hearing and the appeals that followed), further restrictions and requirements were added to the condition suite.

16 NZTA now estimates that WW2TH will cost about $115 million per km (excluding tunnel costs). In per-kilometre terms, that is a 50% increase over P2W within one transport corridor over about ten years.

17 If that trajectory continued, it is not inconceivable that the costs of the Project could potentially be over 100% more than P2W's cost per kilometre (or $150 million/km). While NZTA acknowledges not all increasing costs are condition-related, in its experience onerous and complex conditions are an important and substantial component of overall project cost. At the projected cost trajectory, the Project would simply be unaffordable for New Zealand. It would not be delivered.

18 The consequences for Northland and New Zealand of such an onerous consenting outcome would be serious. The Project's significant benefits, which are not in dispute in this process, would not be realised. The well-documented problems with the existing Brynderwyn Hills crossing, including its poor safety record and vulnerability to slips and closures would remain with resilience risks substantially increasing over time.

19 The wider economic stakes are also significant. The cost of road closures along the existing Brynderwyn Hills route in 2023 alone were estimated to cost between $3.3m, and $14.6m a day,[4] not to mention the social costs for the Northland community. The Project is about more than travel times. For Northland and New Zealand, it is about connection, road safety and economic growth.

NZTA's approach for the Project: reasonable and pragmatic

20 NZTA is not a private developer seeking a commercial return. It is a Crown entity with statutory functions under the Land Transport Management Act 2003 (*LTMA*). It must give effect to the Government Policy Statement on Land Transport 2024 (*GPS 2024*), which puts economic growth and productivity, increased maintenance and resilience, safety, and value for money at the centre of land transport investment.

[4] https://www.ncg.co.nz/news/northlands-plan-to-boost-national-gdp-by-1-2-billion-per-year-revealed

21 NZTA is seeking approvals for the Project under the FTAA. An Act enacted for the purpose of facilitating the delivery of infrastructure and development projects with significant regional or national benefits. The process is intended to be fast, and to avoid the kind of onerous consenting requirements that have resulted in spiralling consenting costs and time as illustrated by the previous sections of the Corridor.

22 As outlined in our opening legal submissions, in line with Government direction and the purpose of FTAA, NZTA is working to move away from growing condition complexity and the compounding onerous construction costs that follow, toward efficient delivery of infrastructure that still achieves good overall environmental outcomes.

23 It has therefore developed the Application, the Proposed Designation, the Indicative Alignment and the proposed conditions carefully and pragmatically. NZTA is committed to delivering the Project and its substantial benefits in an environmentally and fiscally responsible way.

Balancing cost and outcomes

24 As discussed below, NZTA has not stood still since lodgement of the Application. It has listened carefully to the comments and concerns raised by others. Where it reasonably can (as evidenced by the examples below), NZTA has made compromises and refined its mitigation proposals in response.

25 But there are real constraints. NZTA cannot meet every request. For NZTA's projects, the costs of consenting and delivering infrastructure are ultimately borne by taxpayers. As a Crown entity, NZTA must be fiscally responsible. Every additional requirement must be weighed against what it achieves.

26 The Panel will appreciate the scale of the requests NZTA has needed to weigh. Examples (as outlined in Mr Innes' and Mr Ireland's evidence) include:

26.1 The request from Te Parawhau to provide a tunnel through the Brynderwyn Hills, which NZTA estimates would add up to $1.4 billion in capital costs to the Project, along with ongoing annual operational costs in the millions; [5]

26.2 Comments made by DOC and hapū suggesting that the project should have been located in a different alignment to the West, being at least an extra ~$500 million in capital costs, let alone the costs of restarting consenting to accommodate this change;

[5] SOE Tony Innes; SOE Tom Ireland.

26.3 The request from DOC and hapū to bridge over the Piroa Stream, which NZTA estimates would add over $200 million to the cost of the Project; [6]

26.4 The request from DOC to minimise effects on Hochstetter's frog habitat through building a viaduct through the Brynderwyn Hills ONL area which NZTA estimates would add over $100 million to the cost of the Project and 1-2 earthworks seasons to the construction programme; [7]

26.5 The multiple requests from DOC and hapū in relation to mitigation for effects on freshwater, including seeking higher offset or compensation multipliers at a cost of +$30 million, and suggesting that stream realignments must be treated as reclamation rather than remedy at a cost of +$20 million.

27 Taken individually, each request may be well intended. Taken together, they would add $500 million to the cost of the Project, or 33% of its current estimated cost. In effect, the additional costs would mean that New Zealand could not afford to build the Project.

28 While the additional mitigation requested by commenters would increase the cost of delivery of the Project by an order of magnitude, NZTA submits it also would not necessarily achieve substantially better environmental outcomes over and above those that will be achieved by NZTA's mitigation proposal.

29 Every condition added to a consent has a cost for delivery. NZTA respectfully asks the Panel to keep the P2W experience in mind. Lean, outcomes-focused conditions enabled design innovation and cost savings and delivered good environmental results on that project. Northland now needs this Project to be consented on a basis that achieves those same environmental outcomes and allows it to be delivered at a price point that the New Zealand taxpayer can afford.

30 We submit it is the Panel's task to strike the right balance between the Project's benefits and its costs. Infrastructure funding is not a bottomless pit. If costs climb too high, the Project cannot be built, and then none of its benefits, environmental or otherwise, will be realised. In turn, the substantial problems the Project was intended to address will remain and will continue to cost Northland and New Zealand.

PART 2: PROCESS SINCE LODGEMENT AND CONTINUAL REFINEMENT OF PROPOSED MITIGATION PACKAGE

NZTA's application

31 DOC has suggested that the Application, as lodged, did not contain enough information or assessment and DOC and hapū have

[6] SOE Tony Innes; SOE Tom Ireland.

[7] SOE Tony Innes.

suggested the assessments undertaken by NZTA's technical experts were inadequate. NZTA does not accept that criticism. We submit the Application and its supporting assessments are adequate and appropriate for the FTAA and for the Project.

32 Proportionate assessment is consistent with the FTAA's purpose. The FTAA exists to facilitate the delivery of infrastructure and development projects with significant regional or national benefits. Its timeframes are deliberately compressed. In keeping with that purpose, and with its approach to the Project as a whole, NZTA aimed for assessments that are efficient, proportionate and readable. The result gives the Panel, administering agencies and commenters what they need to understand the Project's effects and engage with them within the FTAA timeframes. Longer, more voluminous assessments, would not have assisted the Panel. Rather, they would have worked against the efficiency the FTAA is designed to secure.

