

Before an Expert Consenting Panel

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*under:* the Fast-track Approvals Act 2024

*in the matter of:* applications for resource consents and archaeological authorities and notices of requirement by the New Zealand Transport Agency Waka Kotahi to develop a rapid transit link and associated infrastructure and connections between Brigham Creek and Auckland City centre, alongside State Highway 16, known as 'North West Rapid Transit'

*applicant:* **New Zealand Transport Agency**  
*Requiring Authority and Applicant*

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

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Dated: 15 December 2025

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**LEGAL SUBMISSIONS ON BEHALF OF NEW ZEALAND  
TRANSPORT AGENCY WAKA KOTAHİ**

**INTRODUCTION**

- 1 New Zealand Transport Agency Waka Kotahi (NZTA)<sup>1</sup> has applied for resource consents and archaeological authorities and lodged notices of requirements (NORs) (collectively, the *Application*) for North West Rapid Transit, a rapid transit link and associated infrastructure and connections between Brigham Creek and Auckland City centre, alongside State Highway 16 (SH16) (Project) pursuant to the Fast-track Approvals Act 2024 (FTAA).<sup>2</sup>
- 2 These submissions are intended to assist the Panel convenor to undertake her statutory functions, and the Panel in their consideration of the Application. They provide an overview of the relevant statutory framework and the key matters that the Panel will need to consider.<sup>3</sup>
- 3 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.<sup>4</sup> 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.

**OVERVIEW**

- 4 The Project will provide transformative public transport infrastructure for Auckland. It will enable fast, frequent, reliable and high-capacity bus rapid transit between Northwest Auckland and the City Centre, and will fill a missing link in Auckland's rapid transit network. It will support urban growth in one of the city's largest population growth areas (Northwest Auckland) and improve accessibility to key employment, retail, education and social destinations along the corridor. It will provide genuine transport choice for current and future generations.
- 5 There is no doubt, the Project will provide significant regional and national benefits. The Project's transport benefits include significantly reduced bus travel times, substantially improved bus travel time reliability, improved public transport user experience, improvements for general traffic and freight vehicles using SH16, and more efficient movement of people within the corridor. The Project will also support urban intensification enabled by the

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<sup>1</sup> NZTA is the statutory body responsible for operating the state highway network. Land Transport Management Act 2003 (LTMA), s95(1)(h).

<sup>2</sup> NZTA is a Requiring Authority under s167 of the Resource Management Act 1991 (RMA). NZTA is an authorised person who may lodge applications for the Project under the fast-track consenting process.

<sup>3</sup> Consistent with the Fast-Track Approvals Act 2024: Panel Conveners' Practice and Procedure Guidance, paragraph 4.1(b).

<sup>4</sup> Consistent with the Fast-Track Approvals Act 2024: Panel Conveners' Practice and Procedure Guidance, paragraph 4.1(c).

Auckland Unitary Plan (AUP). It will enable wider economic benefits, including increased productivity, and provide a range of social benefits. The Project is recognised in national and regional policy documents as a key priority for Auckland's future, including in the current Government Policy Statement on Land Transport 2024-2034 (GPS).

- 6 Throughout NZTA's extensive engagement with iwi/hapū, stakeholders, directly affected landowners, and the community, the feedback has been generally positive with high levels of support for the Project. Auckland Transport (AT), which will operate the bus services and stations, has provided a letter in support of the Project.
- 7 The Project has been developed in partnership with Te Kawerau ā Maki, Ngāti Whātua Ōrākei and Te Ākitai Waiohua. Te Kawerau ā Maki gifted the Project name, 'Te Ara Hauāuru', and names for the stations in the west of the corridor.<sup>5</sup> Te Kawerau ā Maki have provided a letter in support of the application, which notes:

*This kaupapa will provide fast, frequent and reliable transport choices for our communities in west and northwest Auckland and will provide better access to employment and education opportunities. West Auckland has had an investment deficit in transport despite being one of the highest growth areas in the country – this project is desperately needed for our rohe.*

