

Before an Expert Panel appointed under the Fast-track Approvals Act 2024

I mua i te roopu tohunga

Under	The Fast-track Approvals Act 2024
In the matter of	A substantive application for notices of requirement, resource consents, a wildlife approval, archaeological authorities, and approvals for complex freshwater fisheries activities to construct, maintain, and operate the Tauriko West – Tupenga Project
By	New Zealand Transport Agency Waka Kotahi Applicant

Legal submissions for the New Zealand Transport Agency Waka Kotahi

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1 Introduction

- 1.1 These submissions support the application lodged by the New Zealand Transport Agency Waka Kotahi ('NZTA')¹ under the Fast-track Approvals Act 2024 ('FTAA') for notices of requirement ('NORs'),² resource consents, wildlife approvals, archaeological authorities and freshwater fisheries approvals (collectively, the 'Application').
- 1.2 The Application involves the upgrade an existing state highway, and construction of a new section of state highway, between the Omanawa Road/State Highway 29 ('SH29') intersection and the Takitimu Northern Link interchange, a new offline section of SH29A, upgrades to key intersections, new grade separated interchanges, local road overbridges and associated infrastructure (the 'Project').
- 1.3 The Project is listed in Schedule 2 of the FTAA.
- 1.4 These submissions have been prepared to assist the Panel convenor and the Panel in their consideration of the Application against the requirements of the FTAA. They provide an overview of the relevant statutory framework and the key matters that the Panel will need to consider.
- 1.5 In preparing the Application, NZTA has sought to ensure its scope and contents are proportional to the complexity of the Project, the approvals sought, and the nature and scale of the Project's impacts.³ Consequently, the Application documentation reflects the focus and context of the FTAA, and it has been carefully tested to ensure it provides the Panel with the necessary information.
- 1.6 Overall, we submit that the Project meets the purpose of the FTAA and comfortably satisfies the relevant statutory tests, such that the approvals sought in the Application can be granted by the Panel. The Project will deliver significant national and regional infrastructure benefits, as evidenced by the fact that it is a listed project under Schedule 2 of the FTAA, a Road of National Significance ('RoNS') under the Government Policy Statement on Land Transport 2024 ('GPS 2024'), and a priority regionally significant activity in the Bay of Plenty Regional Land Transport Plan ('RLTP'). The adverse effects resulting from the Project are not significant.

¹ NZTA is the Crown entity responsible for operating the state highway network under s95(1)(h) of the Land Transport Management Act 2003.

² NZTA is a Requiring Authority under s167 of the Resource Management Act 1991.

³ See the Panel Conveners' Practice and Procedure Guidance, paragraph 4.1(c).

2 Scope of these submissions

2.1 These submissions provide an overview of:

- a The Project;
- b The Application;
- c Approach to invited comments;
- d NZTA's approach to the Project;
- e The statutory framework; and
- f The conditions proposed by NZTA to manage the effects of the Project.

3 Overview of the Project

3.1 A detailed description of the Project is provided in Section 3.2 of Volume A of the Substantive Application Report ('**SAR**') and is not repeated here.

3.2 An Indicative Design has been developed for consenting purposes. The use of the Indicative Design has enabled an assessment of the Project's potential effects using an 'effects envelope'. NZTA seeks approvals that provide flexibility for the final design to be confirmed through the detailed design process, while ensuring that the adverse impacts of the final design will be managed through a suite of outcomes-based conditions. This approach omits the traditional Condition 1, and is addressed later in these submissions.

3.3 The specific transportation issues that the Project seeks to address are not new. Planning for transport improvements in the Tauriko area started in the early 2000s as increasing freight and urban growth began to put pressure on the safety, capacity and operation of SH29 and SH29A. The need for the Project has continued to escalate in recent years. As a result, the Project is recognised in numerous national, regional and sub-regional land transport planning strategic documents including:

- a The GPS 2024 where it is listed as a RoNS;
- b The RLTP where it is listed as a priority regionally significant activity; and
- c SmartGrowth, the Urban Form and Transport Initiative and the Transport System Plan/Tauranga Urban Network.

- 3.4 NZTA's Project objectives are to:
- a Improve the reliability of journeys to key economic areas, such as the Port of Tauranga, by delivering a 10-15 minute journey time between Ōmanawa and the Taikītimu North Link at all times of the day;
 - b Support growth in Western Tauranga by doubling the capacity on the state highway network and local arterial roads; and
 - c Reduce the number of deaths and serious injuries (DSIs) on the arterial road corridor between Ōmanawa and the Takitimu North Link by 50%.
- 3.5 The benefits of the Project can be classified into two broad categories – construction and operational benefits.
- 3.6 The scale of the construction benefits associated with this major infrastructure are significant at a regional and national scale and include:
- a Direct expenditure of approximately \$2.5 billion;
 - b Approximately \$1.04 billion in total value added to the Bay of Plenty Gross Domestic Product over the course of the development;
 - c Direct employment of approximately 2,460 FTE years over the course of the development; and
 - d Indirect and induced employment of approximately 3,000 FTE years over the course of the development.
- 3.7 Once operational, the Project will continue to deliver very significant regional and national benefits as a result of:⁴
- a Increased efficiency, resilience, and reliability of a nationally significant freight corridor which connects the Port of Tauranga to the Upper North Island "Golden Triangle";
 - b Improved reliability for local traffic by increasing network capacity, reducing vulnerability to congestion and improving travel times;
 - c Improved connectivity between residential communities, employment areas, and key services;

⁴ Section 1.7 of Volume A of the SAR.