33 The level of detail provided in the Application is appropriate given the nature of the Project. The Project seeks flexibility for detailed design and construction, through an Indicative Alignment and outcomes based conditions. Detailed design and construction is several years away, and the receiving environment may change in that time. Assessing every effect in final detail now and locking in mitigation based on the environment as it exists today and a design that does not yet exist, would be of limited value and could quickly become out of date. The more robust and appropriate approach is the one NZTA proposes. It will keep the flexibility for innovation in detailed design, and it does not lessen environmental protection. Protection comes from the conditions, which set the outcomes the detailed design must achieve and provide for scalable mitigation in line with those outcomes.

34 The Application included a proposed mitigation package and a draft set of conditions. NZTA's intention was always that those conditions and corresponding package would be refined through the FTAA process in response to engagement, comments, Panel requests and later procedural steps such as expert conferencing and mediation. NZTA also expected to undertake further work to inform that refinement and to answer requests for further information from the Panel.

The FTAA process: completed and anticipated steps

35 In our submission, the FTAA expressly anticipates, and provides for, the refinement of an applicant's proposed mitigation package and the provision of more information over the course of the Panel's consideration of the Application.

36 The FTAA sets out a staged process in which the Panel's consideration of an application is informed progressively by:

36.1 Comments from administering agencies, relevant local authorities, iwi authorities and other invited parties;

36.2 The applicant's response to those comments;

36.3 Further information the Panel requests from the applicant or others; and

36.4 Any further procedural steps the Panel directs, such as expert conferencing, mediation or a hearing.

37 The structure of the Act shows that Parliament intended the evidential record and proposed conditions to develop as the process goes on. NZTA has followed that process at every stage and continues to do so.

38 In NZTA's experience of other FTAA projects, the information before the Panel, the mitigation package and the conditions keep developing until the very end of the process. It is a sign the process is working as intended, not a weakness in the original application.

Provision of information through response to comments

39 As noted, DOC has suggested that NZTA's Application was missing a significant amount of information at the outset. It has also raised natural justice concerns about the substantial amount of new information that it expects NZTA to introduce through its response to comments, requesting a further opportunity to respond to this information.[8]

40 NZTA respectfully disagrees with DOC's characterisation on both counts.

41 The Application met the statutory standard for completeness, and the EPA confirmed it. The right test is not whether the Application held every piece of information the Panel will eventually have or whether it included every piece of information DOC would like to see. The test is whether the Application met the FTAA's information requirements when it was lodged. It did. The EPA assessed the Application and found it complete under those requirements. That finding was not a formality. It was the statutory gateway Parliament set for an application to go forward to a panel. Criticism that amounts to saying the Application should have contained more than the Act requires should be given little weight.[9]

42 On the second point, we submit that none of the information provided as part of NZTA's response to comments is new in the sense of raising a new proposal or a new effect. All of the information refines the mitigation package lodged with the Application, and (as noted above) responds directly to issues raised in comments, including those raised by DOC.

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[8] Memorandum from the Director-General of Conservation dated 20 October 2026.

[9] Comments made by DOC, as a relevant administering agency, need to be relevant to the decision before the Panel only, not revisiting those made by the EPA. See section 53(2A).

43 The additional information provided by NZTA comprises the results from further frog habitat surveys, the relocation site assessment criteria and the frog compensation framework (noting DOC was provided with an earlier draft of that assessment criteria and compensation framework through the engagement process).

44 Beyond that information, NZTA's response elaborates on matters raised in its lodged application and in comments received (including peer reviews, further information on iwi engagement, project costs and constructability and refinements to conditions).

45 NZTA has iteratively developed and refined its effects management proposed for the Project as part of its response to comments. None of the components of NZTA's response have resulted in a material change to the general scope of the Project as lodged, at least in terms of the nature and location of the physical works proposed, or the extent of the Project's designation.

46 Each refinement strengthens and improves NZTA's original mitigation package. Responding constructively to comments in this way is exactly what the response to comments step in the FTAA is for. An applicant should not be criticised for using that step for its intended purpose.

47 NZTA accepts that other parties should be able to consider NZTA's response as part of the FTAA process. But given that NZTA's response represents an iterative development rather than a shift in the nature/scope of the activity that has been proposed at lodgement, there is no reason why this response cannot occur in a constrained way as part of the FTAA process (as outlined above), such as during any conferencing, mediation, conditions workshops or hearing. The information and application iteration NZTA is providing in its response is not beyond what might normally be expected by an applicant under a notified RMA two-step process, or an appellant in an RMA Environment Court hearing. Therefore there is no apparent natural justice or fairness issues with this approach.

Further procedural steps

48 The Panel has indicated it is considering what further steps are likely to assist its consideration of the Application, including expert conferencing, condition workshops, mediation and possibly a hearing. NZTA expects that any such steps the Panel directs will involve further work on, and refinement of, its mitigation package. NZTA will engage fully in that work and anticipates other parties will too.

49 As set out in these submissions, the remaining areas of contention are, in substance, differences of professional opinion between experts. Those matters have already been debated at length. Each expert's position is clear and on the record. Expert conferencing works best where issues are still undefined or there is real scope to narrow them. That is not the case here. NZTA respectfully submits that conferencing would add time and cost without a corresponding

benefit to the Panel's decision, which would sit uneasily with the FTAA's emphasis on efficiency.

50 NZTA does see value in mediation. Unlike conferencing, mediation can move past restating expert positions and focus on practical outcomes, particularly the content of the mitigation package and the conditions. NZTA supports a Panel direction for mediation and would take part constructively.

Refinement of NZTA's proposed mitigation package since lodgement

51 In line with its pragmatic approach to delivery of the Project, NZTA has considered all feedback received (both formally and informally) from other parties involved in the process (including the various section 51 reports, cultural impact assessments and comments received prior to suspension) and considered whether to refine its proposed mitigation package to address the concerns raised.

52 Where reasonable concerns have been raised, NZTA has taken steps to address those concerns. Specifically, NZTA has:

52.1 Engaged peer reviewers to consider and provide feedback on the Terrestrial Assessment (as it relates to indigenous vegetation and frogs) and the Freshwater Assessment and, where appropriate, adopted the recommendations of those peer reviewers;

52.2 Undertaken further surveys of the initially proposed frog release sites as well as identified and undertaken surveys of additional potential frog release sites to provide confidence in release site availability;

52.3 Undertaken additional surveys of frog habitat both inside and outside of the Proposed Designation to provide further information on the extent and quality of frog habitat and frog populations within the Brynderwyn Hills area; and

52.4 Prepared a release site assessment framework and criteria to determine suitability of proposed release sites for frogs and ground truthed that framework against the proposed release sites to provide confidence in release site suitability.

53 These processes, as relevant to each technical discipline, are explained in the statements of evidence provided as part of NZTA's response to comments.

