BEFORE THE FAST-TRACK PANEL

FTAA-2502-1009

UNDER	The Fast-track Approvals Act 2024
IN THE MATTER OF	An application by CCKV Maitai Dev Co LP for resource consents for the Maitahi Village Project - FTAA-2502-1009

LEGAL SUBMISSIONS ON BEHALF OF THE APPLICANT

6 JUNE 2025

Solicitor for the Applicant	Sam Chidgey Tavendale & Partners Christchurch +64 374 9999 sam.chidgey@tp.co.nz
Counsel for the Applicant	Alanya Limmer Christchurch +64 21 812 811 alanya@bridgesidechambers.co.nz

MAY IT PLEASE THE PANEL

INTRODUCTION

1 These submissions are filed on behalf of the Applicant in respect of the Maitahi Village Project (**Proposal**). The Proposal is listed in Schedule 2 of the Fast Track Approvals Act 2024 (**FTAA**) and was applied for on 13 February 2025 (**Application**).

2 The Proposal is one of the first to be considered under the FTAA. These legal submissions address the statutory framework governing determination of the Proposal, focusing on:

2.1 The over-arching legal principles and framework guiding the decision making process;

2.2 When a panel must or may decline approvals for the Proposal;

2.3 Relevant considerations; and

2.4 Conditions of consent.

3 The Proposal would otherwise require resource consent under the Resource Management Act 1991 (**RMA**). This makes the RMA particularly relevant to this Proposal, and it is referred to throughout these submissions.

Context

4 The Application for this Proposal follows closely behind the Private Plan Change 28 (**PPC28**) process. PPC28 entailed a fully notified process upon which there was a hearing before an independent hearing panel. The decision to approve PPC28 was then appealed to the Environment Court. After a hearing before the Environment Court, the decision to approve PPC28 was upheld (with some modifications to some provisions). All decisions on PPC28 are in the recent past.

5 PPC28 was advanced to facilitate the Proposal and the Proposal before you has been designed to conform to its environmental expectations. The PPC28 process thoroughly traversed the costs and benefits of its provisions by reference to the potential adverse and beneficial effects of the development it would facilitate.

6 The Applicant seeks approval under the FTAA framework for the expediency it offers in delivering much-needed housing and infrastructure, not to avoid scrutiny. The Applicant commenced the formal planning process for this Proposal over four years

ago.[1] In seeking approval under the FTAA regime the Applicant does not look to gain approval for anything less sustainable or beneficial than was approved through the rigorous process of PPC28. PPC28 established – particularly through its bespoke Objective, Policies, Structure Plan and Special Information Requirements – a planning framework that:

6.1 Carefully selected areas appropriate for urban development; and

6.2 Articulates clear performance expectations and outcome-based thresholds for determining when effects are acceptable, so applications for resource consent that would follow (such as this) can be robustly considered and confidently granted.

7 As evident in the Application, it is the Applicant's position the Proposal is fully compliant with the substantive requirements of both the FTAA and the RMA, including relevant National Environmental Standards, National Policy Statements as well as relevant regional and district plan provisions. Accordingly, it does not come to this process seeking leniency or expecting an easy process. Rather, it accepts the need for mahi to satisfy the Panel as to the existence of a lawful and sustainable development that is worthy of approval under the FTAA framework.

OVER-ARCHING LEGAL PRINCIPLES AND FRAMEWORK

8 Whilst the FTAA is sometimes described as "another" iteration of fast-track consenting, it is fundamentally different from anything that has gone before. It shares features of previous fast-track regimes - such as time-bound decision making and limited appeal rights, but there are two key features of the FTAA that set it apart from all previous regimes and are poised to be hugely influential on the fate of the Application:

8.1 The FTAA's purpose; and

8.2 The statutory test for when an application may be declined.

9 Under the FTAA the relevance of district, regional, and national planning instruments - such as those under the RMA - is material but not determinative. The FTAA modifies the usual RMA hierarchy of planning instruments and public process in favour of an expedited, panel-led decision making structure.

[1] PPC28 was lodged with Nelson City Council on 16 April 2021; hearings were held in July 2022; a Council decision issued in September 2022; an Environment Court hearing was held in February 2024; an interim decision was issued in July 2024 and a final decision was issued in November 2024.