- 8 NZTA seeks designations, resource consents and archaeological authorities to enable construction and operation of the Project.
- 9 The Project will be located in a highly modified urban environment, which is dominated by major transport infrastructure (SH16). It is a context in which change is both anticipated and appropriate.
- 10 As a result of that context, the Project's impacts will be much lower than those associated with many other NZTA projects the Panel may be aware of. The Project impacts that do require management (such as construction noise) are mostly of a nature that is well understood and already experienced in a developed but growing urban environment. Most impacts are temporary in nature, and all can be effectively managed using familiar and tested measures, which are set out in NZTA's proposed conditions (*Proposed Conditions*).
- 11 The Proposed Conditions do not include a traditional 'Condition 1' requiring the Project to be undertaken "*in general accordance with*" the application documents. This approach is a lawful and accepted approach for large scale infrastructure projects. It is appropriate for this Project given the final design and construction methodology will not be developed until some time in the future, with construction of the Project expected to be staged over approximately 20 years.

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<sup>5</sup> Application, Part 2, Section 3.2 – 3.3.

- 12 The Proposed Conditions are more streamlined than those imposed on some recent NZTA projects under the RMA. This approach reflects the nature of the existing environment, the limited environmental effects of the Project, and the FTA legal framework. In our submission, the Proposed Conditions have been designed to appropriately manage the Project's impacts and, in some cases, go beyond what is required via *Augier* conditions.
- 13 The Project does not involve ineligible activities and is not inconsistent with any relevant Treaty settlement. Further, the Project will deliver profound and enduring benefits for Auckland and New Zealand, and the adverse impacts are limited and manageable through standard measures. In our submission, there is no credible or legal basis for declining the approvals sought.
- 14 We submit the Panel can, and should, grant the approvals sought for the Project subject to the Proposed Conditions.

## **CONTENTS**

- 15 These submissions:
  - 15.1 Introduce the Requiring Authority and Applicant;
  - 15.2 Provide an overview of the Project and the approvals sought;
  - 15.3 Provide an overview of the statutory decision-making framework applying to the Application;
  - 15.4 Address the key matters that NZTA anticipates will require close consideration by the Panel – the benefits and the impacts of the Project; and
  - 15.5 Address the conditions proposed by NZTA to manage the impacts of the Project.

## **THE REQUIRING AUTHORITY AND APPLICANT**

- 16 NZTA's statutory objective is to "*undertake its functions in a way that contributes to an effective, efficient, and safe land transport system in the public interest*".<sup>6</sup>
- 17 Its functions, as relevant to the Project, include:<sup>7</sup>
  - 17.1 Contributing to an effective, efficient, and safe land transport system in the public interest;
  - 17.2 Managing the state highway system, including planning, funding, design, supervision, construction, and maintenance and operations, in accordance with the Land Transport

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<sup>6</sup> Land Transport Management Act 2003 (LTMA), s94.

<sup>7</sup> LTMA, s95(1)(a), (h), (i) and (j).

Management Act 2003 (LTMA) and the Government Roading Powers Act 1989;

17.3 Overseeing the planning, operation, implementation, and delivery of public transport (including issuing guidelines for regional public transport plans); and

17.4 Managing funding of the land transport system.

18 NZTA must “*give effect to*” the Government Policy Statement on Land Transport when performing its land transport planning and funding functions.<sup>8</sup> Importantly, one of the four strategic priorities in the current GPS is “*value for money*”. This strategic priority requires NZTA to improve value for money from transport investment including through “*a focus on whole-of-life costs to maximise long-run value*”.<sup>9</sup>

19 NZTA is a Requiring Authority under s167 of the Resource Management Act 1991 (RMA) in relation to state highways and motorways,<sup>10</sup> rapid transit networks and projects,<sup>11</sup> and cycleways and shared paths<sup>12</sup>. It is therefore authorised to issue the NORs for the Project.