54 In NZTA's submission, these workstreams provide further detail on the matters addressed in the Application, respond to concerns raised by DOC and hapū and have supported NZTA in refining its proposed mitigation package.

55 As noted above, NZTA has expanded its proposed mitigation package and made changes to its proposed condition suite in

response to feedback and with the benefit of the further detail provided through the workstreams outlined above. NZTA has made changes where reasonable and appropriate to do so, bearing in mind its obligations to deliver the Project in a timely and cost-effective manner and within the context of the overall purpose of the FTAA.

56 As a result, NZTA's proposed mitigation package now includes:

56.1 Amended offset planting ratios and compensation to address the loss of indigenous forest habitat;

56.2 Mitigation for intermittent as well as perennial streams;

56.3 Mitigation for moderate wetlands (as well as high), and updates to the mitigation package for wetlands to provide optionality for both wetland restoration and creation and require confirmation of the extent and values of wetlands at the time of impact;

56.4 A specific effects management package for frogs and frog habitat to include;

56.5 Incentives for the future Project contractor to avoid spoil disposal in streams in the southern side of the Brynderwyn Hills north of the Piroa Stream;

56.6 A requirement to avoid the main kahikatea stands at Waipu. In response to comments from the Bryham family and other members of the Waipu community about the significance of these trees, NZTA has undertaken further design work to determine whether the roundabout at Waipu could be restricted.[10] As a result, these stands will be retained to the extent recommended by Mr Nicholas Singers, NZTA's vegetation expert.[11]

PART 2: KEY MATTERS BEFORE THE PANEL

Commenters' overall position

57 There is significant and broad-based support for the Project, including from within the communities that the Project will both affect and serve.

58 There is complete agreement between NZTA and Heritage New Zealand Pouhere Taonga (*HNZPT*) on the archaeological authority conditions and between NZTA and Kaipara District Council (*KDC*) on the designation conditions. NZTA understands Whangārei District Council (*WDC*) also agrees with the designation conditions. The regional resource consent conditions are largely agreed between

[10] Comment from Bryham Farms Limited; See also SOE Tony Innes.

[11] Designation condition DCX and Appendix A – Avoid Areas.

NZTA and the Northland Regional Council (*NRC*), subject to some minor wording changes.

59 The only remaining areas of any real contention are concerns raised by a handful of landowners about the effects of the Project on their private property, and concerns about the cultural and ecological effects of the Project, held by hapū and DOC.

Councils

60 NRC, KDC and WDC strongly support the Project, acknowledging it will promote the growth vision for, and provide significant benefits to, the region, economy and people. This support is evident in the comments provided by all three Councils.

61 As noted, NZTA understands all designation conditions are agreed between NZTA, KDC and WDC and the resource consent conditions are largely agreed with NRC. The extent of agreement across all councils is unprecedented for a large NZTA project such as this one and is indicative of the substantial and recognised benefits of the Project and NZTA's comprehensive effects management package.

62 Of note, and as discussed below, the councils are the consent authorities for the RMA approvals. They have specific statutory powers and responsibilities under the FTAA and the RMA and will be charged with managing and monitoring compliance with the RMA approvals and discharging those responsibilities. The Councils are satisfied that NZTA's proposed mitigation package will ensure the potential adverse effects of the Project are adequately managed. The Councils also represent the collective voices of the people of Northland. In that context, we submit the Councils' views should be given strong weight by the Panel.

Heritage New Zealand Pouhere Taonga

63 HNZPT supports granting the archaeological authorities for the Project subject to the conditions agreed between NZTA and HNZPT. HNZPT has confirmed its position and the agreed conditions via letter to NZTA.

Landowners

64 Of the 226 landowners invited by the Panel to comment on the Project, only 8 comments were received, with 5 supporting in principle and only 3 in opposition. This outcome is reflective of the support of the Northland community for the Project and again, unprecedented for a large infrastructure project such as this one.

Hapū

65 NZTA appreciates the recognition from hapū of the safety and resilience benefits that the Project will deliver and the need to provide a connection between Te Tai Tokerau and the rest of New

Zealand.[12] However, hapū have concerns about the cultural and environmental effects of the Project and consider these to be significant. Given the scale of the Project, that is to be expected and is acknowledged by NZTA.

66 As explained in Ms Thompson's evidence, NZTA has undertaken extensive engagement with iwi and hapū throughout the Project development process. This process has included iwi and hapū involvement and input into in corridor selection, route refinement and alignment workshops, technical expert hui including discussion on ways to mitigate adverse effects, involvement of kaitiaki in ecological field investigations, cultural impact assessment preparation and involvement in the development of conditions and mitigation (including the identification of avoid areas).

67 Hapū also prepared separate Cultural Impact Assessments (*CIAs*), which have informed both the Project and the Proposed Conditions. NZTA's approach has emphasised ongoing dialogue, so that hapū will be involved not only in the design phase, but also in the development of management plans and during the construction phase.

68 In terms of the remaining outstanding concerns raised by hapū, NZTA considers the ecological effects are adequately mitigated through its updated proposed condition suite (as addressed in the statements of evidence of Dr Keesing, Mr Garrett-Walker, Dr Bull, Mr Singers, Mr Chapman, Dr Denmead and Mr van Winkel). NZTA considers any remaining cultural matters will be addressed through its revised conditions, including through more direct involvement from hapū in the development of the Cultural Values Management Plan.

69 Since lodgement, engagement between the parties has continued. NZTA and hapū hui on a regular basis, with the next hui scheduled for 11 November. NZTA is open to progressing separate agreements in relation to the Project, with a view to addressing the matters raised by hapū that are not appropriate for inclusion as conditions of consent.

70 NZTA reiterates its commitment to continued meaningful engagement with hapū and to acting reasonably, honourably and in good faith as the Project moves through consenting and into the detailed design, construction and delivery stages.

DOC

71 DOC is concerned about a very broad range of ecological effects of the Project, ranging from the need to provide ropes for lizards to climb out of stormwater ponds to a suggestion that NZTA should

[12] Comment from Te Parawhau, Cover Letter - Further Comments dated 20 October 2026; Comment from Patuharakeke, Submissions of Counsel dated 20 October 2026; Comment from Te Parawhau Incorporation dated 11 August 2026.

avoid all high value streams. However, DOC has not explicitly suggested the Panel should decline the Application. Instead, DOC has either proposed additional, complex and costly mitigation measures, criticised the location of the project more generally, or criticised NZTA's proposed mitigation as uncertain or bound to fail.

72 DOC's comments made in its s51 report and in its s53 comments are made both in the context of an administering agency (in relation to the Wildlife Act approvals) and a general commenter (in relation to the RMA approvals).