- d Delivery of infrastructure to support planned urban growth within Tauriko West, the Tauriko Business Estate, and the wider Western Corridor including housing, commercial and industrial growth;
 - e Improved safety outcomes on the SH29 and SH29A corridors through upgraded infrastructure, safer intersections, improved network design and separation of local and strategic traffic movements; and
 - f Travel time savings of approximately 7-11 minutes between the Ōmanawa Bridge and the Takitimu North Link roundabout, and 3-8 minutes between the Ōmanawa Bridge and Barkes corner. These travel time saving are estimated to contribute to economic growth and productivity benefits of \$5.7b-\$6.1b due to the Project's route supporting critical strategic movements, including freight travel from the Port of Tauranga.
- 3.8 The benefits outlined above have produced positive feedback during NZTA's extensive engagement with hapū, stakeholders, directly affected landowners, and the community with high levels of support for the Project.
- 3.9 Throughout the development of the Project NZTA has engaged with the hapū of Ngāi Tamarāwaho, Ngāti Hangarau, Ngāti Kahu. A mana whenua working group was established for the Project and given the name 'Tupenga'. The role of Tupenga is to support collaborative engagement, cultural input and participation throughout the Project lifecycle.
- 3.10 NZTA acknowledges the strong associations mana whenua maintain with the Wairoa River, Kōpūrerua Valley, wetlands, waterways, the wider Tauriko landscape, and the importance of protecting and enhancing cultural values through the Project.
- 3.11 While the Project covers a large land area, its adverse effects are well understood and can be appropriately managed. The Project site does not include Māori land, the coastal environment, significant natural areas, or outstanding natural features or landscapes. Measures to manage and mitigate effects have been carefully evaluated and structured by the experts advising NZTA, and offsetting and compensation are proposed as part of the Project's approach to wetlands and stream naturalisation.

4 Approvals sought

- 4.1 NZTA seeks the following approvals to construct, operate and maintain the Project:

- a Designations for which the notices of requirement would otherwise be lodged with Tauranga City Council ('**TCC**') and Western Bay of Plenty District Council ('**WBOPDP**') under the Resource Management Act 1991 ('**RMA**');
- b Resource consents that would otherwise be applied for under the RMA in relation to the relevant regional plan, the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 and the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011;
- c A wildlife approval for an act or omission that would otherwise be an offence under the Wildlife Act 1953;
- d Archaeological authorities that would otherwise be applied for under the Heritage New Zealand Pouhere Taonga Act 2014 ('**HNZPTA**'); and
- e An approval or dispensation that would otherwise be applied for under regulation 42 or 43 of the Freshwater Fisheries Regulations 1983 ('**FFR**') in respect of a complex freshwater fisheries activity.⁵

5 Invitations to comment

5.1 The Panel must invite comments on the Application in accordance with section 53 of the FTAA. The persons or groups that the Panel **must** invite comments from are (relevantly):

- a Relevant local authorities⁶ – Bay of Plenty Regional Council ('**BOPRC**'), WBOPDC, and TCC;
- b Relevant iwi authorities⁷ – Ngāti Hinerangi, Ngāti Pūkenga, Ngāi Te Rangi and Ngāti Ranginui;
- c Relevant Treaty settlement entities⁸ - Te Tāwharau o Ngāti Pūkenga Trust, the Ngāi Te Rangi Settlement Trust, the Ngā Pōtiki a Tampahore Trust, and the Ngā Hapū o Ngāti Ranginui Settlement Trust.

⁵ Freshwater Fisheries Regulations 1983, regulations 42 and 43.

⁶ FTAA, s 53(2)(a).

⁷ FTAA, s 53(2)(b).

⁸ FTAA, s 53(2)(c).

- d The owners of the land to which the Application relates and land adjacent to that land⁹ – set out in Appendix D of Volume A of the SAR and covered below;
- e The occupiers of the land to which the Application relates and the land adjacent to that land unless, after reasonable inquiry, an occupier cannot be identified¹⁰ – set out in Appendix D of Volume A of the SAR and covered below;
- f The Minister of Cities, Environment, Regions, and Transport and other relevant portfolio Ministers;¹¹
- g Relevant administering agencies¹² – here the Department of Conservation¹³ and Heritage New Zealand Pouhere Taonga;
- h Any requiring authority that has a designation on land to which the Application relates or on land adjacent to that land – the Ministry of Education (in relation to Tauriko School), TCC (in relation to road widening on Pyes Pa Road), and WBOPDC (in relation to its offices situated on the corner of Cameron Road and SH29A);¹⁴ and
- i The New Zealand Conservation Authority, relevant Conservation Boards, the New Zealand Fish and Game Council and the Game Animal Council.¹⁵

5.2 The Panel's ability to invite comments from any other person or group¹⁶ is addressed further below.

Land to which the Application relates and adjacent land

5.3 The land adjacent to the Project site has been identified as land that is not part of a parcel of land that includes the site, but is contiguous with the site (i.e., contiguous with the Designation Boundary) or is across a road or a watercourse from the site. Where there are large parcels which are only partially within the Designation Boundary, the area within the Designation Boundary has been identified as the 'site', and the area of that land parcel outside the Designation

⁹ FTAA, s 53(2)(h).