Purpose of the FTAA and significant regional benefits

10 The purpose of the FTAA is uncomplicated and succinct:[2]

> *… to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.*

11 This purpose permeates all aspects of the FTAA and guides the interpretation and application of its provisions.[3] In the context of the RMA, the High Court has found its purpose (section 5) important to the overall interpretive exercise as it establishes priorities, expresses national goals and aspirations, and overall embodies the "spirit" of the legislation. The Court further noted that it required decision-makers to approach the provisions of the RMA with the *hortatory statutory objectives firmly in view*.[4] More recently the Supreme Court has found the purpose (section 10) of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 to be fundamental in creating an "environmental bottom line", against which every decision is to be measured.[5]

12 The purpose of the FTAA differs markedly from that of both the RMA[6] and the most recent, historic "version" of Fast Track consenting.[7] This crucial difference permeates the decision making framework of the FTAA and results in a legislative regime that may support the grant of a resource consent, even when the traditional RMA process would not.

13 In the resource consenting context, the FTAA prioritises the FTAA's purpose - facilitating significant regional or national benefits - over other considerations.[8] However, the panel must still consider environmental impacts and may decline applications where adverse impacts (not limited to "effects") are disproportionate to the benefits.

14 The purpose of the FTAA reflects the Government's intent to address challenges such as infrastructure deficits, housing shortages, and energy needs by accelerating project approvals.[9] Utilisation of the FTAA's processes is therefore contingent upon a project conferring significant regional or national benefits. This threshold had to be surmounted in order for a project to be listed and still has to be surmounted for a project to be referred.[10]

---

[2] FTAA, s. 3.
[3] Legislation Act 2019, s. 10; see also for example, *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127; and *TV3 Network Services Ltd v Waikato DC* [1998] NZLR 360; [1997] NZRMA 539 (HC).
[4] *TV3 Network Services Ltd v Waikato DC* [1998] NZLR 360; [1997] NZRMA 539 (HC), at 7.
[5] *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127.
[6] Contained in RMA, s. 5.
[7] COVID-19 Recovery (Fast Track Consenting) Act 2020, s. 4.
[8] FTAA, cl. 17(1) of Schedule 5.
[9] Beehive media release, 'One-stop shop fast-track bill passes third reading', Hon Chris Bishop, Hon Shane Jones, 17 December 2024.
[10] FTAA, s. 22(1)(a).

15 The legislative history of the FTAA supports the deliberateness of its requirement to afford greatest weight to the FTAA's purpose. Paragraph 17 of the Legislative Statement outlines the Parliamentary intention for decision making under the Bill:[11]

> *"The purpose and provisions of the Bill will take primacy over other legislation in decision making. This means that approvals can be granted despite other legislation not allowing them, such as, projects that are prohibited activities or those which are inconsistent with RMA National Direction. This approach is intended to ensure key infrastructure and other development projects with significant benefits for communities are not declined where the benefit of approving the project outweighs any issue identified."*

Significant regional benefits of this Proposal

16 The Proposal is listed in Schedule 2 of the FTAA. It is submitted this is powerful evidence of its potential benefits being significant at a regional level, for the following reasons:

16.1 Guidance issued by the Ministry for the Environment advised applicants that to be eligible for listing, they must explain how their project would help to achieve the purpose of the Bill (as introduced): namely, to: [12]

> *"provide a fast-track decision making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits".*

16.2 In response to the application form, the Applicant's project listing application,[13] detailed how the Proposal will deliver regionally significant benefits by addressing pressing housing needs, including provision for Iwi and aged care housing, while also contributing to a well-functioning urban environment and delivering significant economic benefits.

16.3 The Fast-Track Projects Advisory Group was established to provide independent advice to Ministers on projects to be included in Schedule 2 of the Bill. In the Terms of Reference, the Advisory Group was tasked to determine if projects meet the purpose of the Bill (as introduced), are eligible to use the fast-track process under Clause 17 of the Bill, and provide a

[11] Legislative Statement for Fast-Track Approvals Bill, Presented to the House of Representatives in accordance with Standing Order 272, at [17].
[12] Fast Track Approvals Bill Listed Projects – Guidance for Applicants, Ministry for the Environment, at page 2.
[13] Project listing application for Maitahi Village Development, submitted by CCKV Maitai Dev Co LP on 2024-05-03, see Section 7 (Eligibility), at pages 11-14.

recommendation report with lists of projects to be included in Schedule 2 Part A and Part B.[14]

16.4 In its initial eligibility assessment, the Ministry for the Environment reported to the Advisory Group that the Project would provide significant regional benefits under clause 17(3), including that it:[15]

(a) Was identified as a priority project in the Nelson/Tasman Plans;

(b) Would deliver regionally significant housing and associated infrastructure;

(c) Would increase the supply of housing and address a range of housing needs, including those of iwi and aged care; and

(d) Would deliver significant economic benefits.