73 With respect, and acknowledging DOC's function as a conservation advocate, we submit that DOC's comments on RMA matters should be given lesser weight by the Panel than those made by the Councils on those matters as it is the Councils that are the relevant consent authorities for the RMA approvals.

74 NZTA acknowledges and appreciates DOC's role as a Crown agency with a strong and vocal voice for protection and conservation of wildlife. NZTA accepts that, given its role, DOC may always have concerns about large-scale infrastructure projects that traverse natural environments, and it is understandable that DOC's position, as an environmental and conservation advocate, will sometimes conflict with NZTA's role as an infrastructure provider and operator. DOC is required by its statutory functions under the Conservation Act 1987, to advocate for the protection and conservation of the environment.[13] NZTA is required by its statutory obligations under the LTMA and GPS, to deliver a safe, nationally significant state highway in an efficient, efficient and fiscally responsible manner.[14]

75 We submit it is the role of the Panel, as an independent and objective decision-maker, to consider the matters raised by these two strong voices within the statutory decision-making framework of the FTAA. It is the Panel's task to strike the right balance between the Project's benefits and its adverse effects. Infrastructure funding is not a bottomless pit. If costs climb too high, the Project cannot be built, and its benefits cannot be realised.

PART 3: KEY AREAS OF CONTENTION AND PARTIES' POSITIONS

76 The following sections sets out, by topic and area of effect, the key outstanding matters raised by DOC through its s51 report and s53 comments and by hapū through their s53 comments. We then provide a summary of NZTA's response to those matters. (Further detail on NZTA's response is provided in the package of documents forming NZTA's response to comments.)

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13 Conservation Act 1987, s6(b).

14 Land Transport Management Act 2003, s94.

Alternative corridors and design

77 Te Parawhau, Patuharakeke and DOC submit there are alternative corridors and alignments that would be less intrusive to the environment were not adequately assessed by NZTA.

78 Te Parawhau, Patuharakeke and DOC seek structures such as bridges, viaducts or tunnels, at various points along the Indicative Alignment, on the basis that such structures would avoid or minimise environmental effects.[15]

79 NZTA does not accept alternatives were inadequately assessed. As explained by Mr Innes, over the past almost ten years, the Te Hana to Whangārei corridor has been progressively assessed and narrowed through business case and investment case processes. That work used a multi-criteria assessment covering safety, resilience, cost, geology, cultural values, property and environmental constraints.[16] Western corridors were discounted after the 2023 weather event exposed extremely poor ground conditions, which added hundreds of millions of dollars in cost and risk to the Project.[17] Eastern options through Atlas Quarry were considered but not chosen due to significant increases in the complexity of the works, potential impacts on a DOC reserve, impacts on a regionally significant business, and considerably more expense.[18] Localised assessments then refined the Indicative Alignment to avoid or reduce environmental effects.[19]

80 Bridges, viaducts and tunnels were considered by NZTA at the key locations. While these structures would reduce effects locally, they may push environmental effects elsewhere and would substantially increase construction complexity, programme and cost.[20]

Cultural effects

81 As noted above, NZTA has engaged extensively with Te Uri o Hau, Patuharakeke and Te Parawhau in relation to the Project, and is continuing to do so. This engagement is summarised in Ms Thompson's statement of evidence. Throughout that engagement, and as evidenced in comments, hapū, while recognising significant benefits of the Project, have raised concerns about the effects of the Project.

82 Many of the concerns raised by hapū are focussed on the Project's ecological effects, which are addressed in the sections that follow.

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15 Comment from Te Parawhau, Cover Letter - Further Comments dated 20 October 2026, Review of Resource Conditions dated July 2026; Comment from Patuharakeke, Submissions of Counsel dated 20 October 2026, Attachment A – Patukarakeke Comments on Conditions; Comment from DOC, Appendix C – Frogs, lizards and avifauna – Dr Rhys Burns dated 20 October 2026.

16 SOE Tony Innes.

17 SOE Tony Innes; SOE Tom Ireland.

18 SOE Tony Innes.

19 SOE Tony Innes.

20 SOE Tom Ireland; SOE Tony Innes.

While we appreciate that streams, wetlands and native flora and fauna are taonga, with respect, it is not clear what could be added to the mitigation package to address asserted cultural effects on that taonga over and above what NZTA has proposed to mitigate ecological effects.

83 NZTA also proposes development of a Cultural Values Management Plan (*CVMP*) that will be built on the values that hapū have expressed in their own CIAs and will be developed through continued collaboration. NZTA also supports the creation of a Hapū Steering Group to advise on tikanga, karakia and cultural matters during design and construction of the Project.

84 NZTA considers it is appropriately mitigating the ecological effects raised by hapū and is upholding Treaty principles by ensuring hapū have the opportunity to be involved in the Project through the CVMP and Hapū Steering Group.

Impacts on private land

85 NZTA acknowledges the comments received from landowners regarding land acquisition and compensation, business loss, injurious affection and the spatial extent of the Proposed Designation.

86 Overall, while acknowledging the genuinely held concerns raised by the relevant landowners, we submit that the matters raised are either not relevant to the Panel's consideration of the Application under the FTAA, or have been adequately addressed through NZTA's Application and proposed mitigation package.

Erosion and sediment control (ESC)

87 Sedimentation effects have been raised by DOC, Te Parawhau ki Tai, and Patuharakeke. They consider refinements are necessary to the erosion and sediment controls.[21] Mr Ridley, NZTA's erosion and sediment control expert, who we note was the expert who developed and oversaw the ESC controls that were used, highly successfully on the P2W project, does not agree that the Project's earthworks pose a significant downstream sediment risk, or that the proposed controls are inadequate or generic.

88 NZTA has accepted targeted improvements raised by submitters, including WDC, including assessment of downstream environments when triggers are exceeded and an upper pH limit sought by Patuharakeke.[22]

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[21] Comment from Te Parawhau, Review of Designation Conditions; Comment from Patuharakeke, Submissions of Counsel dated 20 October 2026; Patuharakeke Cultural Impact Assessment dated March 2026; Rural Design Limited Ecological Review for Patuharakeke dated October 2026, Comment from DOC, Appendix A – Freshwater Ecology – Dr McEwan dated 11 October 2026, Appendix C – Frogs, Lizards and Avifauna – Dr Burns dated 20 October 2026.

[22] SOE Graeme Ridley.

