



APPENDIX A

Analysis of Legal Framework

**BEFORE AN EXPERT PANEL
SOUTHERN SEAWALL RENEWAL PROJECT**

UNDER the Fast-track Approvals Act 2024

IN THE MATTER OF an application by Wellington International Airport Limited for
approvals for the Southern Seawall Renewal Project

**ANALYSIS OF LEGAL FRAMEWORK APPLYING TO THE APPLICATION
BY WELLINGTON INTERNATIONAL AIRPORT LIMITED**

23 October 2025

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1. INTRODUCTION AND BACKGROUND TO THE PROJECT

Purpose and structure of this document

- 1.1 Wellington International Airport Limited (**WIAL**) is lodging a substantive application (**application**) under section 42 of the Fast-Track Approvals Act 2025 (**FTAA**) for various approvals¹ to enable the Southern Seawall Renewal Project (**Project**).
- 1.2 The FTAA, which is intended to provide a more efficient and certain consenting pathway for projects with significant regional or national benefits, establishes the legal framework within which WIAL's application for approvals is to be considered.
- 1.3 The Project is listed in schedule 2 to the FTAA. As a listed project, the Project does not need to satisfy any further criteria in order to use the fast-track process, having effectively already been assessed as an *"infrastructure or development project that would have significant regional or national benefits"*.²
- 1.4 To assist the Panel, this document presents a summary of the FTAA framework and evaluates WIAL's application against the key legal tests. The structure of this document is as follows:
 - (a) this **Section 1** introduces the Project and its context;
 - (b) **Section 2** summarises the legal framework under the FTAA;
 - (c) **Section 3** applies the framework to the Project, including by reference to the Project's environmental effects and the relevant planning instruments;
 - (d) **Section 4** addresses the Panel's power to set conditions; and
 - (e) **Section 5** contains a brief conclusion.
- 1.5 Detailed information on the Project and how it has been evaluated against the applicable approvals framework is provided in Part A of the application, which has been prepared by expert planners at Mitchell Daysh Limited and draws on technical advice provided by a large team of other experts. This

¹ WIAL is applying for resource consents that would otherwise be applied for under the Resource Management Act 1991 (**RMA**); concessions that would otherwise be applied for under the Reserves Act 1977 (**Reserves Act**); wildlife approvals that would otherwise be applied for under the Wildlife Act 1953 (**Wildlife Act**); and an archaeological authority that would otherwise be applied for under the Heritage New Zealand Pouhere Taonga Act 2014 (**HNZPT Act**).

² This is one of the criteria that must be met for a referral application to be accepted by the Minister of Infrastructure under s 21 and 22 of the FTAA.

legal analysis complements and is intended to be read alongside Part A and the rest of the application.

Principal submission

- 1.6 The Southern Seawall is critical infrastructure that protects Wellington International Airport (**the Airport**) from the large waves that occur during Wellington's frequent southerly storms. The Project will strengthen the Southern Seawall to make it resilient across 50 years of expected sea-level rise, with an ability to adapt it further to protect the Airport well into the 22nd century.
- 1.7 Safeguarding the Airport over the long-term is very important for Wellington and for New Zealand; as the country's only centralised international airport, it provides a vital lifeline³ and point of international and domestic connection for millions of people each year.
- 1.8 As well as being a major enabler of people's social and cultural wellbeing, the Airport is a huge contributor to the economy in the Wellington region. It facilitates annual expenditure of \$3.9 billion,⁴ supports over 14,500 full-time equivalent (**FTE**) jobs, and contributes around \$2 billion in gross domestic product (**GDP**) to the region's economy annually.⁵
- 1.9 The Project is a large and important undertaking that is necessary to secure the overall benefits provided by the Airport into the future, and to avoid the high costs associated with ongoing incremental maintenance of the Southern Seawall. The Project's gross benefits may exceed \$690 million (in a high-benefit scenario); in the median scenario, gross benefits are estimated at \$553.6 million (net present value (**NPV**)) over a 50-year timeframe and net benefits are valued at \$336.9 million NPV.
- 1.10 The Project will also generate employment equivalent to approximately 800 FTE positions during its multi-year construction period.
- 1.11 The Project has been developed with care to ensure that sensitive values in the coastal environment will be protected and adverse effects, including on people living near the Airport, will be minimised through a comprehensive suite of management tools. While it would be impossible to internalise fully the adverse effects of a large construction project in this location, residual

³ The Airport is a lifeline utility with important duties to fulfil under the Civil Defence Emergency Management Act 2022.

⁴ Made up of direct expenditure of \$2.2 billion and flow-on (indirect and induced) expenditure of \$1.7 billion.

⁵ *Economic contribution of Wellington International Airport*, Business and Economic Research Limited (BERL), October 2024.

impacts will generally be low (and certainly not out of proportion to the Project's regional and national benefits, which are significant).

- 1.12 The Project would strongly merit approval under traditional statutory processes; for example, Airport-related activities – including this Project in particular – enjoy considerable support from the relevant resource management planning instruments.
- 1.13 Under the FTAA, there is no reasonable basis on which the Panel could decline WIAL's application; it will strongly promote the purpose of the FTAA (to "*facilitate the delivery of infrastructure (...) projects with significant regional or national benefits*") to grant the application on appropriate conditions – that is, on conditions that are proportionate to the adverse effects of the Project and that will not unreasonably compromise WIAL's ability to deliver the Project.

Wellington International Airport Limited

- 1.14 WIAL owns and operates the Airport, which is a critical strategic asset for Wellington and the surrounding regions (serving communities stretching from Hawke's Bay to Marlborough).
- 1.15 As explained in the application documents, the Airport is one of the busiest airports in New Zealand, operating a mixture of scheduled domestic and international flights, corporate jets, medical/emergency flights, military and diplomatic flights and general aviation. It is currently the third largest airport in New Zealand in terms of passenger numbers, and is a gateway for millions of residents, visitors and business travellers every year, connecting the capital city to all parts of New Zealand, Australia, the Pacific and onwards, to the rest of the world.