¹⁰ FTAA, s 53(2)(i).

¹¹ FTAA, s 53(2)(j).

¹² FTAA, s 53(2)(k).

¹³ The Director-General of Conservation is also required to be invited under s 53(2)(m)(i).

¹⁴ FTAA, s 53(2)(l).

¹⁵ FTAA, s 53(2)(m)(iv) and sch 7, cl 4.

¹⁶ FTAA, s 53(3).

Boundary has been identified as 'adjacent'. The site and land adjacent to the site are shown on Drawings C7 included in Appendix C of Volume A of the SAR.

- 5.4 NZTA identified adjacent land as that which abuts the Project site, or which is only separated from the land to which the substantive application relates by a road. This approach is consistent with that outlined by the Panel in the Ports of Auckland Limited Bledisloe North Wharf and Fergusson North Berth Extension decision.¹⁷

Comments from any other party

- 5.5 The Panel **may** also invite comments from any other person or group the Panel considers appropriate.¹⁸ We submit it is unnecessary, and would be inconsistent with the FTAA, to invite comments from additional parties in relation to this Project.
- 5.6 The Fast-track Practice and Procedure Guidance Note recommends that panels take a principled approach to the exercise of discretion in section 53(3), and consider the following matters when determining whether to invite other persons to provide comment:¹⁹
- a The purpose of the FTAA and the procedural principles set out in section 10;
 - b Any relevant aspect of the public or community interest that requires consideration;
 - c The comprehensiveness and quality of the applicant's technical information and how the applicant has addressed the issue of consultation;
 - d The likely extent of local authority participation in the application process;
 - e Whether the activity would otherwise be prohibited under relevant legislation;
 - f Whether the application is for a project that has been previously declined under another statutory process;
 - g Whether the application is likely to involve novel or contentious legal or disputed factual issues; and

¹⁷ Decision of expert panel for Port of Auckland Fast-track Application for Bledisloe North Wharf and Fergusson North Berth Extension, 21 August 2025, at [75].

¹⁸ *Fast-track Approvals Act 2024: Panel Conveners' Practice and Procedure Guidance*, 22 July 2025, page 9.

¹⁹ *Fast-track Approvals Act 2024: Panel Conveners' Practice and Procedure Guidance*, 22 July 2025, page 9.

h Any other matter that, in the opinion of the Panel, ought to be considered.

5.7 The panel in the POAL Decision also considered the following additional matters:²⁰

- a The statutory requirement to issue a decision within a very short timeframe;
- b The nature of the projects in their factual context;
- c Whether the wide range of entities from whom comment must be sought under section 53(2) would ensure that all relevant information is before the panel to enable the panel to make a robust decision; and
- d Whether any exceptional factors warrant the exercise of a discretion to invite comment from any further person, going well beyond mere public interest.

5.8 NZTA submits that none of the above factors justifies the use of section 53(3) to invite comments from any 'other person' because:

- a Not inviting comments from any other person is consistent with the purpose of the FTAA to facilitate the delivery of infrastructure with significant national and regional benefits and the procedural principles of the FTAA to use timely, efficient, consistent and cost-effective processes that are proportionate;
- b The NZTA has provided the Panel all of the information it needs to grant the approvals being sought;
- c NZTA has undertaken extensive consultation as set out in Section 4 and Appendix E of Volume A of the SAR;
- d There are no contentious legal or factual disputes, and the Application does not raise any legal issues beyond those which might be expected as part of a regionally or nationally significant project processed under the FTAA;
- e The Application has not been previously declined;
- f The works for the Project are not otherwise prohibited under the relevant legislation; and

²⁰ Decision of expert panel for Port of Auckland Fast-track Application for Bledisloe North Wharf and Fergusson North Berth Extension, 21 August 2025, at [89].

- g There are no exceptional factors that warrant comments to be invited from any other person.

6 Legal framework - FTAA

6.1 The FTAA requires the Panel to:²¹

- a Decide whether it must or should decline the Application; and
- b Determine what conditions should be applied to each approval.

Scope to decline

6.2 The Panel may only decline the Application if the Project is:²²

- a An ineligible activity;
- b Inconsistent with relevant Treaty settlements; or
- c Results in adverse effects that (after taking into account conditions) are sufficiently significant so as to be out of proportion with the Project's benefits.