20 NZTA is the authorised person who may lodge a substantive application for the Project with the EPA through Schedule 2 of the FTAA.<sup>13</sup>

## THE PROJECT

**Project overview**

21 The Project is the construction, operation and maintenance of new bus rapid transit facilities located adjacent to SH16, from the Brigham Creek Road/SH16 intersection in northwest Auckland to Ian McKinnon Drive in the Auckland City Centre.

22 A bi-directional, offline busway will extend from Brigham Creek to Te Atatū and then from the Waterview Interchange to the Auckland City Centre. The Project will rely on the existing bus shoulder lanes along the causeway between Te Atatū and the Waterview Interchange, and no approvals are sought or required in this area.

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<sup>8</sup> LTMA, s70(1).

<sup>9</sup> GPS, page 23.

<sup>10</sup> The Resource Management (Approval of Transit New Zealand as Requiring Authority) Notice 1994: *New Zealand Gazette*, 3 March 1994, Notice No. 1994-go1500.

<sup>11</sup> The Resource Management (Approval of New Zealand Transport Agency as a Requiring Authority) Notice 2023: *New Zealand Gazette*, 18 September 2023, Notice No. 2023-go4371.

<sup>12</sup> Resource Management (Approval of NZ Transport Agency as a Requiring Authority) Notice 2015: *New Zealand Gazette*, 19 November 2015, Notice No. 2015-go6742.

<sup>13</sup> FTAA, Schedule 2.

The Project includes seven rapid transit stations located at Brigham Creek (which also includes a park and ride facility), Westgate, Royal Road, Lincoln Road, Te Atatū, Point Chevalier and Western Springs.

- 23 The Application presents an "Indicative Design" for the Project. An "Indicative Design" has been developed for consenting purposes, to enable an assessment of the Project's potential effects and the development of an "effects envelope". It is anticipated that delivery of the Project will be staged over approximately 20 years, with construction likely to begin in the west at Brigham Creek Rarawaru Station in 2027.<sup>14</sup> The final design of each Project stage will be completed closer to construction and may be different from the Indicative Design. For this reason, NZTA seeks approvals that provide flexibility for the final design to be confirmed through the detailed design phase, while managing adverse impacts of the final design through the suite of outcomes-based Proposed Conditions to ensure those impacts remain within the effects envelope as consented. This 'no Condition 1' approach is addressed later in these submissions.
- 24 The Application also presents an indicative construction methodology for the Project.<sup>15</sup> The key construction activities are enabling works (including demolition and utilities relocation), earthworks and construction of stations, bridges, underpasses, culverts and road pavement.
- 25 Part 2 of the Application provides a full description of the Project.

### **Project objective**

- 26 NZTA's objective for the Project is to:

Provide bus rapid transit facilities alongside State Highway 16 between the SH16/Brigham Creek Road intersection and Ian McKinnon Drive, including stations that integrate with the surrounding transport network.

### **Approvals sought**

- 27 NZTA seeks the following approvals to construct, operate and maintain the Project:
  - 27.1 Twelve designations: NZTA has issued notices for five primary designations for the Project (three to the west of the causeway and two to the east) to enable staged construction. NZTA has issued notices for a further seven overlapping designations for the stations to enable future transfer of the stations to an operator.
  - 27.2 Resource consents required in accordance with sections 9(1), 9(2), 12, 13, 14 and 15 of the RMA (*Consents*), including the

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<sup>14</sup> Application, Part 2, Section 4.2.1.

<sup>15</sup> Application, Part 2, Section 4.2.

resource consents required under rules and regulations in the:<sup>16</sup>

- (a) Auckland Unitary Plan operative in part (*AUP*);
- (b) Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (*NES-F*); and
- (c) Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (*NES-CS*);

Overall, the activity status for the Consents is discretionary.<sup>17</sup>

27.3 Two archaeological authorities: NZTA has applied for authorities for all publicly owned land within two geographical areas (ie west of the causeway and east of the causeway).