89 NZTA's position is that the ESC measures required under its proposed conditions will ensure sediment effects will be appropriately managed and the overall effect will be minor.[23]

Freshwater

90 DOC, Te Uri o Hau, Patuharakeke and Te Parawhau ki Tai have raised concerns about the potential environmental effects of the Project on streams, including:

90.1 The appropriateness of the freshwater assessment.[24]

90.2 The quantum of loss.[25]

90.3 The effects management hierarchy;

90.4 Avoidance of high-value streams through bridging;[26]

90.5 Failure of realignments, and stream realignments through spoil sites as reclamations rather than remedies;[27] and

90.6 Offsetting of all streams, and strict application of the Stream Ecological Valuation and Ecological Compensation Ratio, used to calculate offsetting (SEV/ECR).[28]

91 In response to these comments, NZTA submits:

91.1 The Freshwater Assessment is appropriate, and stream loss has not been understated.[29] Dr Keesing and Mr Garrett-Walker both consider the Assessment provides a robust basis for the Panel's decision and that stream effects will be less than minor once mitigated.[30]

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23 SOE Graeme Ridley.

24 Comment from DOC, Appendix A – Freshwater ecology – Dr McEwan dated 11 August 2026, Appendix F – Freshwater offsetting – Dr Storey dated 20 October 2026; Comment from Te Parawhau, Review of Resource Consent Conditions dated July 2026 Comment from Patuharakeke.

25 Comment from DOC, section 53 comments – Alternative to the Brynderwyn Hills; Appendix A – Freshwater ecology – Dr McEwan dated 11 August 2026, Appendix F – Freshwater offsetting – Dr Storey dated 20 October 2026.

26 Comment from Te Parawhau, Cover Letter - Further Comments dated 20 October 2026, Review of Resource Conditions dated July 2026; Comment from Patuharakeke, Submissions of Counsel dated 20 October 2026, Attachment A – Patukarakeke Comments on Conditions; Comment from DOC, Appendix C – Frogs, lizards and avifauna – Dr Rhys Burns dated 20 October 2026.

27 Comment from DOC, section 53 comments – Alternative to the Brynderwyn Hills; Appendix A – Freshwater ecology – Dr McEwan dated 11 August 2026, Appendix F – Freshwater offsetting – Dr Storey dated 20 October 2026.

28 Comment from DOC, section 53 comments – Alternative to the Brynderwyn Hills; Appendix A – Freshwater ecology – Dr McEwan dated 11 August 2026, Appendix F – Freshwater offsetting – Dr Storey dated 20 October 2026.

29 SOE Jeremy Garrett-Walker; SOE Vaughan Keesing.

30 SOE Vaughan Keesing; SOE Jeremy Garrett-Walker.

91.2 Bridging of all high-value streams is neither necessary nor proportionate. As explained by Mr Innes and Mr Ireland, bridges would increase spoil disposal and stream disturbance elsewhere, as well as materially increase construction complexity and cost. Examples include:

(a) More than $200 million for a bridge or viaduct over the Piroa Stream and displacement of 700,000m3 of spoil;[31]

(b) $135 to $150 million and about 12 months' delay to Project construction at Gully CH20000;[32]

(c) $100 to $150 million for a bridge through the pepeketua (native frog) habitat and 1-2 additional earthworks seasons.[33]

91.3 In terms of DOC's comments on stream realignments being classified as a remedy and the use of the SEV/ECR, NZTA notes that these matters have been raised by DOC and debated numerous times on previous NZTA projects.[34] Overall, NZTA's position is that the concerns are unwarranted, and the additional mitigation sought by DOC is unnecessary, onerous and unworkable.[35] In particular:

(a) DOC's position that stream realignments should be classified as a 'offsetting' not 'remediation' has been considered and found to be largely irrelevant by decision-makers in previous projects. Most recently, the Panel considering the Takitimu Northern Link Project agreed with NZTA that, because the outcomes-based conditions proposed on that project would provide an appropriate ecological outcome, any difference in expert opinion with respect to whether the ecological outcomes are sufficiently certain and reliable, was academic.[36]

(b) The SEV/ECR is a guidance tool only. There is no legal or policy direction that requires the SEV/ECR to be applied, let alone any direction that requires it to be applied strictly. The approach advocated by DOC, which involves a 'strict' application of the SEV/ECR to calculate an ECR would require NZTA to assess and manage the effects of the Project on the basis that all low-value streams affected would otherwise be restored

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31 SOE Tony Innes.

32 SOE Tom Ireland.

33 SOE Tony Innes.

34 SOE Vaughan Keesing.

35 SOE Vaughan Keesing; SOE Jeremy Garrett-Walker.

36 Expert Panel decision on the Takitimu Northern Link Stage 2 project, dated 19 March 2026, at paragraph 335.

to a higher ecological value, regardless of whether such restoration is actually likely to occur. This is neither a realistic nor a legally sound approach. There is no regulatory certainty or reasonable expectation that widespread restoration of these streams would take place in the absence of the Project or in the near future;

(c) The approach sought by DOC would add approximately $50 million of works to the mitigation package already proposed by NZTA.

Indigenous Vegetation

92 DOC, Te Parawhau ki Tai and Patuharakeke raise concerns about the extent of indigenous vegetation lost through the Project and draw attention to the high value of that vegetation.[37] They consider NZTA's proposed mitigation package and replacement planting ratios is insufficient.

93 The commenters seek more avoidance and retention of indigenous vegetation and higher mitigation ratios. NZTA's position, supported by its technical expert, Mr Singers, is that the additional mitigation sought is unnecessary and onerous. In particular, NZTA notes:

93.1 The Proposed Designation has been located to avoid significant vegetation and to cross ecological areas at their narrowest point, and the Waipu kahikatea remnants will now be avoided;[38]

93.2 Mr Singers proposes a 1:3 offset ratio for all offsettable forest types. That ratio is above the BOAM outputs and achieves no net loss, with a small net gain;[39]

93.3 Large kauri outside of kauri dominant forests and certain large pūriri trees outside of pūriri dominant forests are to be replaced at 1:50;[40] and

93.4 Where areas cannot be offset they are to be compensated if impacted, in line with Mr Singers' recommended priority areas.[41]

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37 Comment from DOC – Appendix G - Terrestrial and wetland offsetting dated 11 August 2026, Appendix B, Vegetation Review dated 20 October 2026; Comment from Te Parawhau, Comments s53-54 dated August 2026; Comment from Patukarakeke, Ecology Review – Brynderwyns Alternative Route dated October 2026.