16.5 In its report to Ministers, the Advisory Group assigned priority rankings (from 1 to 5) to all 2A projects by sector.[16] In terms of prioritisation, the Terms of Reference required the Advisory Group to provide recommendations on the priority of projects both in terms of their worthiness of being listed, as well as the order in which they should be referred to a panel post-enactment.[17] Maitahi Village Project was placed in Priority Group One – the highest tier within the housing and land development sector[18] - in our submission, reflecting its strong alignment with the FTAA's purpose and its readiness for referral.[19]

16.6 On 5 October 2024, the Applicant was notified by email that the Project would be listed in Schedule 2.[20] It confirmed that the Advisory Group and relevant Ministers had concluded "the project meets the Bill's purpose to facilitate the delivery of infrastructure and development projects with significant regional or national benefit".[21] The following day, the Ministers publicly announced the listing, stating that the Maitahi Village was one of 149 projects selected by Government to have significant regional or national benefits.[22]

---

[14] Briefing: Fast-Track Approvals (Listed Projects) – Options for Ministers, Ministry for the Environment, 22 July 2024 at [4]-[5] and [8]]; also see: Aide Memorie: Fast-track projects Advisory Group - report to Ministers - 2 August 2024, Ministry for the Environment, at [4]].
[15] Ministry for the Environment Assessment Form – Stage 1: Application For Listed Project under Fast-Track Approvals Bill – Maitahi Village Project for Schedule 2A, 5 July 2024, Table A, at pages 4-5.
[16] Fast Track Projects Advisory Group: Report to Ministers, 2 August 2024, at page 11.
[17] At page 11.
[18] At pages 23 and 36.
[19] At page 11.
[20] Email from ListedProjects@mfe.govt.nz to the Applicant, 5 October 2024.
[21] A copy of the email can be provided to the Panel if useful.
[22] Beehive media release, 'Fast-track projects released', Hon Chris Bishop, Hon Shane Jones, 6 October 2024.

17 Accordingly, in becoming a listed project, the Government had to be (and was) satisfied the Maitahi Village Project could deliver significant regional benefits.

18 It is submitted the listing process and the Government's ultimate decision to list the project in Schedule 2, is a relevant consideration for the Panel. It is also submitted to be highly persuasive evidence that the Project offers significant regional benefits - it would be difficult to reconcile a finding on a substantive application that a project would not have the requisite benefits, when that same project has satisfied the "significant benefits" test in order to be listed.

19 It is therefore submitted the Panel does not need to enquire into whether significant regional benefits will accrue if the Project is granted. Rather, the Panel's consideration of benefits is directed toward understanding the magnitude of them, so the Panel is equipped to undertake the proportionate weighing exercise required by section 85(3)(b). Statutory indicators supporting this submission include:

19.1 The FTAA's referral and listing processes serve as filters in this respect, with proof of significant benefits being at the heart of successful applications thereby embedding the existence of qualifying benefits into the process before a substantive application is made;

19.2 The absence of any requirement, guidance or criteria as to how a Panel should decide whether a project offers significant benefits. Rather, the FTAA requires a Panel to assess the *extent*[23] of benefit. It is submitted this further supports the interpretation contended for by the Applicant – that significant benefits are assumed (because the Project would not be here otherwise) and the Panel's enquiry is limited to understanding whether those benefits outweigh any adverse impacts that might become apparent during the decision making process;[24] and

19.3 The process affords little enough time as it is, let alone if the Panel was required to determine whether significant benefits are on offer as well. To illustrate, it took the EPA some 60 working days to determine whether the first two referral applications should be granted.[25] While the applications had to do more than just establish significant regional or national benefit, this was a part of it. It is therefore submitted the process does not envisage or allow adequate time for the Panel to revisit whether a project's potential benefits qualify as significant.

[23] FTAA, s. 81(4).
[24] For the purposes of the evaluation required by FTAA, s. 85(3)(b).
[25] Both the Ashbourn and Ayburn Screen Hub projects were applied for on 11 February 2025 and referred by the Minister for Infrastructure on 13 May 2025 into the Fast-track approval process..

20 If the Panel disagrees with the interpretation contended for and considers it necessary to undertake its own assessment of whether significant regional benefits exist, the information required for such an assessment is readily available within Section 1.1 of the Application. Section 1.1 of the Substantive Application demonstrates in clear terms that the proposed Maitahi Village Project is consistent with the statutory purpose, as required under section 43 of the FTAA.