The Project

- 1.16 The Airport is bounded by Lyall Bay to the southwest and south, which faces towards the Southern Ocean. To protect the Airport's runway and flight operations from southerly storms, wave protection seawalls and a breakwater were constructed around 1954 (which also serve to protect a range of Wellington City Council (**WCC**) assets, including the city's main wastewater connection to the Moa Point Wastewater Treatment Plant and Moa Point Road itself).
- 1.17 The Southern Seawall is at the end of its functional life and requires replacement. Through the Project, the Airport will continue to be protected against natural hazards, its resilience to climate change and the effects of

sea-level rise will significantly increase, and increasing maintenance demands on WIAL will be reduced.

1.18 A number of ancillary activities will be required to support the reconstruction and upgrade of the Southern Seawall, as described in the application documents. In summary, the Project comprises the following key elements:

- (a) establishment and use of the Miramar Golf Course Construction Yard (**MGC Yard**) for the storage of rock and concrete armour units;
- (b) clearance and use of the George Bolt Street Construction Yard (**George Bolt Yard**) for the storage of materials and plant;
- (c) establishment and use of the Moa Point Construction Yard (**Moa Point Yard**) and site facilities at the corner of Stewart Duff Drive and Moa Point Road;
- (d) renewal of the Southern Seawall, involving overlaying the existing seawall with a layer of rock and re-used concrete units (**underlayer**), a layer of armour units, and construction of the Seawall toe and associated works;
- (e) remediation of the Eastern Bank, providing rock protection as a transition between the Southern Seawall and the unprotected coastline to the east and help to reduce the active erosion of the existing bank;
- (f) creation of high-quality kororā habitat on the landward side of Moa Point Road (**Stage 1 Kororā Colony**) and on part of the Moa Point Yard (**Stage 2 Kororā Colony**) to support kororā habitation and breeding; and
- (g) supply of rock and armour units.

1.19 A notable feature of the Project is that many of the construction activities associated with reconstructing the Southern Seawall must take place at night, due to a need to avoid equipment breaching the 'Obstacle Limitation Surface' while the Airport is operating (and due to a need to keep the Airport operating, including to safeguard its function as a lifeline utility).

The scope of the application

1.20 The Project is a 'listed project' under subparts 2 and 3 of part 2 and schedule 2 to the FTAA. The Project is described, and its scope set out, in schedule 2, as being to:

"Replace and upgrade the existing seawall at the southern end of the runway at Wellington Airport, and carry out activities to support reconstruction, including a new or upgraded supply wharf and construction yards".

- 1.21 The Project is consistent with that description (although it has proven unnecessary to construct or upgrade a supply wharf). Approvals are sought for the activities directly associated with replacing and upgrading the Southern Seawall, as well as for the various other activities necessary to support those construction activities, including activities to mitigate or otherwise address the environmental effects of the Project.

The existing environment

- 1.22 The Project activities are proposed to take place within an area that could be described as highly industrialised, including land reclaimed and used for the Airport. Nonetheless, some important native species and other natural values are present, and a number of residents live nearby along Moa Point Road and in the suburb of Strathmore Park.
- 1.23 From a legal perspective, a number of the activities associated with the Project could have been enabled, in an RMA sense, by existing approvals held by the Airport. These include the Airport's designations WIAL2, WIAL4, and WIAL5, which together extend across the MGC Yard area, the George Bolt Yard, and other parts of the Project site and are relevant to understanding the nature of the 'existing environment' against which the effects of the Project must be assessed. Also relevant in this regard are:
- (a) the regional rule that permits maintenance of the Southern Seawall;
 - (b) the Special Purpose Airport Zoning that applies over various parts of the Project area and permits a number of airport-related activities; and
 - (c) the Wildlife Act approval held by WIAL to deter or kill birds for aviation safety purposes.
- 1.24 It is important to note, however, that in seeking specific RMA and other approvals for all activities related to the Project, the technical specialists advising WIAL have not relied on permitted activities or WIAL's existing approvals to discount or downplay the Project's adverse effects.

2. LEGAL FRAMEWORK – FAST-TRACK APPROVALS ACT 2024

Introduction

- 2.1 Key aspects of the FTAA are summarised in sections 2 to 4 of this document.

- 2.2 Again, the purpose of the FTAA is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits. As the Panel will be aware, it must interpret the FTAA from its text, read in light of its purpose (set out in section 3 of the FTAA) and its context.⁶
- 2.3 Notably, the FTAA consolidates multiple statutory approval processes that are typically required for large or complex projects, into a 'one-stop-shop' arrangement. That is, the FTAA establishes an alternative consenting / approvals regime to that under a range of "*specified Acts*".⁷ Where a substantive application for approvals for the Project is made under section 42, the process and requirements for obtaining approvals under the FTAA will apply instead of the equivalent processes under the relevant Acts.
- 2.4 As applicable to this Project, the approvals sought by WIAL include:⁸
- (a) all the resource consents necessary under the RMA to construct, operate, and maintain the Project, pursuant to the relevant District and Regional Plans and the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health;
 - (b) concessions (in the form of leases and licences) to enable activities on esplanade reserve land administered by Wellington City Council (**WCC**) under the Reserves Act;
 - (c) approvals under the Wildlife Act for activities associated with relocating native lizards from the Moa Point Yard and MGC Yard to suitable adjacent habitats, for activities associated with relocating kororā from the Southern Seawall to the Stage 1 Kororā Colony (including 'marking' kororā for species management and research purposes), and for any unintentional, incidental harming or killing of protected wildlife during construction; and
 - (d) an archaeological authority under the HNZPTA, on a precautionary basis, to modify or destroy any archaeological site (in the unlikely event that one is encountered during construction activities, many of which take place on reclaimed land).