- 28 The twelve designations are collectively referred to as the 'Proposed Designation' in these legal submissions. The term 'Project Area' is used to refer to both the Proposed Designation and the extent of the coastal occupation permits sought.
- 29 NZTA is not seeking a wildlife permit for the Project. NZTA will comply with the Wildlife Act 1953 (or subsequent legislation) when undertaking Project works.<sup>18</sup> The Wildlife Act processes will ensure appropriate management of the direct effects of the Project on protected species, and duplication of effects management through RMA approvals should be avoided. For this reason, in our submission, matters regulated under the Wildlife Act 1953 are not before the Panel for consideration or decision.

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<sup>16</sup> Application, Part 4, at section 1.2. NZTA seeks all necessary resource consents required for the Project whether or not the application identifies specific rules or regulations that trigger the need for consent, except that it does not seek resource consents under regulation 45 of the *NES-F*.

<sup>17</sup> Application, Part 4, section 1.2.

<sup>18</sup> It is noted that ecological surveys for the Project identified two copper skink, which are protected under the Wildlife Act 1953: Application, Part 4, section 10.1.1.3. If any protected wildlife is present at the time of Project works, NZTA will need to relocate the protected wildlife in accordance with a wildlife permit (general or Project-specific).

## LEGAL TESTS

30 The FTAA sets out the legal framework applying to approvals for a listed project such as the Project.<sup>19</sup> Pursuant to this framework, the Panel has two tasks. It must:

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

31 We address the legal framework relevant to the first task here. The legal framework relevant to conditions is addressed later in these submissions.

### **Scope to decline approvals under the FTAA**

32 The Panel's scope to decline the Application is limited under the FTAA to:<sup>20</sup>

- 32.1 Ineligibility;
- 32.2 Inconsistency with relevant Treaty settlements; and
- 32.3 Adverse impacts that (after taking into account conditions) are sufficiently significant so as to be out of proportion to the Project's benefits.

33 We submit that none of the mandatory or discretionary matters allowing the Panel to decline the Application are engaged in this case. Specifically:

#### ***The Project is not an ineligible activity***

33.1 NZTA has completed a comprehensive investigation, including checking titles, Gazette notices, and other sources, to confirm that the Project is not an 'ineligible activity'.

#### ***The Project is not inconsistent with relevant Treaty settlements***

33.2 When making its decision, the Panel must also consider whether granting the approvals would comply with section 7 FTAA. Section 7 requires that all persons performing and exercising functions, powers, and duties under the FTAA must act in a manner that is consistent with obligations arising under existing Treaty settlements.<sup>21</sup>

33.3 The Application summarises the Treaty settlements relevant to this Project.<sup>22</sup> There are nine Treaty settlements that are

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<sup>19</sup> In particular, FTAA, ss81, 83 and 85, Schedule 5, cl17 and cl24, and Schedule 8, cl4.

<sup>20</sup> FTAA, s85.

<sup>21</sup> As defined in FTAA, s4.

<sup>22</sup> Application, Part 2, Section 7.

potentially relevant to the Project Area. Of direct relevance to the Project are the statutory acknowledgements for Te Kawerau ā Maki and Ngāi Tai ki Tāmaki and the proposed<sup>23</sup> statutory acknowledgements for Te Ākitai Waiohua. Apart from those matters, the settlements do not contain principles or provisions that are specifically relevant to the Project Area, nor do they contain any specific obligations on NZTA.

- 33.4 As explained in the Application, NZTA’s Project Partners (including Te Kawerau ā Maki and Te Ākitai Waiohua) have been extensively involved in the development of the Project. This involvement has allowed matters of importance to those iwi/hapū (including their statutory acknowledgements) to be considered in the development of the Project. Te Kawerau ā Maki has provided a letter in support of the Project. NZTA has provided opportunities for Ngāi Tai ki Tāmaki to engage on the Project. However, Ngāi Tai ki Tāmaki has advised NZTA that it does not wish to comment.<sup>24</sup>
- 33.5 We therefore submit the Project satisfies the requirements of section 7 of the FTAA.
- 33.6 For completeness, we note that while the general requirement to “*take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)*” in s8 of the RMA does not apply to decision-making under the FTAA, NZTA has conducted itself consistently with that provision.