38 SOE Nicholas Singers.

39 SOE Nicholas Singers.

40 SOE Nicholas Singers.

41 SOE Nicholas Singers.

Wetlands

94 DOC, Te Uri O Hau, Te Parawhau ki Tai and Patuharakeke regard the loss of wetlands as a result of the Project as significant.[42] All consider the wetland inventory incomplete. All prefer avoidance to ratio-based replacement. DOC considers NZTA's proposed wetland offset site Q08/066 is unsuitable and restoring degraded wetlands within the corridor to be a preferable approach.[43] DOC also seeks that all affected wetlands be offset, regardless of value at higher ratios than those proposed by NZTA.[44]

95 NZTA has updated its management package for wetlands to provide opportunities for wetland restoration and creation for loss of high and moderate value wetlands.

96 NZTA does not consider that the imposition of higher ratios are ecologically justified.

97 Dr Keesing, and Mr Singers consider most wetlands within the Proposed Designation are exotic-dominated features of low or negligible value, whose loss is less than minor without effects management.[45] Dr Keesing's opinion is that NZTA's mitigation package will result in a less than minor effect overall and Project-wide, it is more likely than not that there will be a general uplift in stream quality across much of the designation once the various remedies and offsets are in place.[46]

98 Because avoidance and remediation are not practicable for the affected moderate and high value wetlands, offsetting is the appropriate response.[47]

99 Mr Singers, who peer reviewed Dr Keesing's assessment, surveyed the additional wetlands identified by DOC.[48] He found that about 97% of the identified areas are exotic-dominant and of low to

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42 Comment from DOC, Appendix C - Frogs, lizards and avifauna - Dr Burns dated 20 October 2026, Appendix A - Freshwater ecology - Dr McEwan dated 11 August 2026; Comment from Te Uri o Hau, Te Uri o Hau Letter dated 21 July 2026; Comment from Te Parawhau ki Tai, Te Parawhau Hapū Comments S53-54 FTAA Brynderwyn Hills dated August 2026; Comments from Patuharakeke, Ecology Review - Brynderwyns Alternative Route - October 2026, October 2026; Patuharakeke - expert kaupapa Maori covering letter with appendices, 20 October 2026.

43 Comment from DOC, Addendum to Appendix G – Terrestrial and wetland offsetting – Mr Goldwater dated 20 October 2026, Appendix C - Frogs, lizards and avifauna - Dr Burns dated 20 October 2026.

44 Comment from DOC, Appendix G – Terrestrial and wetland offsetting – Mr Goldwater dated 11 August 2026.

45 SOE Vaughan Keesing.

46 SOE Vaughan Keesing.

47 SOE Vaughan Keesing.

48 SOE Nicholas Singers.

negligible value. He considers the effect of the additional loss of approximately 4 hectares is less than minor.[49]

100 Moderate and high value wetlands will be offset through creation or restoration, which Dr Keesing and Mr Singers consider to be a very suitable offset site. NZTA does not consider DOC's offset ratios are appropriate given the effected wetlands are highly modified, with low complexity and diversity.[50]

Avifauna

101 Te Parawhau ki Tai, Patuharakeke and DOC criticise the surveys undertaken for avifauna, suggesting that targeted surveys should have been undertaken for cryptic or nocturnal species such as kiwi and bittern as well as fernbird.[51] The commenters seek a strengthened Avifauna Management Plan (*AMP*). Te Parawhau and Patuharakeke seek exclusion zones, pre-clearance nesting checks and predator and pest control.[52] Te Uri o Hau seek offset wetlands in addition to those measures.[53]

102 Te Parawhau ki Tai and Patuharakeke both seek the inclusion of kiwi and other avifauna in Wildlife Approvals.[54]

103 NZTA's position is that the avifauna assessment is robust and the additional measures sought are largely unnecessary.

104 As outlined by Dr Bull, repeated targeted surveys across the roughly 1,000 ha Proposed Designation are not feasible.[55] Dr Bull therefore took a conservative approach and assumed that species are present

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49 SOE Nicholas Singers.

50 SOE Vaughan Keesing.

51 Comment from Te Parawhau ki Tai, Te Parawhau Hapū Comments S53-54 FTAA Brynderwyn Hills, dated August 2026; Te Parawhau Review of Designation Conditions July 2026, dated July 2026; Te Parawhau Review of Wildlife Approval Conditions (July 2026), dated July 2026; Comment from Patuharakeke, Ecology Review - Brynderwyns Alternative Route - October 2026, dated October 2026; Patuharakeke - expert kaupapa Maori covering letter with appendices, dated 20 October 2026; Comment from DOC, Appendix C - Frogs, lizards and avifauna - Dr Burns dated 20 October 2026.

52 Comment from Te Parawhau, Te Parawhau Hapū Comments S53-54 FTAA Brynderwyn Hills, dated August 2026, Te Parawhau Review of Designation Conditions July 2026, dated July 2026, Te Parawhau Review of Wildlife Approval Conditions (July 2026), dated July 2026; Comment from Patuharakeke, Ecology Review - Brynderwyns Alternative Route - October 2026, dated October 2026, Patuharakeke - expert kaupapa Maori covering letter with appendices, dated 20 October 2026.

53 Comment from Te Uri o Hau, Vol. A – Appendix H – Cultural Impact Assessment – Te Uri o Hau dated April 2026.

54 Comment from Te Parawhau ki Tai, Te Parawhau Hapū Comments S53-54 FTAA Brynderwyn Hills, dated August 2026, Te Parawhau Review of Wildlife Approval Conditions (July 2026), dated July 2026; Comment from Patuharakeke, Ecology Review - Brynderwyns Alternative Route - October 2026, dated October 2026, Patuharakeke - expert kaupapa Maori covering letter with appendices, dated 20 October 2026.

55 SOE Leigh Bull.

wherever potential habitat exists, including kiwi[56] and bittern, which were not recorded.[57] Pre-construction surveys under the AMP will manage the construction effects on Threatened and At Risk species, and Dr Bull recommends that the AMP also include methods for Not Threatened native species such as kiwi.[58]

105 Predator and pest control will be delivered through the proposed designation consent conditions,[59] which will benefit avifauna, and Dr Bull considers further avifauna-specific control is required.[60]

106 Offset wetlands already form part of NZTA's mitigation package. Ultimately, Dr Bull considers that, post mitigation, the Project's potential effects on avifauna are Low to Very Low.

Bats

107 DOC, Te Parawhau ki Tai and Patuharakeke raise concerns about the Project's potential effects on bats and suggest NZTA's management package is insufficient.[61]

108 The commenters seek that bats be addressed in the Wildlife Approvals and through a Bat Management Plan. DOC also seeks a residual-effects package.[62]

109 NZTA's position is that it is not necessary to obtain a Wildlife Approval for bats, as effects on long-tailed bats will be appropriately managed through implementation of the DOC Bat Protocols.