6.3 The Panel cannot form the view that an adverse impact is disproportionate solely on the basis that the adverse impact is inconsistent with, or contrary to, a provision of an Act specified in the FTAA or any other document²³ that the Panel must take into account.²⁴ 'Adverse impact' is defined as "any matter considered by the panel in complying with section 81(2) that weighs against granting the approval".²⁵

6.4 We submit that:

- a **The Project is not an ineligible activity** - NZTA has completed a comprehensive investigation, including checking titles, Gazette notices, and other sources, to confirm that the Project is not an 'ineligible activity'.
- b **The Project is not inconsistent with relevant Treaty settlements** – The SAR summarises the four Treaty settlements relevant to the Project.²⁶ The Project does not directly affect any identified cultural redress property or

²¹ FTAA, ss81, 83 and 85, Schedule 5, cl17 and cl24, and Schedule 8, cl4.

²² FTAA, s85.

²³ These documents include national direction and the objectives and policies in any relevant regional or district plans (sch 5, cl 17(1)(b) FTAA).

²⁴ FTAA, s 85(4).

²⁵ FTAA, s 85(5).

²⁶ Section 4.5 of Volume A of the SAR.

statutory acknowledgement area. The Project located is within the wider areas of interest in relation to these settlements, which all recognise the historical, spiritual, and traditional associations that the various mana whenua groups have with their ancestral lands, waterways, and natural resources. The settlements are of contextual relevance to the Project, particularly given the Project's location within the wider Tauranga Moana catchment, and potential effects on waterways and receiving environments connected to Tauranga Moana. As outlined above, NZTA has worked collaboratively with Tupenga throughout the development of the Project.

- c **The adverse residual impacts of the Project are not significant and are significantly outweighed by the Project's benefits** – The Project's potential adverse effects range from negligible to low or no more than minor post mitigation and in many cases the effects will be positive. As set out above, the Project will result in significant regional and national benefits during the construction phase and enduring ongoing national and regional benefits post-construction.

Relevant considerations and weighting

- 6.5 In considering the application, the Panel must 'take into account' the purpose of the FTAA, as well as the following matters:
- a Resource consents: Parts 2, 3, 6 and 8 to 10 of the RMA (excluding s 104D) that "direct decision making on an application" and the relevant provisions of any other legislation that directs decision making under the RMA;²⁷
 - b Designations: Part 8 of the RMA (except s170) and the relevant provisions of any other legislation that directs decision making under the RMA;²⁸
 - c Archaeological authorities: The matters in s59(1)(a) of the HNZPTA and any relevant statement of general policy confirmed or adopted under the HNZPTA²⁹.
 - d Wildlife approvals: the Panel must take the purpose of the Wildlife Act into account, as well as any information and requirements relating to the protected wildlife impacted by the approval.³⁰

²⁷ FTAA, s81 and Schedule 5, cl17(1).

²⁸ FTAA, s81 and Schedule 5, cl24(1).

²⁹ FTAA, s81 and Schedule 8, cl4.

³⁰ FTAA, s81 and Schedule 7 cl5.

- e Freshwater fisheries approvals: the Panel must assess a complex freshwater fisheries activity approval in accordance with the process set out in clause 5 of Schedule 9.³¹
- 6.6 The Panel is required to give the “greatest weight” to the purpose of the FTAA, which is to “facilitate the delivery of infrastructure and development projects with significant regional or national benefits”.
- 6.7 The panels in the POAL Decision and Milldale decisions considered caselaw³² relating to similar weighting requirements and concluded that:³³
- a Panels must not rely on the purpose of the FTAA at the expense of due consideration of the other factors;
 - b Panels must still consider all factors on an individual basis, prior to standing back and conducting the overall weighting exercise; and
 - c Environmental effects do not become less minor simply because of the purpose of the FTAA, but they may be outweighed by the purpose of facilitating the delivery of infrastructure and development projects with significant regional or national benefits.
- 6.8 Summarising the approach taken by FTAA panels to date, we submit that the Panel must:
- a Consider each factor on an individual basis; and
 - b Conduct an overall weighting exercise which gives the greatest weight to the purpose of the FTAA.
- 6.9 The weighting exercise to be undertaken for this Project is straightforward because the Project will achieve the purpose of the FTAA while also satisfying the other factors required to be considered for each approval.

Other legislation

- 6.10 The Panel is required to take into account the relevant provisions of any other legislation that directs decision making under the RMA.³⁴ There is no relevant other legislation for the purposes of schedule 5, clause 17(1)(c).

³¹ FTAA, s81 and Schedule 9 cl5

³² *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541.

³³ Decision of expert panel for Port of Auckland Fast-track Application for Bledisloe North Wharf and Fergusson North Berth Extension, 21 August 2025, at [121]; decision of expert panel for Milldale Application, 3 October 2025, at [60].

³⁴ FTAA, sch 5, cl 17(1)(c), cl 24(1).