***Any adverse residual impacts are not significant and are significantly outweighed by the Project’s benefits***

- 33.7 Finally, the Panel has a discretion to decline an approval if it forms the view that the adverse impact(s) of the Project “*are sufficiently significant to be out of proportion to the project’s regional or national benefits*”. As confirmed in a recent FTAA decision, this test means that the Panel may grant an approval even if residual effects remain.<sup>25</sup>
- 33.8 As we will establish below, the Project is consistent with the purpose of the FTAA and will have substantial regional and national benefits. Further, the Project’s potential adverse environmental effects (post-mitigation) are ‘moderate’ at most and in a few categories only. In many cases, effects will be positive.
- 33.9 For these reasons, in our submission, there can be no credible argument that adverse impacts will be so significant as to be out of proportion to the Project’s substantial regional and

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<sup>23</sup> The statutory acknowledgement is identified in the Te Ākitai Waiohua settlement deed, but settlement legislation has not yet been introduced to Parliament.

<sup>24</sup> Application, Part 2, Section 6.2.

<sup>25</sup> Decision for the Drury Metropolitan Centre - Consolidated Stages 1 and 2 Project, dated 7 November 2025, paragraph 157.

national benefits. Rather, the converse is demonstrably the case.

### **Relevant considerations and weighting**

34 The Panel must “take into account” the purpose of the FTAA, as well as the following other matters under the RMA and Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA)<sup>26</sup> as relevant:

- 34.1 For the resource consents, the provisions within Parts 2, 3, 6 and 8 to 10 of the RMA (excluding s 104D) that “*direct decision making on an application*” as well as the relevant provisions of any other legislation that directs decision making under the RMA;<sup>27</sup>
- 34.2 For the designations, the provisions of Part 8 of the RMA that direct decision making on “*an application [sic] for a designation*” (except section 170) as well as the relevant provisions of any other legislation that directs decision making under the RMA;<sup>28</sup> and
- 34.3 For the archaeological authorities, the matters in s59(1)(a) of the HNZPTA, as well as a relevant statement of general policy confirmed or adopted under the HNZPTA.<sup>29</sup>

35 These considerations are addressed in detail in Parts 4 and 5 of the Application.

36 For the purposes of the Panel’s evaluation, and its weighing of the various relevant considerations, the FTAA expressly directs the Panel to give the “*greatest weight*” to the purpose of the FTAA, being:<sup>30</sup>

To facilitate the delivery of infrastructure and development projects with significant regional or national benefits.

37 The Expert Panel that issued the first decision on an FTAA application (by Ports of Auckland for the Bledisloe North Wharf and Fergusson North Berth Extension) considered the “*greatest weight*” test. It provided the following guidance on the test:<sup>31</sup>

- 117.1 While the greatest weight is to be placed on the purpose of the FTAA, we must be careful not to rely solely on that purpose at the

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<sup>26</sup> Including relevant provisions of the RMA and HNZPTA pursuant to FTAA, s81(3).

<sup>27</sup> FTAA, s81 and Schedule 5, cl17(1).

<sup>28</sup> FTAA, s81 and Schedule 5, cl24(1).

<sup>29</sup> FTAA, s81 and Schedule 8, cl4. Sections 47(1)(a)(ii) and 47(5) of the HNZPTA are not relevant as NZTA is seeking archaeological authorities under s44(a) of the HNZPTA, not s44(b).

<sup>30</sup> FTAA, s3 and Schedule 5, cl 17 and 25 and Schedule 8, cl4.

<sup>31</sup> Bledisloe North Wharf and Fergusson North Berth Extension, FTAA Panel Decision, 21 August 2025, paragraphs 120-121.

expense of due consideration of the other matters listed in (b) to (c) / (d): Enterprise Miramar [41].

117.2 The clauses require us to consider the matters listed in sub-clauses (a) to (c) / (d) on an individual basis, prior to standing back and conducting an overall weighting in accordance with the specified direction: Enterprise Miramar [52] – [53].