21 As set out in Section 1.1, the Proposal promises substantial economic benefits, including job creation, stimulation of regional development, and long-term contributions to the housing market. It also provides considerable public benefits — namely, the delivery of essential regional infrastructure and the provision of housing tailored to the needs of iwi, aged care communities, and retirees. These elements strongly align with the statutory emphasis on regional or national significance and support the conclusion that approving the application advances the purpose of the FTAA.

WHEN A PANEL MUST OR MAY DECLINE APPROVALS

22 A prominent feature of the FTAA is the limited circumstances in which a proposal must[26] or may[27] be declined.

23 Summarily, the FTAA establishes a streamlined process with limited and specific criteria for declining applications. Decision making under the FTAA is purpose-driven and constrained. A panel must approve an application unless the adverse impacts are sufficiently significant to make approval inappropriate in light of the FTAA's purpose. Approval is the default. The purpose of the FTAA is a central and integral consideration.

24 This is distinct from the statutory framework of the RMA which provides decision-makers with a broad discretion to decline applications based on a comprehensive assessment of environmental effects, alignment with planning documents and (in some cases) consistency with Part 2 of the RMA. While a FTAA panel may consider planning instruments to the extent they are relevant, those instruments do not form part of the legal test for decision making, nor is there any equivalent to Part 2 of the RMA.

[26] FTAA, ss. 85(1) and (2).
[27] FTAA, s. 85(2).

25 Notably:

25.1 A panel can approve activities that would otherwise be classified as "prohibited" under the RMA (although this proposal does not involve any such activities);[28]

25.2 A panel can approve an activity even if its grant would be precluded by a provision of the RMA (the example give is section 87A(6));[29] and

25.3 An adverse impact is not *out of proportion to the project's regional or national benefits* just because the adverse impact is inconsistent with or contrary to the provision of (for example) the RMA or an RMA plan.[30]

Mandatory decline

26 Sections 85(1) and (2) are not relevant here because:

26.1 The EPA has confirmed that the Proposal is not ineligible; and

26.2 The Panel has complied (and presumably will continue to comply, to the extent needed) with the section 7 requirement to act consistently with existing Treaty settlements and recognised customary rights,[31] by inviting comment from all relevant iwi authorities and Treaty settlement entities, pursuant to section 53(2) of the FTAA; and

26.3 This is not an application for a coastal permit for aquaculture activities.[32]

27 As such, there are no grounds mandating a decline of the Proposal.

Optional decline

28 Under section 85(3) of the FTAA, the Panel <u>may</u> decline approval if, in complying with section 81(2), it determines that:

a) *there are 1 or more adverse impacts in relation to the approval sought*; and

b) those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits...

29 Both criteria must be satisfied for the Panel to exercise its discretion to decline under subsection (3).

---

[28] FTAA, s. 42(5)(a).
[29] FTAA, cl. 17(3) and (4) of Schedule 5.
[30] FTAA, s. 85(4).
[31] Treaty Settlements and other Obligations (Section 18) Report, Ministry for the Environment, 10 April 2025, at [7].
[32] FTAA, cl. 17(5) of Schedule 5.

30 “Adverse impact” is broadly defined in subsection (5) as:

> *…any matter considered by the panel in complying with section 81(2) that weighs against granting the approval.*

31 It is submitted “adverse impacts” and “adverse effects” are unlikely to be the same thing. “Adverse effects” under the RMA are perhaps best understood as a likely subset of the FTAA’s “adverse impacts”.

32 However, the distinction between “adverse effects” and “adverse impacts” is unlikely to be material in this case. This is because the panel must assess whether any identified adverse impact is *sufficiently significant to be out of proportion to the project's regional or national benefits* and it is submitted that here, even if one or more potential adverse impacts are identified, the scale of the benefits on offer — in particular, economic, infrastructural, social, ecological and cultural — mean that the statutory test for decline is not met.

33 The panel is therefore required to undertake a kind of quantitative or proportional balancing exercise. Adverse impacts are not determinative in and of themselves because the essential question is whether, in light of the Act’s development-facilitation purpose, those adverse impacts are “out of proportion” to the project’s benefits, thereby making approval inappropriate.