⁶ Legislation Act 2019, s 10(1).

⁷ FTAA, 4(1); as relevant to this Project, this term includes the HNZPT Act, the Reserves Act, the RMA, and the Wildlife Act.

⁸ FTAA, s 42(4)(a) to (n).

- 2.5 Once an approval is granted under section 81(1)(a) of the FTAA, that approval will have the same force and effect for its duration, and according to its terms and conditions, as if it were granted under the relevant Acts.
- 2.6 WIAL is lodging with the Environmental Protection Authority (**EPA**) an application for all approvals required for the Project under section 42 of the FTAA, and the Panel has been established to process the application and make decisions on each approval sought.

Purpose of 'facilitating delivery'

- 2.7 As noted above, the purpose of the FTAA is to ***"facilitate the delivery of infrastructure and development projects with significant regional or national benefits"*** (emphasis added).⁹ Facilitating the delivery of such projects means the same thing as 'helping make them happen'.
- 2.8 This purpose section was intentionally strengthened through the Parliamentary process; in its first reading, the relevant clause in the Bill read: *"to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits."* The change in language from 'providing a process' to simply 'facilitating the delivery' represents significant strengthening of the purpose. This was intentional, as explained in the Select Committee report.¹⁰
- 2.9 The purpose of 'facilitating delivery' of beneficial projects is not to say the process under the FTAA does not apply rigour to assessing a substantive application, or that an application cannot be declined. However, there is a strong starting presumption of 'facilitating delivery'; the foundational premise of the FTAA is that the delivery of infrastructure with significant regional or national benefits should be facilitated. This presumption is reflected in a number of ways throughout the scheme of the FTAA. That is:
- (a) A panel must give the greatest weight to the purpose of the FTAA in its decision-making, ahead of all other considerations.¹¹ This deliberate aspect of the FTAA clearly intends to make decision-making more favourable to beneficial proposals than would otherwise be the case under usual (non-FTAA) processes.

⁹ FTAA, s 3 (purpose).

¹⁰ Fast-track Approvals Bill, as reported from the Environment Committee, 18 October 2024, at page 3.

¹¹ FTAA, cl 17(1)(a) (resource consent), 20(3)(a)(i) (change or cancellation of a resource consent condition), 24(1)(a)(i) (notice of requirement) of schedule 5; cl 7(1)(a)(i) (concession), 29(1)(a)(i) (land exchange) and 45(1)(a) (conservation covenant) of schedule 6; cl 5(a) (wildlife approval) of schedule 7; cl 4(1)(a) (archaeological authority) of schedule 8; cl 5(a) (freshwater fisheries activity approval) of schedule 9; cl 6(1)(a) (marine consent) of schedule 10; cl 7(1)(a)(i) and cl 8(1)(a)(i) (access arrangements), and cl 19(1)(a) (mining permit) of schedule 11.

- (b) A panel only has discretion¹² to decline an application where "*adverse impacts*" are "*sufficiently significant to be out of proportion to the project's regional or national benefits.*"¹³ There is therefore a clear tolerance for adverse impacts, provided they are not out of proportion to the regional and national benefits (and even if they are, a panel has a residual discretion to grant approvals).
- (c) The 'proportionality' consideration means that the more significant the regional and national benefits of a proposal, the more significant the adverse impacts would need to be before the proposal could be declined. This consideration was introduced to the FTAA late in the legislative process (at the Committee of the Whole House stage), in order to "*clarify the high bar for declining an approval.*"¹⁴
- (d) That the bar is "*high*" is underscored by Parliament's choice of language in the test. A panel's discretion to decline approvals does not arise if a project's adverse effects are merely 'significant', or 'greater than' its benefits. Rather, adverse effects must be "*sufficiently significant to be out of proportion to*" the regional and national benefits in order for the discretion to decline to be available; this requires a panel to apply a strong presumption in favour of enabling a beneficial project (and thereby realising its benefits).
- (e) Moreover, before the discretion to decline an approval is available to a panel, it must first have taken into account the full extent of its powers to impose conditions (and any conditions that may be offered by an applicant).¹⁵
- (f) The FTAA also requires a panel, if proposing to decline approvals, to provide the applicant with a copy of its draft decision and invite the applicant to propose conditions on, or modifications to, any of the approvals sought (or withdraw the part of the substantive application).
- (g) Any conditions imposed by a panel must be no more onerous than necessary to address the relevant matter.¹⁶ The clear intent of this

¹² There are also limited mandatory circumstances in which an application must be declined set out in section 85(1).

¹³ Section 85(3).

¹⁴ [Amendment Paper No 238 \(released 10 December 2024\) – New Zealand Legislation.](#)

¹⁵ Section 85(3)(b).

¹⁶ Section 83.

provision is to prevent the imposition of conditions that are overly burdensome and may delay or prevent the delivery of a proposal.

- (h) The general processing and decision-making timeframes set out in the FTAA are shorter than under the equivalent non-FTAA process. The time efficiency built into the process is geared toward enabling faster delivery of the relevant proposals, which means that the benefits of such proposals are accrued earlier.

Information requirements

2.10 The information requirements for a substantive application for approvals are set out in section 43 and in various provisions in schedules 5 to 11, as relevant to each approval type that can be sought under the FTAA.¹⁷ In particular, a substantive application must (relevantly):

- (a) explain how the project is consistent with the purpose of the FTAA;¹⁸
- (b) demonstrate that the project does not involve any '*ineligible activities*' (within the meaning in section 5(1) of the FTAA);¹⁹
- (c) comply with any requirements in schedules 5 to 11 that apply to the approvals sought;²⁰ and
- (d) for a listed project, information that would have been required to be included in a referral application under section 13(4).²¹

2.11 Schedules 5 to 11 of the FTAA include additional information requirements for each approval sought.²² For example, the specific form, manner and content requirements for consent applications under schedule 5 of the FTAA are set out in clauses 5 to 7, and 12 (respectively). Those clauses include additional information requirements than those specified in the RMA, including the requirement to provide information about any Treaty settlements that apply in a project area.²³ For some other approvals, the

¹⁷ FTAA, sch 5, cl 5 to 8 (resource consent); sch 5, cl 11 (certificate of compliance); sch 5, cl 12 (designation); sch 6, cl 3 (concession); sch 6, cl 23 (land exchange); sch 6, cl 42 (conservation covenant); sch 7, cl 2 (Wildlife Act approval); sch 8, cl 2 (archaeological authority); sch 10, cl 2 and 4 (marine consent); sch 11, cl 3 (access arrangement).