Mana Whakahono ā Rohe or joint management agreements

- 6.11 There are no Mana Whakahono ā Rohe or joint management agreements relevant to the Application.³⁵

Assessment of effects of the Project

- 6.12 A summary of the assessment of the Project's potential effects on the environment is contained in Section 1.9 of Volume B of the SAR and further detail is contained within the technical assessments included in the SAR.
- 6.13 The construction effects of the Project are all temporary, are to be expected in relation to a major infrastructure project of this nature and scale, and will be managed using well-established and proven mitigation techniques and management plan processes used by NZTA across the country. The proposed management plans are:
- a Construction Traffic Management Plan;
 - b Construction Noise and Vibration Management Plan;
 - c Construction Air Quality Management Plan;
 - d Landscape Mitigation Plan (includes some temporary screening requirements);
 - e Erosion and Sediment Control Plans;
 - f Stream Realignment Plan (includes works in streams);
 - g Wetland Management Plan (includes works in retained wetlands that are to be remediated or restored);
 - h The Aquatic Fauna Management Plan (native fish relocation);
 - i Lizard Management Plan; and
 - j Archaeological Management Plan (including a research strategy).
- 6.14 A temporary groundwater take is also proposed during the construction period. There is sufficient availability to accommodate this water take, and with appropriate abstraction limits and metering in place, the potential effects in

³⁵ FTAA, sch 5, cl 24(1).

relation to drawdown, stream and wetland hydrology, saline and groundwater settlement will be less than minor.

- 6.15 Groundwater interception may also occur during earthworks, piling and bridge construction. Less than minor adverse effects are expected from the predicted localised drawdown and mounding, with no net loss of stream baseflow and no adverse effects on neighbouring groundwater users, wetlands or land stability.
- 6.16 The conditions that apply to construction activities contain clear directions as to the outcomes that must be achieved, and the relevant standards to be applied, through the management plan process and certification of various details by suitably qualified experts. In summary, the residual adverse effects during the construction phase have all been assessed as being no more than minor. None of the potential adverse effects reach a level of 'moderate' adverse effects post mitigation.
- 6.17 Operational effects will be overwhelmingly positive as set out above. The potential adverse effects of the Project following completion of construction will be managed as follows:
- a Operational noise: There will be permanent changes in road-traffic noise at existing sensitive receptors. Traffic noise will increase in some locations, while noise levels will remain similar or reduce where traffic moves away from existing receivers. Where noticeable noise increases are predicted, noise levels will remain within Category A under NZS 6806. The use of low noise road surfaces will ensure that the effects on sensitive receivers are negligible to low.
 - b Freshwater ecology: The Project will result in the permanent loss or modification of wetland and stream extent and value, along with potential habitat fragmentation and edge effects. Wetland remediation, creation and restoration and the naturalisation of several streams is proposed. The resulting outcome will be no net loss in terms of stream and wetland values, with the potential for positive outcomes.
 - c Terrestrial ecology: The existing terrestrial environment is dominated by pasture, plantation forestry, shelterbelts, and other exotic vegetation, with limited indigenous vegetation largely confined to planted or restored areas. Most habitats are of negligible to low ecological value, with some habitats of moderate value where restoration planting has occurred. The potential impacts will be managed through landscape planting provided for by

restoration and replacement planting, mitigation planting (as per the Landscape Mitigation Plan) along with riparian and wetland planting required by the Wetland Management Plan and the Stream Realignment Plan.

- d Visual, landscape and natural character: The Project will introduce new and widened carriageways, interchanges, bridges, batters, stormwater infrastructure and associated road infrastructure. The change in views will be most pronounced from residential properties near the Redwood Lane and Takitimu Drive interchanges. The Landscape Mitigation Plan identifies the areas where mitigation planting is required to address the potential visual effects on views from those properties and ensure the Project is appropriately integrated into the landscape. Post mitigation landscape and visual effects will be low to low-moderate. The changes to natural character will be low adverse to benign, transitioning to positive effects (in some locations) as a result of the naturalisation of several waterbodies including riparian, wetland and landscape planting.
- e Water quality and quantity: The potential effects of the Project on flooding and water quality include increased stormwater runoff volumes and peak flows from additional impervious surfaces, changes to downstream flood levels and flow regimes, erosion and scour at discharge points and within receiving environments and discharge of sediment, heavy metals, hydrocarbons, and other road-runoff contaminants to freshwater receiving environments. These effects will be managed through appropriate stormwater treatment and design measures. Following implementation of these measures, operational stormwater effects will be less than minor. Flooding effects will also be less than minor across most of the Project area, with effects at four Marshall Avenue properties are assessed as no more than minor.

- 6.18 More detail about the proposed approach to managing effects through the conditions is set out below.