110 Bat activity recorded across the Proposed Designation was very low and no occupied roosts were found. Mr Chapman nonetheless assumed that bats may use suitable habitat throughout the designation.[63] Mr Chapman considers that the DOC Bat Roost Protocols are the appropriate primary management response to direct effects on bats. Habitat loss, fragmentation and collision risk are addressed by habitat retention, enhancement and revegetation, connectivity measures including bat hop-overs, and long-term management.[64] With these measures, residual effects on bats and

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56 SOE Leigh Bull.

57 SOE Leigh Bull.

58 SOE Leigh Bull.

59 SOE Leigh Bull; Proposed designation conditions.

60 SOE Leigh Bull.

61 Comment from DOC, Appendix D - Bats - Thurley dated 20 October 2026; Comments from Te Parawhau ki tai, (Kūkūwai Consulting Limited technical review), Te Parawhau Hapu Comments S53-54 FTAA Brynderwyn Hills, dated 12 August 2026; Comments from Patuharakeke Ti Iwi Trust Board (Rural Design Limited), Ecology Review - Brynderwyns Alternative Route - October 2026, dated October 2026.

62 Comment from DOC, Appendix D - Bats - Thurley dated 20 October 2026, section 53 comments - Alternative to the Brynderwyn Hills dated 20 October 2026.

63 SOE Simon Chapman.

64 SOE Simon Chapman.

bat habitat are Low and do not require a Bat Management Plan, bat-specific offset or residual-effects package.[65]

Lizards

111 Te Parawhau, Patuharakeke and DOC consider the survey effort for lizards was inadequate.[66] DOC considers many undetected lizards are likely to be killed by Project construction, the Central Release Site is unsuitable, and prefer a predator-proof enclosure is required.[67]

112 NZTA's position, supported by its technical expert, Mr Chapman, is that the lizard assessment is robust and that effects will be appropriately managed through its proposed effects management package.[68] Pre-construction surveys, staged vegetation clearance and salvage and release under a Lizard Management Plan to be certified by DOC as required by the Wildlife Approval conditions will substantially reduce the risk of injury and mortality.[69] The Northern and Southern Release Sites contain suitable habitat and will be enhanced and managed.[70] Predator-proof fencing is not necessary or proportionate for the species known or expected to be present within the Project area.[71] Residual effects on lizards and their habitat will be Low.[72]

Snails

113 Te Parawhau ki Tai, Patuharakeke and DOC consider survey coverage was insufficient.[73] DOC also considers that salvage cannot replace habitat, and that the capacity of the proposed release sites is unproven.[74]

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65 SOE Simon Chapman.

66 Comments from Te Parawhau ki Tai, Te Parawhau Hapū Comments S53-54 FTAA Brynderwyn Hills, dated August 2026, Comment from Patuharakeke Ti Iwi Trust Board (Rural Design Limited), Ecology Review - Brynderwyns Alternative Route - October 2026, dated October 2026; Comment from DOC, Appendix C – Frogs, lizards and avifauna - Dr Burns dated 20 October 2026.

67 Comment from DOC, Appendix C – Frogs, lizards and avifauna - Dr Burns dated 20 October 2026, Addendum to Appendix G – Terrestrial and wetland offsetting - Mr Goldwater dated 20 October 2026, Appendix H - Planning - McEnhill dated 20 October 2026.

68 SOE Simon Chapman.

69 SOE Simon Chapman.

70 SOE Simon Chapman.

71 SOE Simon Chapman.

72 SOE Simon Chapman.

73 Comment from Te Parawhau ki Tai (Kūkūwai Consulting Limited technical review), Te Parawhau Hapu Comments S53-54 FTAA Brynderwyn Hills, dated 12 August 2026; Comment from Patuharakeke Te Iwi Trust Board, Patuharakeke Cultural Impact Assessment_Section 2B Brynderwyn Hills, dated March 2026.

74 Comment from DOC, Appendix E – Invertebrates - Stavert dated 29 July 2026.

114 Te Parawhau ki Tai, Patuharakeke and DOC seek stronger snail mitigation measures, including compensation.[75]

115 NZTA's position, supported by its technical expert, Dr Denmead, is that the snail assessment is robust and effects will be appropriately managed subject to imposition of her recommended proposed conditions and Lizard Management Plan to be certified by DOC.[76] Post mitigation, Dr Denmead concludes direct effects on snails will be Low and effects on snail habitat less than minor.[77]

116 Surveys cannot confirm absence or abundance.[78] They were not designed to do so, and estimating abundance at this scale is not practicable given the extent of suitable habitat and the cryptic nature of kauri snails.[79] Salvage and relocation are intended to manage direct effects[80] and habitat effects are addressed separately through Avoid Areas, edge remediation, revegetation, and the indigenous vegetation offsetting and compensation package, much of which also provides snail habitat.[81] Both Release Sites contain suitable habitat, and the Southern Release Site already supports kauri snails.[82] With the proposed enhancement, the sites will collectively accommodate the snails relocated.[83]

Frogs

117 DOC has lodged extensive comments in relation to the Project's effects on frogs and frog habitat. NZTA acknowledges these effects are significant and novel and understands DOC's concerns in this context. In summary, DOC's concerns boil down to:

117.1 A desire to avoid effects on frogs and frog habitat by:

(a) Shifting the Proposed Designation Boundary and Indicative Alignment to the west; or

(b) Constructing bridges or viaducts over watercourses in frog habitat; and

[75] Comment from DOC, section 53 comments – Alternative to the Brynderwyn Hills dated 20 October 2026, Appendix H – Planning - McEnhill dated 20 October 2026, Appendix G – Terrestrial and wetland offsetting - Mr Goldwater dated 11 August 2026, Addendum to Appendix G – Terrestrial and wetland offsetting - Mr Goldwater dated 20 October 2026.

[76] SOE Lisa Denmead.

[77] SOE Lisa Denmead.

[78] SOE Lisa Denmead.

[79] SOE Lisa Denmead.

[80] SOE Lisa Denmead.

[81] SOE Lisa Denmead.

[82] SOE Lisa Denmead.

[83] SOE Lisa Denmead.

(c) Avoiding all spoil disposal in the southern area of the Brynderwyn Hills north of the Piroa Stream;

117.2 Successful relocation of Hochstetter's frogs has never been proven;

117.3 Offsetting for effects on frogs and habitat is not possible or appropriate; and

117.4 Compensation for effects on frogs and habitat is not possible or appropriate.

118 Te Uri o Hau emphasise that pepeketua are a taonga species and seek recognition of this status through the Project. Patuhareke and Te Parawhau ki Tai also emphasise the importance of pepeketua and raise concerns about the scale of the potential effects on frogs, uncertainty about the suitability of receiving environments and uncertainty about the long-term success of relocation.