¹⁸ FTAA, s 43(1)(b)(i).

¹⁹ FTAA, s 43(1)(c).

²⁰ FTAA, s 43(1)(e)(i) and (ii).

²¹ FTAA s 43(2), with reference to s 13(4).

²² FTAA, sch 5, cl 5 to 11 (resource consent) and 12 (notice of requirement); sch 6, cl 2 and 3 (concessions), 23, 24, 27 (land exchanges) and 42 (conservation covenants); sch 7, cl 2 (wildlife approval); sch 8, cl 2 (archaeological authority); sch 9, cl 3 (complex freshwater fisheries activity approval); sch 10, cl 2 (marine consent); sch 11, cl 2 and 3 (access arrangement), cl 15 and 16 (mining permit).

²³ FTAA, sch 5, cl 5(1)(i) and 12(1)(e).

information requirements in the FTAA are likewise more prescriptive than the usual processes under the relevant Acts.²⁴

2.12 Information required for a substantive application for approvals under section 43 must be specified in sufficient detail to satisfy the purpose for which it is required,²⁵ and the Panel may request further information from a number of specified parties any time before making a decision on any approvals sought under section 81 of the FTAA.²⁶

2.13 For completeness and in order to satisfy section 43 and the relevant schedules of the FTAA, WIAL's application documents clearly explain how the information requirements are met and where the information is located.

Relevant considerations for the approvals sought

2.14 The Panel must, when considering the application for the Project, apply the relevant process for obtaining approvals under the FTAA, rather than the usual processes for obtaining approvals under the relevant Acts.²⁷

2.15 The FTAA identifies a range of matters which the Panel must consider in determining whether to grant or decline the approvals sought in a substantive application for a listed project such as this. The Panel must apply the relevant criteria to each approval sought and decide whether to grant or decline that approval (and whether to impose conditions). The criteria that the Panel must consider will depend on the types of approvals being sought, and it must make separate decisions for each approval, subject to the relevant criteria.

Panel decisions on approvals sought in substantive application

2.16 Section 81 and the relevant schedules to the FTAA are relevant to the Panel's decision-making in respect of approvals sought in a substantive application. In particular, section 81(2) sets out the matters relevant to the Panel when considering the application. For the purpose of making a decision for each approval sought, the Panel:²⁸

- (a) must consider the application and any advice, report, comment, or other information received by it throughout the fast-track approvals process²⁹ and within the applicable timeframe³⁰;

²⁴ See for example, s 53 of the Wildlife Act.

²⁵ FTAA, s 44.

²⁶ FTAA, s 67(1)(a). Specified parties are the applicant, a relevant local authority, a relevant administering agency or any person invited to provide comments under sections 35 (referral application) or 53 (substantive application).

²⁷ FTAA, s 40(a).

²⁸ FTAA, s 81(2).

²⁹ Information received by a panel under sections 51-53, 55, 58, 67-70, 72 or 90.

³⁰ FTAA, 81(6).

- (b) must apply the applicable clauses that set out the criteria for decision-making in schedules 5 to 11³¹ (including in relation to the weight to be given to the purpose of the FTAA when making a decision on an approval); and
- (c) must comply with section 82, if applicable;
- (d) must comply with section 83 in setting conditions;
- (e) may impose conditions under section 84; and
- (f) may decline the approval only in accordance with section 85.

2.17 Section 82 applies if a Treaty settlement, the Marine and Coastal Area (Takutai Moana) Act 2011 or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 is relevant to an approval. If a Treaty settlement or those Acts provide for the consideration of a document (such as a statutory document amended as a result of a Treaty settlement), the Panel must give it the same or equivalent effect through its decision-making as it would under the relevant specified Act.

2.18 Further, the Panel must consider section 7 of the FTAA in its decision-making by acting in a manner that is consistent with the obligations in existing Treaty settlements and recognised customary rights. Section 82(3) requires the Panel to consider whether granting an approval would comply with that section, and it may set conditions to recognise or protect a relevant Treaty settlement and any obligations arising under the above Acts.³² For completeness, nothing in section 81, 82 or 85 limits section 7.³³

2.19 Section 83 requires that any conditions imposed by the Panel under the FTAA must be no more onerous than necessary to address the relevant matter.

2.20 Finally, a decision document must accompany a Panel's decisions, that sets out (among other things) the reasons for its decisions, and a statement of the principal issues that were in contention.³⁴

Weight given to the purpose of the FTAA in decision-making

2.21 The weight that the Panel must give to the purpose of the FTAA is set out in in schedules 5 to 11, as relevant to the type of approval. Section 81(4)

³¹ FTAA, s 81(2)(b) and (3). The applicable clauses are (relevantly): for a resource consent, cl 17 to 22 of schedule 5; for a concession, cl 7 to 9 of schedule 6; for a wildlife approval, cl 5 and 6 of schedule 7; and for an archaeological authority, cl 4 and 5 of schedule 8.

³² FTAA, s 84.

³³ FTAA, s 81(7).