Additional considerations relevant to the NOR

Consideration of alternatives

- 6.19 NZTA does not have an interest in all of the land required for the Project that is sufficient for undertaking the work. The Panel must therefore have regard to

“whether adequate consideration has been given to alternative sites, routes or methods for undertaking the work” when considering the NORs.³⁶

- 6.20 Caselaw under the RMA is clear about what adequate consideration entails.³⁷ The Panel’s focus is on the process, not the outcome. NZTA is responsible for selecting the preferred alternative, and there is no requirement to select the ‘best’ alternative. The word ‘adequate’ means sufficient or satisfactory, and does not require an exhaustive process. The consideration of alternatives needs to be more careful where there is a greater impact on private land.
- 6.21 As set out in Section 1.6.3 of Volume B of the SAR, NZTA has undertaken an extensive consideration of alternative corridors, routes and sites since the Project’s inception. A multi criteria assessment process has been used through multiple business cases which commenced in 2017.³⁸ This approach has ensured that the process has been robust, replicable, and transparent.

Reasonable necessity for the work and designation

- 6.22 The work that forms part of this Project is necessary to achieve its project objectives, which are to:³⁹
- a Improve travel time and reliability;
 - b Support growth in Western Tauranga; and
 - c Improve safety of the transport network.
- 6.23 A designation is preferable to land use consents or other planning mechanisms because it:
- a Will be shown in the Tauranga City Plan and Western Bay of Plenty District Plan, which will provide planning certainty for landowners and the Councils;
 - b Will protect against third parties doing anything that would prevent or hinder the Project; and
 - c Is a suitable planning tool for linear infrastructure that crosses multiple zones.

³⁶ RMA, s171(1)(b).

³⁷ See for example *New Zealand Transport Agency v Waikato Regional Council* [2023] NZEnvC 55 at [62]-[65].

³⁸ Section 1.6.3 of Volume B of the SAR.

³⁹ Section 1.6.2 of Volume B of the SAR.

Additional matters relevant to the resource consent applications

RMA provisions

- 6.24 The Panel is required to take into account RMA provisions that are relevant to decision making on a resource consent application, excluding the section 104D gateway test for non-complying activities.⁴⁰ The requirement to take into account Part 2 does not include a requirement to take into account section 8 of the RMA.⁴¹
- 6.25 An assessment against relevant RMA provisions is set out in Sections 1.7 Volume B of the SAR. That assessment concludes that the resource consents:
- a Are consistent with the purpose and principles of the RMA;⁴² and
 - b Are consistent with the relevant national policy statements, national environmental standards, and regional and district planning documents.⁴³

Additional HNZPTA considerations

- 6.26 Section 1.10 of Volume D of the SAR addresses the relevant considerations under HNZPTA. Section 1.11 of Volume D of the SAR also describes the proposed conditions for the archaeological authorities. The proposed conditions are based on HNZPT's standard archaeological authority conditions, with amendments to reflect the scale, duration and construction sequencing of the Project and to avoid duplicating matters addressed in the Archaeological Management Plan and Research Strategy submitted with the Application
- 6.27 NZTA has engaged with Tupenga in the preparation of the application. The archaeological assessment concludes that the effects of the Project on archaeology will be less than minor (post-mitigation). There are no relevant statements of general policy confirmed or adopted under the HNZPTA.

Additional considerations relating to wildlife approvals

- 6.28 When considering an application for a wildlife approval, including conditions, the Panel must take into account the purpose of the Wildlife Act 1953. While the Wildlife Act does not have a specific purpose section, the POAL Decision concluded that the Act should be interpreted in light of its purpose, which is that,

⁴⁰ FTAA, sch 5, cl 17(1)(b). In any event, the Application does not include any activities that would otherwise be non-complying, if sought under the RMA.

⁴¹ FTAA, sch 5, cl 17(2)(a).

⁴² Section 1.8 of Volume B of the SAR.

⁴³ Section 1.4 of Volume B of the SAR.

with some limited exceptions, wildlife is “to be absolutely protected throughout New Zealand”.⁴⁴ The Supreme Court found in *Shark Experience Ltd v PauaMAC5 Inc* that one of the principal purposes of the Wildlife Act 1953 is the protection of wild animals.⁴⁵

- 6.29 The purpose of the Wildlife Act, the effects of the Project on the protected wildlife, and information and requirements relating to the protected wildlife, are addressed in Volume C of the SAR. The SAR concludes that granting the approval would be consistent with the purpose of the Wildlife Act⁴⁶ and that the adverse effects on lizards will be minimised through their relocation and management pursuant to a Lizard Management Plan.⁴⁷

Additional considerations relating to the freshwater fisheries approvals

- 6.30 The Panel must assess a complex freshwater fisheries activity approval in accordance with the process set out in clause 5 of Schedule 9.⁴⁸ No permanent culverts are proposed as part of the Project. Temporary culverts (or other diversion structures) may be necessary to facilitate the construction of the Project or the proposed stream realignments.
- 6.31 When considering an application for complex freshwater fisheries activity approval, the Panel must take into account:
- a The alignment of the proposed activity with best practice and the New Zealand Fish Passage Guidelines;
 - b How the proposed activity will manage risks to freshwater values or habitat, including prevention of access to or spread of invasive species;
 - c The availability and quality of the habitat upstream and downstream of the proposed activity;
 - d The presence of threatened, data-deficient, or at-risk species under the New Zealand Threat Classification System in the vicinity of the proposed activity; and

⁴⁴ Decision of expert panel for Port of Auckland Fast-track Application for Bledisloe North Wharf and Fergusson North Berth Extension, 21 August 2025, at [128]. The relevant provision of the Wildlife Act 1953 is section 3.