117.3 The purpose of the FTAA is not logically relevant to the assessments otherwise required under the RMA, WA53 or HNZPTA. For example, assessments of environmental effects (RMA), or matters relating to protected wildlife (WA53), or historical and archaeological value (HNZPTA). None of those matters become irrelevant, insignificant, or less than minor simply because of the purpose of the FTAA. What changes is the weight to be placed on them - they may be outweighed by the purpose of facilitating the delivery of infrastructure and development projects with significant regional or national benefit, or they may not: Enterprise Miramar [55].

38 Accordingly, the Panel must consider the purpose of the FTAA and relevant matters in the RMA and HNZPTA<sup>32</sup> individually, and then weigh those factors in an overall balancing exercise, which gives the greatest weight to the purpose of the FTAA.

39 We submit that the balancing exercise the Panel must undertake within the FTAA decision-making framework is straightforward in this case. The Project will achieve the purpose of the FTAA and is generally consistent with the relevant RMA and HNZPTA considerations. Even if parties invited to comment on the Application argue that the Project is not consistent with some of those RMA and HNZPTA considerations, in our submission, the significant national and regional benefits of the Project weigh powerfully in favour of granting the Application with the Proposed Conditions put forward by NZTA.

**Irrelevant considerations**

40 There are a number of matters that may be raised by parties invited to comment on the Application that are not relevant to the Panel's determination, including the following:

40.1 *Property considerations:* The owners of properties partly within and adjacent to the Proposed Designation may raise concerns about the impacts the Project will have on their property values or business. However, these matters will be addressed under the PWA and are not for consideration by the Panel under the FTAA.<sup>33</sup>

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<sup>32</sup> FTAA, s81.

<sup>33</sup> *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2020] NZHC 3159 at [84]; PWA, ss 63 and 68.

40.2 *Utilities*: Given the highly urbanised nature of the Project Area, there are a number of utilities that will need to be avoided, relocated or protected to enable construction of the Project. The interfaces between the Project and utilities are governed by legislation and by mechanisms that are addressed, in routine manner, outside of consenting processes. They provide powers and protections to utility owners (in addition to the protections existing designations give many utilities under ss 176 and 177 of the RMA). Accordingly, we submit that the Panel does not need to, and should not, address the interfaces between the Project and utilities as part of its assessment of the Application.

### **THE PROJECT WILL HAVE SIGNIFICANT REGIONAL AND NATIONAL BENEFITS AND ACHIEVE THE PURPOSE OF THE FTAA**

41 The Project will have significant regional and national benefits and granting the approvals is consistent with the purpose of the FTAA as the Project:<sup>34</sup>

- 41.1 Is eligible to use the FTAA process as a listed project;<sup>35</sup>
- 41.2 Is identified as a priority project in a number of national and regional policy documents:
  - (a) The current GPS identifies the Project as a 'key project' under its 'Economic growth and productivity' strategic priority.<sup>36</sup>
  - (b) The Auckland Regional Land Transport Plan 2024-2034 (RLTP) includes the Project in its proposed programme of investment.<sup>37</sup>
  - (c) The Auckland Rapid Transit Pathway (ARTP) sets out the rapid transit network (RTN) corridors required across the Auckland region over the next 30 years, and the Project is the final gap in 'Phase 1' of the ARTP.
- 41.3 Will contribute to a well-functioning urban environment (within the meaning of policy 1 of the National Policy Statement on Urban Development 2020 (NPS-UD)). The residential population in Northwest Auckland is forecast to grow significantly over the coming decades, and the Project

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<sup>34</sup> Bledisloe North Wharf and Fergusson North Berth Extension, FTAA Panel Decision, 21 August 2025, paragraph 285.

<sup>35</sup> FTAA, Schedule 2.

<sup>36</sup> GPS, page 13.

<sup>37</sup> Auckland Regional Land Transport Plan 2024-2034, page 28, Regional Objectives.

will provide reliable travel options and genuine mode choice to the communities along the corridor.