³⁴ FTAA, s 87.

requires the Panel, when taking the purpose of the FTAA into account under the applicable clauses in the schedules, to consider the extent of the Project's regional or national benefits.³⁵

- 2.22 The applicable clauses in schedules 5 to 11 expressly require the Panel to give the greatest weight to the purpose of the FTAA in its decision-making, ahead of all other considerations.³⁶ This includes those that would apply in respect of those approvals under the relevant Acts. As noted above, the clear intent of this statutory framing is to make decision-making more favourable to beneficial proposals than would otherwise be the case under usual non-FTAA processes. That is, while other considerations must be given due consideration on their own terms, a panel must always give the purpose the greatest weight when it stands back and undertakes its overall balancing.
- 2.23 In considering a similar direction to apply a hierarchy to considerations under section 34 of the Housing Accords and Special Housing Areas Act 2013,³⁷ the Court of Appeal in *Enterprise Miramar Peninsula Inc v Wellington City Council*³⁸ found that a decision-maker must undertake an individual assessment of the listed matters before standing back and conducting an overall balancing in accordance with the prescribed hierarchy.
- 2.24 For example, for resource consent approvals, after taking into account each of the matters individually, the Panel must conduct an overall balancing exercise giving the greatest weight to the purpose of the FTAA, and lesser weight to:³⁹
- (a) the provisions of Parts 2,⁴⁰ 6, and 8 to 10 of the RMA that direct decision-making on an application for a resource consent (but excluding section 104D); and
 - (b) the relevant provisions of any other legislation that directs decision-making under the RMA.

³⁵ For a staged project, the regional or national benefits of the whole project must be considered under section 81(5), having regard to the likelihood that any later stages of the project will be completed.

³⁶ As relevant, FTAA, cl 17(1)(a) (resource consent) of schedule 5; cl 7(1)(a)(i) (concession) of schedule 6; cl 5(a) (wildlife approval) of schedule 7; and cl 4(1)(a) (archaeological authority) of schedule 8.

³⁷ The direction to decision-makers under that section was to "*have regard to [listed] matters, giving weight to them (greater to lesser) in the order listed*", with the purpose of that Act listed first.

³⁸ [2018] NZCA 541 at [52] - [53]

³⁹ FTAA, sch 5, cl 17.

⁴⁰ We note that references to Part 2 of the RMA in cl 17 and 24 excludes section 8 1 which requires persons exercising functions and powers under the RMA to take into account the principles of the Treaty of Waitangi.

2.25 A similar structure applies to the criteria for assessing applications for (as relevant) concessions, wildlife approvals, and archaeological authorities.⁴¹

Grounds for declining an approval

2.26 The FTAA prescribes limited grounds by which the Panel can decline to grant an approval.⁴² Those matters are set out in section 85. That section sets out when a panel *must* decline an approval, and where an approval *may* be declined (if the adverse effects of that activity are considered to be out of proportion to the regional or national benefits of the proposal).

2.27 Under section 85(1), the Panel must decline an approval if one or more of the following matters apply:

- (a) the approval is for an ineligible activity;
- (b) the Panel considers that granting an approval would breach section 7 of the FTAA; and
- (c) the approval does not meet the relevant criteria under the schedules⁴³.

2.28 The only ground on which the Panel has discretion to decline an approval is if, in complying with section 81(2), it forms the view that:⁴⁴

- (a) there are one or more "*adverse impacts*"⁴⁵ in relation the approval sought; and
- (b) those adverse impacts are sufficiently significant to be out of proportion to the Project's regional or national benefits under section 81(4), even after taking into account:
 - (i) any conditions that the panel may set in relation to those adverse impacts; and
 - (ii) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.

2.29 Significantly, the above threshold cannot be met solely on the basis that an adverse impact is inconsistent with or contrary to a provision of a specified Act, or any other document that a panel must take into account or otherwise

⁴¹ As relevant, FTAA, sch 6, cl 7(a) (concessions); sch 7, cl 5 (wildlife approvals); and sch 8, cl 4(1) (archaeological authorities).

⁴² FTAA, s 81(2)(f).

⁴³ FTAA, sch 5, cl 23 (change or cancellation of conditions) and cl 27 (certificate of compliance); sch 6, cl 7(3) (concession) and cl 29(2) or (3) (land exchange); sch 11, cl 7(2) or 8(2) (access arrangements) and cl 20 (mining permit).

⁴⁴ FTAA, s 85(3).

⁴⁵ FTAA, s 85(5). This term is broadly defined as meaning any matter "*considered by the panel in complying with section 81(2) that weighs against granting the approval*".

consider in complying with section 81(2).⁴⁶ For example, if a relevant document directed that a particular adverse effect must be avoided, an application could not be declined on the basis of such a direction. Rather, in order for such a proposal to be lawfully declined the adverse impacts (which might include the effect directed by a relevant document to be avoided) must be sufficiently significant to be out of proportion to the Project's regional or national benefits.

2.30 Again, as noted above, this 'proportionality' consideration means that:

- (a) the more significant the benefits of a proposal, the more significant the adverse impacts would need to be before the proposal could be declined; and
- (b) adverse effects that merely outweigh or are greater than the regional or national benefits do not trigger the discretion to decline; adverse effects must be "*sufficiently significant to be out of proportion to*" those benefits.

2.31 Counsel wish to stress, however, that WIAL need not rely on the more favourable scheme of the FTAA (including its greater tolerance for adverse impacts) in order to obtain the requisite approvals. Renewing the Southern Seawall clearly merits the requisite approvals under conventional processes, including because the RMA planning framework is particularly enabling for this Project (as discussed further below). Nevertheless, the different directions under the FTAA must be borne in mind by the Panel.

3. APPLICATION OF THE FRAMEWORK TO THE PROJECT

Introduction

3.1 Part A of the application documents details the approvals sought by WIAL for the Project under the FTAA. As noted above, in broad terms they are resource consents, Reserves Act approvals, wildlife approvals, and an archaeological authority.