34 Unlike the RMA, which requires a broad evaluative judgment having regard to (rather than weighing) a range of effects and policy considerations, section 85(3) of the Fast-track Approvals Act imposes a more formulaic or 'mathematical' test. It requires the panel to undertake a direct comparison of *adverse impacts* against the *regional or national benefits* of a project and decline the application only if those impacts are sufficiently significant that they outweigh the benefits - even after factoring in proposed mitigation or offsetting measures. The language of “out of proportion” invokes a kind of comparative measurement, suggesting a threshold that is more structured and arguably narrower than the more holistic, effects-based evaluative approach under the RMA.

35 Another interesting feature of the FTAA (and section 85 in particular) is that even *if* adverse impacts are out of proportion to benefits, a panel is not obliged to decline an application. While it is submitted this will not arise in this case because the benefits comfortably exceed any potential adverse impacts, the Applicant respectfully seeks leave to provide further legal submissions on this precise point if the Panel finds itself in a position where operation of the word “may” in section 85(3) becomes important.

Application to the Proposal

36 If it were of assistance to the Panel in undertaking its section 85(3) evaluation, the Applicant could prepare a document of two columns summarising (side by side) the potential adverse impacts of the Proposal and its potential benefits. Because adverse impacts are to be considered after any conditions, project modifications or compensation are taken into account,[33] it would likely be most useful to the Panel later in the process and certainly after comments have been filed as well as Applicant responses to the same.

RELEVANT CONSIDERATIONS

Sections 81 to 85

37 Sections 81 to 85 are the key provisions in directing decision making under the FTAA. Section 81 is the starting point.

38 Section 81(1) gives the Panel power to either grant (and set any conditions to be imposed) or decline a proposal. The Panel's evaluative exercise for the Maitahi Village application *must* start by *considering*:

38.1 The Substantive Application;[34] and

38.2 All advice, reports, comments, or other information received by the Panel (unless received after the applicable time frame, in which case it is at the Panel's discretion to consider, provided that a decision has not yet been made on the approval). [35]

39 Section 81(2) then specifies what other *clauses* must be *applied* by the Panel in making its decision. Section 81(2) also requires that sections 82 to 85 are adhered to.

40 Section 81(3) identifies which clauses of which Schedules are relevant to an application, depending on the type of approval sought.

41 Section 81(4) reaffirms the place of the purpose of the FTAA in your assessment.

42 Sections 82 is not relevant to this Proposal.

43 Section 83 imposes a test of *no more onerous than necessary,* in respect of any conditions imposed on a granted approval. The RMA contains no such test.

---

[33] As per FTAA, s. 85(3)(b).
[34] FTAA, s. 81(2)(a).
[35] FTAA, ss. 81(2)(a) and 81(6).

44 Section 84 gives the panel additional powers to set conditions to recognise or protect a relevant Treaty settlement.

45 Section 85 prescribes when a panel *must* decline approval and when a panel *may* decline approval. This section has been discussed earlier in these submissions.

Schedule 5

46 Because the Proposal seeks a resource consent that would otherwise be applied for under the RMA, it is governed by section 81(3)(a). Section 81(3)(a) specifically refers to Clauses 17 to 22 of Schedule 5.

47 Clauses 19 to 22 of Schedule 5 do not apply to this Proposal, so only 17 and 18 are relevant.

48 Clauses 17(2)(b) and (c), (3), (4) and (5) also do not apply to this application.

Clauses 17 and 18 of Schedule 5

49 Pursuant to Clause 17(1) the Panel must *take into account:*

49.1 The purpose of the FTAA. The purpose of the FTAA and its importance to the Panel's decision is addressed earlier in these legal submissions. Clause 17(1) stipulates that the FTAA's purpose is to be given the greatest weight of all matters in Clauses 17(1)(a) to (c);[36]

49.2 *The provisions of Part 2, 3, 6 and 8 to 10 of the RMA that direct decision making on an application for a resource consent*.[37] This Clause is considered in more detail below; and

49.3 the relevant provisions of any other legislation that directs decision making under the RMA. [38]

50 The requirement to "*take into account*" the purpose and above stated provisions of the FTAA requires the Panel to consider the matter which is relevant, weigh it up with other relevant factors, and give it weight as considered appropriate by the Panel in the circumstance.[39] The importance of each matter will vary depending on the factual context of each application, the nature of the environment and the extent and nature of existing interests. It is a "lesser" requirement than "have regard to".

[36] FTAA, ss. 81(2)(b) and 81(3)(a).
[37] FTAA, cl. 17(1)(b) of Schedule 5.
[38] FTAA, cl. 17(1)(c) of Schedule 5.
[39] *Foodstuffs (South Island) Ltd v Christchurch City Council* [1999] NZRMA 481.