119 NZTA accepts the Project has the potential to have significant effects on Hochstetter's frogs and their habitat in the Brynderwyn Hills. It acknowledges DOC and hapū concerns about these potential effects and does not want to diminish or dismiss them. However, it does not share DOC and hapū pessimism about NZTA's ability to mitigate those effects.

120 DOC would like NZTA to avoid the habitat (and therefore the frogs) entirely. The Panel can be assured that NZTA would prefer to avoid the environmental effects, cost and potential constraints of constructing the road through this habitat. It would also have preferred to avoid friction with DOC.

121 However, unfortunately, as explained by Mr Innes and Mr Ireland, it is not feasible (from a cost and practicality perspective) to avoid the frogs and the habitat (either through a western alignment, which we note is beyond the jurisdiction of the Panel), or through the construction of large structures and/or trucking of large amounts of spoil over long distances.

122 NZTA's proposed measures to minimise the effects of the Project on frog habitat seem to be somewhat acceptable to DOC (at least on a principled basis). However, NZTA's proposed relocation of the frogs themselves is not acceptable to DOC, largely because of the uncertainty of a successful outcome.

123 DOC's expert, Dr Burns does not consider it is possible to successfully relocate Hochstetter's frogs because it has not been done before. Not because it has been tried and failed. With respect, just because something has not been proven to be successfully done before does not mean it is bound to fail. NZTA's herpetologists, Mr van Winkel and Mr Chapman, acknowledge relocation of such scale has not been done before. However, they both consider it is possible. NZTA has relocated hundreds of frogs

through its Emergency Recovery Works Project, which was also in the Brynderwyn Hills.[84]

124 While the results of monitoring of those relocations are in the early stages and not yet conclusive, as explained by Mr van Winkel and Mr Chapman, the signs are encouraging.

125 Mr van Winkel and Mr Chapman have developed a mitigation package designed to ensure the relocation process has the best possible chance of success. That package includes the identification and assessment of suitable release sites to ensure suitable habitat and sufficient carrying capacity, substantial enhancement of the habitat within those release sites, pest control and predator fencing, legal protection of those sites, relocation of frogs into those release sites and up to 11 years of monitoring of those relocated frogs, using DNA testing to establish success and breeding. That management package would contribute substantially to the (currently limited) scientific knowledge of the species.

126 If implemented, the management package recommended by NZTA's experts would come at a cost of at least $25 million.

127 NZTA's experts also recommend upfront compensation measures (at further cost) to fence, pest control and monitor created frog habitat and populations

128 We submit that, taking into account NZTA's substantial mitigation and compensation package, the adverse impacts of the Project on Hochstetter's frog would not be sufficiently significant to be out of proportion to the Project's regional and national benefits.

PART 4: CONDITIONS

129 NZTA, working with its technical experts, in response to comments and as a result of engagement with the councils, HNZPT, First Gas, hapū and DOC has prepared an updated suite of conditions. These conditions will be provided to the Panel by Tuesday 3 November.

130 In relation to the effects of the Project on protected wildlife, while habitat effects (ie vegetation) fall under the RMA and direct effects on fauna under the Wildlife Act, NZTA acknowledges there is a degree of overlap between those effects and NZTA's proposed management of them. It is not immediately clear how conditions relevant to protected wildlife should manage that overlap, or under which approvals they should sit. However, NZTA strongly submits that they should not be duplicated across multiple approvals.

131 In the current suite, NZTA has included all conditions relevant to managing the effects on protected wildlife under the Wildlife

[84] The discovery of an escaped population of Hochstetter's Frogs was published by DOC earlier this year, see https://www.doc.govt.nz/news/media-releases/2026-media-releases/escaped-native-frogs-rediscovered-in-backyard-after-50-years/.

Approval conditions. NZTA is agnostic as to under which approvals these conditions sit, and is happy to take guidance from Councils and DOC as the parties who will ultimately be administering the approvals on the appropriate location, provided they are not duplicated.

132 The focus of NZTA's proposed conditions is on managing actual environmental effects and setting clear environmental outcomes, not on prescriptive design or process requirements that add cost without adding environmental value.

133 At lodgement, NZTA deliberately kept its proposed mitigation package lean while still achieving appropriate environmental outcomes. Since then, it has expanded that package, where reasonable to do so, in response to reasonable concerns raised by others. It expects to continue to refine that package throughout the remaining, anticipated steps in the FTAA process. In NZTA's submission, that is exactly the kind of balanced, proportionate outcome the FTAA requires when it directs that conditions be no more onerous than necessary.

PART 5: CONCLUSIONS

134 The Project is urgently needed. It will deliver significant regional and national benefits, including safety, resilience, economic and social benefits which the evidence before the Panel demonstrates and which is not in dispute. These are exactly the kinds of benefits the FTAA is designed to enable.

135 The Project is strongly supported by all of the consent authorities, HNZPT and commenters. It also has widespread support amongst the Northland community.

136 We submit that the Project should be assessed against the real costs of delivering infrastructure today. Over the past decade, the cost of major infrastructure in New Zealand has risen considerably. Ever higher environmental requirements have contributed materially to that increase. Those requirements have not always produced a matching improvement in environmental outcomes.

137 NZTA is a Crown entity with a long and proven record of delivering nationally significant infrastructure. It has consistently met its consent conditions and environmental commitments. The Panel can be assured that the outcomes NZTA has committed to will be delivered.

138 NZTA's approach reflects its statutory requirements and public responsibility to deliver infrastructure cost-effectively and efficiently, while keeping adverse effects to a minimum. These objectives do not conflict. Together they are the responsible way to spend public money on infrastructure.

139 NZTA accepts that the Project will have adverse effects. It has avoided those effects where practicable. Where effects remain after mitigation, NZTA considers their scale is in proportion to, and clearly outweighed by, the Project's significant regional and national benefits, as the FTAA contemplates.

140 NZTA has also responded constructively to the comments received. It has continued discussions with DOC, Te Uri O Hau, Patuharakeke and Te Parawhau ki Tai. As a result, NZTA has made further changes to reduce the Project's impacts wherever reasonably practicable. Those changes have increased the investment in environmental mitigation to over $100 million. They show NZTA's genuine commitment to a balanced and pragmatic outcome, and they strengthen the case that the package before the Panel appropriately weighs benefits against impacts.

141 Any further requirements would come at additional, potentially considerable, cost. Imposing them would undermine facilitating (ie efficient, cost-effective) delivery of infrastructure that the FTAA is meant to promote.

142 In summary, the Project is urgently needed and will deliver significant regional and national benefits. NZTA submits the updated mitigation package appropriately balances those benefits against the Project's costs and impacts.

Paula Brosnahan/ Rebecca Tompkins
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28 October 2026