3.2 Below we first address the following general matters that go to the Panel's evaluation for all types of approval:

- (a) the Project's significant regional and national benefits, which go to the heart of the purpose of the FTAA (and which in turn must be given most weight by the Panel); and

⁴⁶ FTAA, s 85(4).

(b) why the Project's adverse effects, which will be carefully managed through numerous proposed conditions, cannot be said to be sufficiently significant to be out of proportion to the Project's regional and national benefits (even after taking into account conditions).

3.3 We then note additional decision-making criteria relevant to each type of approval.

Significant regional and national benefits

3.4 WIAL does not anticipate that there will be any dispute or doubt that the Project's benefits – including increasing the resilience of the Airport to storm events, reducing maintenance costs, and stimulating economic activity – are very significant at both a regional and a national level. The benefits have been quantified on a conservative basis by expert economists, and those numbers speak for themselves; gross benefits potentially exceeding \$690 million and net benefits expected to amount to well over \$300 million over the next 50 years.

3.5 Standing back, the Airport is central to the lives of many people in Wellington and beyond, and to the region's economy, and it is vital that its operations are protected by implementing this Project.

3.6 The FTAA's very purpose is to facilitate the delivery of infrastructure proposals such as this, and that purpose must be given the greatest weight in the Panel's decision on all the approvals sought.

No adverse effects of significance

3.7 Considered against the Project's very large benefits for New Zealand and Wellington, and taking into account the comprehensive suite of consent conditions proposed by WIAL, the Project's adverse effects are not significant (and are certainly not so significant as to be out of proportion to those benefits).

3.8 The Project is situated in an environment and area that is highly valued by mana whenua, so WIAL has been working closely with Taranaki Whānui and Ngāti Toa Rangatira as the Project has been devised, and will continue to do so as it is implemented. That both iwi have confirmed their broad support for the Project is significant; the Panel can take considerable comfort in this advice, including because it goes to the heart of related issues such as the Project's adverse effects on kororā and other natural values in the coastal environment – these are matters that will be carefully managed, guided by mana whenua.

- 3.9 On ecological matters more broadly, the application documents show the degree of attention paid to addressing the Project's potential effects on kororā, banded dotterel, herpetofauna, marine habitat and other values in the receiving environment, and explain how some positive outcomes overall are likely – such as for kororā, including due to the two large colonies being created for that species – and otherwise that adverse effects are negligible or low.
- 3.10 While the Airport is, by its nature, a noisy environment, works on the Southern Seawall must largely take place at nighttime, so mitigating the adverse effects of noise has been another key focus for WIAL and its consultants. The proposed measures to address the Project's noise effects are therefore comprehensive, including requiring WIAL to offer to purchase relevant properties on Moa Point Road (most of which it owns already) or install mechanical ventilation to insulate residents from exposure to construction noise. Ongoing close liaison with the community and various construction methods will also be important to ensure that disturbance to residents is minimised.
- 3.11 The absence of any significant adverse effects, let alone any that are out of proportion to the Project's very large benefits, means that the Panel has no legal basis on which to refuse any of the approvals sought by WIAL.

Resource consents – additional criteria

- 3.12 WIAL is seeking resource consents under the FTAA that would otherwise have been applied for under the RMA.
- 3.13 As noted above, the Airport is a vitally important piece of Wellington's infrastructure and the Project is fundamentally sound, in that it has very significant benefits and its adverse effects are manageable. Unsurprisingly, therefore, the Project is strongly supported by the relevant planning instruments and promotes the outcomes envisaged by Part 2 of the RMA.
- 3.14 Section 10 in Part A of the application documents explains in detail why the relevant planning instruments contemplate the activities associated with the Project and support consents being granted. Without repeating that detail, this Project is notable in that:
- (a) Both WCC's new District Plan and Greater Wellington Regional Council's (**GWRC**) Natural Resources Plan (**NRP**) provide specific policy direction that is directly relevant to the consenting of this Project. The policies are enabling, and the Project clearly complies with them.

- (b) In the District Plan, clear direction is provided for Airport-related activities in the Special Purpose Airport Zone and for infrastructure-related activities elsewhere, including in the coastal environment. Within the coastal environment, the relevant direction is to allow (among other things) the upgrading of existing infrastructure within coastal and riparian margins in the Special Purpose Airport Zone and the mapped Moa Point Road Seawall area (which is in the Natural Open Space Zone).⁴⁷
- (c) In the NRP, policy P41 provides specific guidance on how the effects of Airport-related activities within the Wellington Airport South Coastal Environment are to be assessed. The policy requires decision-makers such as the Panel to recognise:
- (i) that the Airport is located in the coastal environment and that the Airport needs to provide for its efficient and safe operations and the development of capacity to meet the reasonably foreseeable needs of future generations;
 - (ii) that there must be a functional need or operational requirement for an activity to locate in that area (and no practicable alternative location), which is obviously the case for the Project;
 - (iii) the extent to which any significant indigenous biodiversity values and attributes are enhanced or restored through the proposal and associated management plans; and
 - (iv) other measures to provide for the maintenance and, where practicable, the enhancement or restoration of the affected significant indigenous biodiversity values and attributes at, and in proximity to, the affected area, taking into account any consultation with GWRC, the Department of Conservation (**DOC**), and mana whenua.
- (d) These policies have specifically given effect to higher-order policy direction such as that contained in the New Zealand Coastal Policy Statement (**NZCPS**), in a way that deliberately reconciles policy tensions – such as between infrastructure policy 6 and biodiversity policy 11 in the NZCPS – and provides a clear consenting pathway for this Project. This is of considerable help to the Panel in this process.

⁴⁷ Policy INF-CE-P8 of the (partially operative) District Plan.

- (e) In any event, on a first-principles basis, the Project also complies with relevant 'avoid' policies such as policy 11 of the NZCPS. The application documents clearly explain how the Project will avoid adverse effects on threatened or at-risk indigenous taxa (such as kororā), when those effects are properly considered in the context of the various management measures proposed (as the law requires⁴⁸).