Relevant provisions of the RMA

51 Neither Clause 17(1)(b) or any other part of the FTAA particularises which provisions of the RMA *direct decision making*. It is therefore left for the Panel to determine which provisions ought to be taken account of.

52 Sections 5, 6, 7 and 104(1) of the RMA are submitted to be the most important to this Proposal.

53 There are several other provisions in Parts 3, 6 and 8 to 10 of the RMA that contain procedural requirements and direction. However, the Applicant has taken the view these provisions do not *direct decision making* in the sense they do not go toward the determination of whether consent should be granted (or not).

<u>Sections 5, 6 and 7</u>

54 The statutory direction to *take into account* the purpose of the RMA leads you to consideration of whether the Proposal achieves *sustainable management*. As part of this assessment, the RMA says decision makers should:

54.1 recognise and provide for the matters of national importance as set out in s6(a)-(h) RMA; and

54.2 have particular regard to the other matters set out in s7(a)-(j) RMA.

55 It is to be borne in mind the purpose of the FTAA bears no resemblance to the RMA. Neither does it resemble the "dual purpose" regime of the COVID-19 Fast Track legislation. The purpose of the FTAA is development-focussed only and is the weightier consideration.

56 An assessment of the Proposal against sections 5, 6 and 7 of the RMA is set out at Section 7.0 of the Substantive Application. In summary, the Applicant submits the Proposal:

56.1 represents sustainable management of natural and physical resources and will therefore achieve the purpose of the RMA;

56.2 appropriately recognises and provides for relevant matters of national importance (section 6); and

56.3 has particular regard to relevant section 7 considerations.

57 The Applicant notes that section 8 of the RMA is not listed as a matter to be addressed under the FTAA, but cultural considerations are prominent throughout various of the FTAA provisions. In addition, the principles of the Treaty, kaitiakitanga, mātauranga

Māori and Te Ao Māori have been central considerations in the design of the Proposal and intended to remain so throughout its implementation. Importantly, the project is supported by all iwi of Te Tau Ihu, reflecting a high level of cultural responsiveness and partnership.

Section 104(1)

58 Whilst there are a raft of provisions in Part 6 of the RMA that direct decision making for resource consent applications, section 104(1) is the paramount evaluative provision in any consenting process.

59 s104 RMA requires a decision-maker, subject to Part 2 and section 77M, to have regard to:

59.1 any actual and potential effects on the environment of allowing the activity; and

59.2 any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and

59.3 any relevant provisions of—

(a) a national environmental standard:

(b) other regulations:

(c) a national policy statement:

(d) a New Zealand coastal policy statement:

(e) a regional policy statement or proposed regional policy statement:

(f) a plan or proposed plan; and

59.4 any other matter the consent authority considers relevant and reasonably necessary to determine the application.

60 The statutory requirement for this Panel to "have regard to" under the RMA means that the Panel is required to give those matters genuine attention and thought, but you are not necessarily required to accept those matters.[40] The words of the FTAA

[40] *Foodstuffs (South Island) Ltd v Christchurch City Council* [1999] NZRMA 481.

therefore create a situation where the Panel is to “take into account” provisions that require a decision maker to “have regard to” certain matters.

61 Section 5.0 of the Substantive Application discusses the actual and potential effects of the Proposal. Integral to this are the positive and compensatory water quality, ecological and cultural effects that will arise from the Proposal. These include the gifting of Kākā Hill to Iwi and the enhancements associated with re-routing Kākā Stream.

62 Section 6.0 of the Substantive Application provides an assessment of the Proposal against the relevant statutory planning and policy documents. Some are more important than others in terms of the extent to which they provide specific guidance is relevant to the Proposal.

63 While numerous documents are relevant to some degree or another, none is more so than the Nelson Resource Management Plan and the bespoke provisions inserted by Private Plan Change 28. This is not surprising given Private Plan Change 28 was intended to provide for the Proposal and the Substantive Application has been shaped by its requirements.

64 It is submitted that while RMA plans and policies are still relevant and mandatory considerations under the FTAA regime, they are given reduced legal weight compared to the RMA process. Panels must take them into account – even have regard to them and then take into account the outcome of doing that – but the decision making emphasis is on delivering national or regional benefits; not strict adherence to planning orthodoxy.