⁴⁵ *Shark Experience Ltd v PauaMAC5 Inc* [2019] NZSC 111 at [44]-[45].

⁴⁶ Section 1.3 of Volume C of the SAR.

⁴⁷ Section 1.11 of Volume C of the SAR.

⁴⁸ FTAA, section 81(3)(k).

- e The advantages and disadvantages of providing fish passage upstream or downstream of the proposed activity.
- 6.32 Fish passage will not be provided within the temporary culverts or in conjunction with any other temporary diversion structures. The Aquatic Fauna Management Plan will set out the native fish salvage and relocation requirements and will be complied with in relation to any stream works including where temporary diversion structures are required.

7 Proposed conditions

- 7.1 NZTA is a Crown entity. Its statutory objective under the LTMA is to undertake its functions in a way that contributes to an effective, efficient, and safe land transport system in the public interest.⁴⁹ In meeting that objective, NZTA must exhibit a sense of social and environmental responsibility, and use its revenue in a manner that seeks value for money.⁵⁰ As a statutory entity, NZTA is also subject to administrative law obligations, including the requirement to act reasonably. These factors distinguish NZTA from private developers.
- 7.2 NZTA has decades of experience in delivering major, complex projects, engaging with a broad range of stakeholders, and managing significant construction and earthworks activities in a wide variety of New Zealand's natural and physical environments. NZTA has earned a strong reputation as a responsible and trusted designer, constructor and operator of nationally significant infrastructure.
- 7.3 NZTA has proposed a robust suite of conditions and a comprehensive mitigation package for the Project, which together will appropriately manage and mitigate its adverse effects. The proposed conditions are included in the relevant volumes of the SAR. As an experienced user of designation and resource consent processes across multiple projects, NZTA has invested significant resources into drafting conditions across its FTAA projects that are succinct, clear for contractors to understand, achieve the outcomes sought and easy for councils to monitor. It has also been mindful of the fact that the FTAA provides opportunities to address effects in a way that aligns with NZTA's responsibility to seek value for money, in accordance with the GPS in particular.
- 7.4 The format used for the Bay of Plenty Regional Council ('**BOPRC**') conditions differs from what NZTA would normally propose. NZTA has used BOPRC's standard format for organising the resource consent conditions as it understands that this approach is necessary to enable the consents to be incorporated into

⁴⁹ Land Transport Management Act 2003, s94.

⁵⁰ LTMA, s96(1)(a) and (b).

BOPRC's consent administration system. This approach has resulted in some repetition, but is necessary to ensure ease of administration by BOPRC.

- 7.5 NZTA acknowledges that the Project will, as with any undertaking of this size, scale and significance, bring a significant change to the environment. It will impact archaeological sites, areas of significance to Tupenga, wetlands and streams. During construction the Project will have noise and other amenity effects on some neighbours, if not carefully managed. NZTA has been mindful of those potential effects when preparing the proposed conditions.
- 7.6 The technical experts who have undertaken the effects assessments all consider that the mitigation package provided for through the proposed conditions responds appropriately and proportionately to the effects of the Project. To assist the Panel in considering NZTA's proposed suite of conditions, we set out below a summary of the key legal principles governing the imposition of conditions.

Legal principles

- 7.7 The approvals sought in the Application may be granted subject to conditions.⁵¹ As noted above, the Panel must not impose a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of the FTAA that confers the discretion.⁵²
- 7.8 The specific requirements for each type of approval are:
- a For resource consent conditions, the relevant provisions of the RMA.⁵³ This includes section 108 of the RMA, and the restrictions which section 108AA imposes on the imposition of conditions;
 - b For the designation alteration, the provisions of Part 8 of the RMA 1991 that are relevant to setting conditions on a designation;⁵⁴
 - c For the wildlife approval, the Panel may set any conditions that the Panel considers necessary to manage the effects of the activity on protected wildlife. In doing so, the Panel must:⁵⁵
 - a. Consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife that is to be covered by the approval; and

⁵¹ FTAA, s 81(2)(e).

⁵² FTAA, s 83.

⁵³ FTAA, sch 5, cl 18.

⁵⁴ FTAA, sch 5, cl 25.

⁵⁵ FTAA, sch 7, cl 6.