3.15 Other adverse effects of the Project – to the extent they have not been able to be avoided altogether – will be comprehensively addressed through proposed conditions. The residual effects, such as they are, do not provide any valid reason for the Panel to refuse consent.

3.16 In terms of Part 2:

- (a) the Project will safeguard the ongoing operation of the Airport, which is a vital facet of people's social, economic, and cultural well-being;
- (b) the Project has been developed in an environmentally responsible manner and has comprehensively addressed its potential adverse effects; and
- (c) the Project has also responded appropriately to the specific directions in section 6, 7, and 8 of the RMA, as explained in more detail in the application documents, including through WIAL's close working relationship with mana whenua, which has led to their support for the Project.

3.17 Therefore, the Panel can have a high degree of confidence that the Project is consistent with Part 2 and achieves the sustainable management purpose and principles of the RMA.

Reserves Act approvals – additional criteria

3.18 WIAL is seeking concessions (in the form of leases and licences) to enable construction and other activities on esplanade reserve land administered by Wellington City Council (**WCC**) under the Reserves Act.

3.19 WIAL has been working closely with WCC to obtain WCC's written approval for those activities, which is a necessary precursor to the Panel granting the approvals sought under the FTAA; see clause 7(3)(a) of schedule 6. WIAL is grateful for WCC having already authorised the bulk (if not all) of those

⁴⁸ See the Supreme Court's decision in *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26, [2024] 1 NZLR 241 at [176].

activities, as explained in the application documents, and will continue to work quickly with WCC to secure any remaining approval needed.

3.20 As with all other approvals sought in the overall application, the Panel must take into account, and give the greatest weight to, the purpose of the FTAA when assessing the application as it relates to the Reserves Act.

3.21 Clause 7 of Schedule 6 to the FTAA sets out a detailed list of other matters that must also be taken into account, which are not problematic for the Project.

Wildlife Act approvals – additional criteria

3.22 In considering an application for a wildlife approval (including conditions), the Panel must take into account:⁴⁹

- (a) the purpose of the Act (as above, this must be given the greatest weight); and
- (b) the purpose of the Wildlife Act and the effects of the Project on native lizards and kororā (the protected wildlife); and
- (c) information and requirements relating to that wildlife (including the New Zealand Threat Classification System or any relevant international conservation agreement).

3.23 The Wildlife Act does not contain a standalone purpose section. The long title states:

An Act to consolidate and amend the law relating to the protection and control of wild animals and birds, the regulation of game shooting seasons, and the constitution and powers of acclimatisation societies.

3.24 The Court of Appeal and Supreme Court have confirmed that the Wildlife Act has a protective purpose (although protection of wildlife is not the sole purpose of the Act).⁵⁰ What types of activity fall within the 'protective purpose' of the Act will be fact and circumstance dependent.⁵¹ Protection is a part of the Wildlife Act's overarching purpose of regulating human interactions with wildlife. That protective purpose is not absolute; it requires consistency with protection at a species level, not solely at an individual animal level.

⁴⁹ FTAA, schedule 7, cl 5.

⁵⁰ *PauaMAC5 Inc v Director-General of Conservation* [2018] NZCA 348, [2019] 2 NZLR 1 at [42]–[43], [47], [52] and [58]; and *Shark Experience Ltd v PauaMAC5 Inc* [2019] NZSC 111, [2019] 1 NZLR 791 at [44] and [66].

⁵¹ *PauaMAC5 Inc v Director-General of Conservation* [2018] NZCA 348, [2019] 2 NZLR 1 at [52]–[53].

- 3.25 Recent legislative amendments have clarified that a section 53 Wildlife Act authority may, in certain circumstances, be granted for killing of wildlife that is incidental to carrying out an otherwise lawful activity.⁵² Those circumstances are where the overall effect of the authority would be consistent with the protection of populations of wildlife and individual wildlife. The focus is on protecting individual wildlife and the viability of populations of wildlife as far as practicable.
- 3.26 In this case, all care will be taken when translocating kororā and native lizards, and to avoid incidental deaths during the construction process. A suite of management plans and other measures (enforceable through conditions) is proposed, as described in the application documents.
- 3.27 The provision of enhanced kororā habitat into the future is an important aspect of the Project (noting that kororā may well recolonise parts of the Southern Seawall once it has been built). The details of those enhancements are likely to be the subject of comments by entities through the fast-track process.

Archaeological authority – additional criteria

- 3.28 WIAL is seeking an archaeological authority for the Project, on a precautionary basis, in case an archaeological site is discovered during Project earthworks and needs to be modified or destroyed in order to implement the Project.
- 3.29 In considering the application, the Panel must take into account:⁵³
- (a) The purpose of the FTAA. As above, this must be given the greatest weight.
 - (b) The matters set out in section 59(1)(a) of the HNZPTA. In that respect:
 - (i) the historical and cultural heritage values of the archaeological sites within the Project site are described in sections 3 and 4 of Part A of the application documents, and in the supporting expert archaeological assessment;
 - (ii) the application is consistent with the purpose and principles of the HNZPTA, as the authority will ensure the correct management of

⁵² Sections 53A-53C, Wildlife Act.

⁵³ FTAA, schedule 8, cl 4.

any archaeological sites discovered during the proposed works (which is unlikely), while enabling the development of the Project;

- (iii) WIAL has consulted with the persons who may be directly affected by the proposed archaeological authority, including the mana whenua and HNZPT;
 - (iv) there is no statutory acknowledgement that relates to any archaeological site within the Project Site; and
 - (v) the Project will respect the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tūpuna, wāhi tapu, and other taonga of relevance to the Project Site, as evidenced by the support of Taranaki Whānui and Ngāti Toa Rangatira for the Project.
- (c) The matters set out in section 47(1)(a)(ii) and (5) of the HNZPTA. In that respect:
- (i) the effects on archaeological sites / values (if any) will be no more than minor; and
 - (ii) there is no HNZPT 'statement of general policy' that is directly relevant to the Project.⁵⁴

3.30 Again, of particular note is that mana whenua and HNZPT are comfortable with WIAL's application for an archaeological authority for the Project.