65 The decisions in *King Salmon*[41] and *Davidson*[42] were products of the structure and hierarchy of the RMA, especially the hierarchy it creates in respect of planning and policy instruments. Consequently, it is submitted that while the Supreme Court decision in *King Salmon* and the Court of Appeal decision in *Davidson* are pivotal authorities under the RMA, their relevance to the FTAA is substantially limited by the statutory context and different decision making framework.

66 The statutory context of the RMA includes the obligation to **“**give effect to” higher-order instruments, like NPSs and the primacy of Part 2**.** By way of comparison, the FTAA:

66.1 Has a different purpose (development and benefit focussed);

66.2 Applies a lower threshold ("take into account") for national direction; and

[41] *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38.
[42] *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

66.3 Grants panels **broad discretion** to depart from policies they would be bound by under the RMA (most particularly because of Section 85(4) and Clauses 17(1) and (4)).

67 It is submitted that while they may assist in guiding interpretation of RMA instruments, *King Salmon* and *Davidson* do not constrain decision making under the FTAA like they do under the RMA. The statutory discretion under the FTAA is broader and the FTAA purpose more powerful.

68 The Applicant does not consider there are any "other" matters that fall for consideration under section 104(1)(c).

Section 104D of the RMA

69 Importantly, section 104D of the RMA is expressly excluded from consideration. This is a notable feature of the FTAA and is relevant to the Proposal because, if resource consent were being sought under the RMA, it would have a non-complying status. Section 104D is an important section in the RMA. It contains what are known as the "gateway tests" for non-complying activities. A non-complying activity cannot proceed to an assessment on its merits unless it first passes through one or other of the two gateways.

70 The COVID-19 Fast Track Act also excluded consideration of section 104D for listed projects, but retained it as relevant for referred projects. Correct application of s104D to a referred application under the COVID-19 Fast Track Act was a large focus of the recent Court of Appeal decision in the *Glenpanel* proceedings.[43]

71 The purpose of the COVID-19 Fast Track Act was set out in section 4 as:

> *The purpose of this Act is to urgently promote employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.*

72 The Court of Appeal held, in the context of the COVID-19 Fast Track regime, that s104D applied to referred projects without substantive modification.[44] Relevantly, it also noted the position was different for listed projects where *Parliament itself has identified the applications that will be addressed by a panel under modified RMA provisions.*[45]

---

[43] *Glenpanel Development Ltd v Expert Consenting Panel* [2025] NZCA 154.
[44] At [20].
[45] At [22].

73 In the case of this Proposal the position is even more removed from the RMA because:

73.1 Like for listed projects under the COVID-19 Act, consideration of s104D has been ousted; but, in addition

73.2 The purpose of the FTAA does not include any requirement to continue the promotion of the sustainable management of natural and physical resources.

Summary position

74 In summary then, despite the substantial differences between the two items of legislation, RMA considerations are of relevance to decision making under the FTAA. The weight to be given to relevant RMA instruments and their influence on the final decision will differ from the standard RMA process though, principally because of:

74.1 The FTAA's purpose – being to facilitate projects with significant regional or national benefits;

74.2 The exclusion of section 104D from consideration and determinative impact;

74.3 The FTAA allows the grant of approval for an activity even if grant would be precluded under the RMA;[46]

74.4 The test for decline is a relatively "black and white" weighing of adverse impacts against project benefits; and

74.5 Even if adverse impacts are *out of proportion* to project benefits, a panel still retains discretion to grant approval and the purpose of the FTAA will be highly relevant to the exercise of that discretion.

Conditions of Resource Consent

75 Section 83 imposes a test of *no more onerous than necessary,* in respect of any conditions imposed on a granted approval. The RMA contains no such test.

76 The provisions relevant under Clause 17(1) must also be taken into account by the Panel when deciding upon conditions in accordance with Clause 18.[47] When imposing conditions on a resource consent, the provisions in Parts 6, 9,[48] and 10 of the RMA will potentially apply.[49]

77 The relevant provisions for this Proposal are:

[46] FTAA, cl. 17(3) and (4) of Schedule 5.
[47] FTAA, cl. 17(1) of Schedule 5.
[48] The provisions in Part 9 are not relevant because they relate to resource consents considered under a Water Conservation Order.
[49] FTAA, cl. 18 of Schedule 5.

77.1 Section 108 (conditions of consents); section 108AA (requirements for conditions of consents) and section 128 (circumstances when conditions can be reviewed) of Part 6; and

77.2 Section 220 (conditions of subdivision consents), section 240 (conditions as to amalgamated land) and section 243 (conditions as to easements) of Part 10.