- b. Where more than minor residual impacts on protected wildlife cannot be avoided, minimised, or remedied, ensure that they are offset or compensated for where possible and appropriate; and
- c. Take into account, as the case may be, the New Zealand Threat Classification System or relevant international conservation agreement that may apply in respect of the protected wildlife that is to be covered by the approval.
- d. For the archaeological authorities, a Panel may impose any conditions, including the specific types set out in clause 5(1) of Schedule 8; and
- e. For complex freshwater fisheries activities, the Panel may impose conditions that it considers necessary to manage the effects of the activity on freshwater fish species, taking into account best practice standards and the New Zealand Fish Passage Guidelines.⁵⁶

7.9 No specific conditions have been proposed by NZTA for the freshwater fisheries approvals because the conditions on the resource consents will manage the effects of the activity on freshwater fisheries species.⁵⁷ Clause 19 of Schedule 5 to the FTAA allows this approach.⁵⁸

7.10 The panels in the POAL Decision and Milldale decisions approached the assessment of the proposed resource consent conditions in a manner consistent with established RMA jurisprudence on conditions.⁵⁹ Relevant to this Application:

- a. A resource consent condition must be for a resource management purpose, not an ulterior one; it must fairly and reasonably relate to the development authorised by the resource consent; and it must not be so unreasonable that a reasonable planning authority, duly appreciating its statutory duties, could not have approved it.⁶⁰ Section 108AA of the RMA similarly limits conditions to those:
 - i. Directly connected to adverse effects, district or regional rules or a national environmental standard;
 - ii. Directly connected to other specified matters; or

⁵⁶ FTAA, sch 9, cl 6.

⁵⁷ Section 1.8 of Volume E of the SAR.

⁵⁸ This approach was also adopted in the recent Panel decisions in relation to NZTA's Belfast to Pegasus Project.

⁵⁹ Decision of expert panel for Milldale Application, 3 October 2025, at [192].

⁶⁰ *Newbury District Council v Secretary of State for the Environment* [1980] 1 All ER 731 (HL), at 739.

iii Related to administrative matters that are essential for efficient implementation;

b Conditions must be certain and enforceable;⁶¹ and

c A condition must also not delegate the making of any consenting or other arbitrary decision to any person, but may authorise a person to certify that a condition of consent has been met or complied with or otherwise settle a detail of that condition.⁶²

7.11 We submit that the same approach should apply to the conditions on the designation, wildlife permit and archaeological authorities.

Envelope of effects approach

7.12 As outlined above, the conditions have been crafted to ensure that the effects of the Project are appropriately managed, while providing flexibility to accommodate change as the Project's design is finalised. The conditions do not contain a conventional 'Condition 1' requiring the Project to be constructed and operated "in general accordance with" specified drawings and documents lodged as part of the Application.

7.13 This approach is important for large linear infrastructure projects, where optimisation of the design is a standard practice during detailed design and has been adopted across a number of other NZTA projects including:

- a Ara Tūhono – Pūhoi to Wellsford Road of National Significance: Pūhoi to Warkworth Section;
- b Ara Tūhono - Warkworth to Wellsford project;
- c SH1 Cambridge to Piarere; and
- d Takitimu North Link Stage 2 Project (noting no Condition 1 was imposed on the designation conditions, and a 'flexible Condition 1' was imposed on the resource consent conditions).

7.14 Such optimisation allows for refinement of elements such as cut-fill balance and horizontal and vertical alignment, which can reduce both environmental effects and overall costs. For a Project of this nature and scale, changes are inevitable through the detailed design phase once a contractor has been appointed.

⁶¹ *Bitumix Ltd v Mt Wellington Borough Council* [1979] 2 NZLR 57.

⁶² *Turner v Allison* (1970) 4 NZTPA 104.

Changes will occur during the detailed design process whether a 'Condition 1' is imposed or not. However, if a conventional 'Condition 1' was imposed, future refinements to the design would risk alterations to designations or amendments to consent conditions being required, resulting in significant additional cost and delays to procurement, construction and the realisation of this regionally and nationally significant Project.

- 7.15 It is noted that an indicative, or concept design has been included for the proposed stream realignments. The conditions require the stream realignments to be constructed in general accordance with the indicative design or such other design that achieves the same outcomes. This greater level of detail has been provided to assist NZTA in clearly identifying the intended outcomes and, through its proposed conditions, provide confidence that the naturalisation of these existing modified channels will be successfully delivered.

Lapse period

- 7.16 The lapse date for the resource consents and designation must be long enough to accommodate funding, procurement and pre-implementation processes, and delivery of enabling works prior to construction commencement. NZTA seeks a 20-year lapse date for the designation and resource consents to provide for funding, procurement and pre-implementation lead in time. We submit that, in all the circumstances of the Project, this lapse period is both reasonable and appropriate.

Concluding comment on conditions

- 7.17 NZTA has carefully considered these legal principles in the development of the proposed conditions, and submits that the relevant tests are met in all respects.

8 Conclusion

- 8.1 The Application demonstrates that:
- a The Project will deliver significant national and regional benefits;
 - b The adverse effects resulting from the Project are not significant, do not even reach the level of 'moderate' adverse effects and are appropriately managed by the proposed conditions;
 - c There is significant support for the Project and its benefits; and
 - d The Application is consistent with the purpose of the FTAA.

- 8.2 Accordingly, we submit that the Panel can be satisfied that there is no mandatory or discretionary reason to decline the approvals sought. The Panel must approve the approvals sought and NZTA asks the Panel to grant the approvals, subject to the proposed conditions.

Dated 31 July 2026



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