4. CONDITIONS

4.1 When considering the application, the Panel must decide whether to grant any approvals and set any conditions to be imposed on those approvals.⁵⁵

4.2 The Panel has a broad scope to impose conditions, subject to the following requirements in the FTAA:

- (a) the Panel may impose conditions that an applicant has proposed with its application;⁵⁶
- (b) the Panel may set conditions relating to the effect of the grant of any approvals on Treaty settlements and recognised customary rights;⁵⁷

⁵⁴ The document of most potential relevance is "*The Administration of the Archaeological Provisions*" (2015). However, there is nothing in that document that weighs against the granting of the application, particularly because no known archaeological site will be affected by the Project.

⁵⁵ FTAA, s 81(1).

⁵⁶ For example, FTAA, sch 5, cl 12(1)(k) (resource consent).

⁵⁷ FTAA, s 84.

- (c) relevant Ministers⁵⁸ may comment on a draft decision of the Panel and any draft conditions proposed⁵⁹; and
- (d) as referenced above, any conditions on approvals must be no more onerous than necessary to address the purpose for which they are set.⁶⁰

4.3 Schedules 5 to 11 of the FTAA set out specific considerations relevant to each approval sought,⁶¹ and in some instances require the Panel to set conditions in accordance with the legislation to which that approval relates. For example, Part 6 of the RMA applies to the Panel's imposition of resource consent conditions.⁶²

4.4 To expand on that point, the Panel has a broad powers to impose conditions for resource consents under Part 6 of the RMA and these are relevant to its powers to set conditions under the FTAA. The following principles, with which the Panel will be familiar, are relevant. Valid conditions must:

- (a) be for a resource management purpose and not for any ulterior purpose;
- (b) fairly and reasonably relate to the proposal which is the subject of consent or designation (noting that section 108AA of the RMA requires a condition to be "directly connected" to an adverse effect of the activity on the environment and/or an applicable planning rule or environmental standard);
- (c) not be so unreasonable that no reasonable decision-maker could have imposed them; and
- (d) not involve an unlawful delegation of the decision-maker's duties.⁶³

4.5 Another key administrative law principle is that a condition cannot negate, frustrate, or nullify the grant of consent. This means that the Panel cannot grant consent subject to a condition that cannot be complied with.⁶⁴

4.6 The Panel may apply bespoke conditions clauses (ie not contained in the enabling legislation) for certain types of approvals. For example, for Wildlife

⁵⁸ The Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development.

⁵⁹ FTAA, s 72.

⁶⁰ FTAA, s 83.

⁶¹ Relevantly FTAA, sch 5, cl 18 (resource consent); sch 6, cl 8 (concession); sch 7, cl 6 (wildlife approval); and sch 8, cl 5 (archaeological authority).

⁶² FTAA, schedule 5, cl 18.

⁶³ *Newbury District Council v Secretary of State for the Environment* [1980] 1 All ER 731 (HL) at [739], endorsed in the context of the RMA in *Housing NZ Ltd v Waitakere City Council* [2001] NZRMA 202 (CA) at [18].

⁶⁴ See generally *Lyttelton Port Company Limited v Canterbury Regional Council* EnvC Christchurch C8/2001, 26 January 2001 at [11], *Westfield (New Zealand) Limited v Hamilton City Council* (2004) 10 ELRNZ 254 (HC) at [53]–[55], and *Director-General of Conservation v Marlborough District Council* [2004] 3 NZLR 127 (HC) at [22]–[23].

Act approvals, the Panel may set conditions that it considers necessary to manage the effects of the activity on protected wildlife.⁶⁵

- 4.7 In terms of process, before granting an approval under section 81, the Panel must direct the EPA to seek comments on its draft conditions from the applicant, persons that provided comments on the application (and any report for a land exchange) and parties with statutory responsibility to enforce or monitor compliance with the relevant conditions.⁶⁶
- 4.8 Again, if the Panel is minded to decline an approval, it must provide the applicant with an opportunity to propose conditions on, or modifications to, any of the approvals sought, or withdraw any parts of the application that sought those approvals.⁶⁷
- 4.9 WIAL has prepared an extensive set of proposed conditions, which has been provided with the application. WIAL has engaged extensively with mana whenua, WCC, GWRC, DOC, HNZPT, and various other entities in respect of the proposed conditions, and is grateful for the comments received.
- 4.10 The Panel will need to consider the conditions proposed by WIAL, and any comments made on the conditions by the administering agencies and others involved in the process.

5. CONCLUSION

- 5.1 The Project satisfies all the relevant tests under the FTAA (and relevant legislation). More than that, though, it is an important undertaking that needs to be carried out for the benefit of the Wellington region and the many other people who use and enjoy the Airport. Enabling the Project clearly accords with the purpose of the FTAA (and relevant legislation).
- 5.2 The Project has also been carefully designed so that its adverse effects have been minimised, and will be appropriately managed in accordance with the provisions of the FTAA and relevant legislative requirements.

⁶⁵ FTAA, schedule 7, cl 6(1).

⁶⁶ FTAA, s 70(1).

⁶⁷ FTAA, s 69(2)(b). Any draft conditions relating to Treaty settlements may be commented on by relevant Ministers under section 72.

5.3 The Panel can therefore be satisfied that the approvals can be granted on the conditions proposed.

DATED this 23rd day of October 2025

A handwritten signature in blue ink, appearing to be 'D G Randal / T J Ryan', written in a cursive style.

.....
D G Randal / T J Ryan
Counsel for Wellington Airport International Limited