The use of management plans in consent conditions

78 At the Project Overview Conference, the Panel asked Counsel to confirm the legal status of management plans under the FTAA. It is submitted RMA jurisprudence on this matter is relevant and useful.

79 The starting point is section 108(3) of the RMA, which gives a consent authority the power to impose conditions on resource consents requiring the preparation and maintenance of management plan(s). Management plans are a means of adaptively managing and mitigating the actual or potential adverse effects of an activity. They are particularly useful where imposing a standard condition of consent may not give sufficient flexibility to appropriately manage an adverse effect[50] and/or where they require a level of detail that would be inappropriate in a consent condition.

80 Section 108(3) of the RMA applies to the Panel when deciding to impose conditions, pursuant to Schedule 5, clause 18 of the FTAA. It is therefore submitted that management plans are as lawful under the FTAA as they are under the RMA.

81 Recent decisions have provided greater guidance regarding the appropriate use of management plans. For example, in *Re Canterbury Cricket Assn Inc* [2013] NZEnvC 184,[51] the Court found that where a management plan(s) is proposed:[52]

81.1 it is imperative that conditions of consent identify the performance standards that are to be met; and

81.2 that management plans are confined to identifying how those standards are to be achieved.

82 The Court went onto expressly state its expectation that an applicant seeking the inclusion of a management plan requirement, will provide evidence demonstrating how the effects of the activity are to be managed: [53]

82.1 under the management plan objectives; and

---

[50] *Wood v West Coast Regional Council* [2000] NZRMA 193, at 6.
[51] *Re Canterbury Cricket Assn Inc* [2013] NZEnvC 184 [2013] NZRMA 371, at [114]-[128].
[52] At [125].
[53] At [130].

82.2 In broad terms, how those objectives are to be achieved.

83 Without such evidence, the Court indicated it is unlikely to be satisfied the proposed conditions were appropriate.[54]

84 It is not unlawful for objectives in a management plan condition to be made up of qualitative criteria (in appropriate circumstances), instead of quantitative criteria.[55] The Court has also previously stated it is inappropriate to include parameters or limits within a management plan – these should be in the conditions themselves. However, a management plan can legitimately provide information as to how specified parameters or limits can and will be met.[56]

85 The Applicant is scheduled to provide a revised iteration of draft conditions with its responses to any comments received. It is respectfully suggested this would be the appropriate juncture at which to provide more fulsome legal submissions pertaining to section 83 and Clause 18 of Schedule 5, if necessary. Another opportunity would arise if draft conditions are circulated for comment.

Conclusion

86 The FTAA is a new and distinct item of legislation. While aspects of the RMA (and therefore the jurisprudence developed it under it) have some application to the FTAA decision making framework, the pivotal provisions are starkly different.

87 In many ways the FTAA presents a comparatively straightforward approvals process in that it has a singularly-focused purpose, which is expressed succinctly, and a "decline threshold" that introduces a more arithmetic balancing test than is found in the RMA.

88 The Substantive Application allows you to undertake an evaluation of the Proposal against the machinery provisions of the FTAA, as well as section 104(1) of the RMA. This application follows a change to the Nelson Resource Management Plan, which was advanced and approved to facilitate this development. Plan Change 28 was publicly notified and tested before independent hearing commissioners. An appeal was heard and decided by the Environment Court. The resulting planning provisions are the culmination of a thorough-going and participatory plan change process.

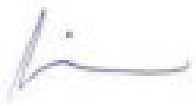
89 The Proposal offers the Region substantial benefits. As well as responding to a desperate need for more housing, the Proposal offers opportunity for cultural, ecological and water quality enhancements. The Proposal has been designed to satisfy the stringent requirements of all relevant planning and policy provisions.

---

[54] At [130].
[55] *Northcote Point Heritage Preservation Soc Inc v Auckland Council* (2016) NZEnvC 248, at [48].
[56] *Wellington Fish and Game Council v Manawatu-Wanganui Regional Council* [2017] NZEnvC 37, at [175].

90 The Applicant seeks to avail itself of the FTAA process for the sake of expediency, not to avoid environmental accountability. The fact the Applicant has just spent several years before commissioners and the Environment Court in respect of the precursor Plan Change is testament to this, as well as the faithfulness of the Proposal to the development parameters set down by the NRMP.

91 Because of the novelty of the FTAA, the Applicant wishes its legal counsel to extend an offer to present these submissions to the Panel, if that would assist.



Alanya Limmer KC I Sam Chidgey
Counsel for CCKV Maitai Dev Co LP