41.4 Will deliver new regionally or nationally significant infrastructure, which will provide significant and meaningful social and economic benefits, including:<sup>38</sup>

- (a) *Improved accessibility:* By 2031, without the Project, SH16 is expected to be operating beyond what it can efficiently accommodate, causing increased delays, worsening congestion and limiting access for people in northwest Auckland to employment, education and social opportunities. The Project is expected to significantly shorten public transport travel times, reducing the journey time between Westgate Station and Karanga-a-Hape Station by up to 15 minutes compared to the current WX1 service. The Project will also improve reliability by providing more consistent travel times. Currently, public transport travel times between Westgate and Ian McKinnon Drive vary by up to 18 minutes in the morning peak. The Project will reduce bus travel time variability to 2-4 minutes across the day.
- (b) *Attractive and efficient public transport:* The Project will significantly improve the attractiveness of travelling by public transport as a result of improving efficiency and user experience. The Project is expected to meaningfully increase public transport (for example, annual weekday WX1 boardings are forecast to increase by 5.4 million by 2051). The Project will significantly increase corridor capacity and throughput along the SH16 corridor particularly during weekday peak periods. The busway itself will have the capacity to move up to 9,000 passengers in one direction per hour (equivalent to the theoretical capacity of four lanes of general traffic). The Project will therefore free up space on SH16 for heavy vehicles, trades and people who need to drive.
- (c) *Economic benefits:* The Project will support a thriving and dynamic Auckland regional economy by improving the movement of people across Auckland and by reallocating SH16 and local road network capacity to the movement of goods/freight. The Project will significantly improve access to key employment and education destinations (eg Westgate, Unitec, University Zone (East City Centre), Auckland CBD), and therefore increase productivity and generate agglomeration benefits.

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<sup>38</sup> Assessment of Traffic Effects, at section 4.2.1.

42 Part 3 of the Application provides a detailed overview of all of the Project's benefits.

**THE PROJECT WILL HAVE LIMITED ADVERSE IMPACTS, AND THEY WILL BE APPROPRIATELY MANAGED THROUGH THE PROPOSED CONDITIONS**

43 A detailed assessment of the Project's potential effects on the environment is contained in Parts 4 and 5 of the Application, with more detail provided in the technical assessment reports contained in Part 6 of the Application.

44 The Panel will be aware that the FTAA uses the language of 'impacts' whereas the RMA focuses on 'effects'. The HNZPTA similarly uses 'effects' language. The *Maitahi Village* decision discussed the two terms, and found that the difference was "*presumably deliberate*".<sup>39</sup> The decision went on to say that, in the absence of statutory guidance as to "*the equivalence or otherwise of adverse effects in an RMA context and adverse impacts under the FTAA*", it would treat "*any adverse effects as found under the RMA as being the same as adverse impacts for the purposes of its evaluation and decision making under the FTAA*".<sup>40</sup> We submit there is no material difference in the language used and that adverse impacts under the FTAA and adverse effects under the RMA and HNZPTA can be treated by the Panel as equivalent.

45 No permitted baseline has been applied in assessing the Project's impacts. However, where relevant, the assessments do note the types of activities that are permitted and therefore anticipated and considered to have minimal impacts (for example, the Transport Report notes that local road improvements are permitted activities and routinely delivered with minimal disruption, and the AEE notes that demolition of two of the buildings in the historic core of the Point Chevalier Town Centre is a permitted activity).

**Context for the Project's impacts**

46 It is important the Panel recognises that the Project's impacts will be quite different from those associated with many NZTA projects, for two reasons:

46.1 First, the Project will be located adjacent to, and in some locations within, the existing SH16 – its impacts are therefore more akin to a road widening project, than a project creating a new road corridor.

46.2 Secondly, the Project is situated in a highly modified urban environment (ie a 'brownfields' location). The Project Area has already been subject to significant modification, both in built form and landform modification – any remaining natural values are very limited. Consequently, many of the impacts

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<sup>39</sup> *Maitahi Village*, FTAA Panel Decision, 18 September 2025, paragraph 91.

<sup>40</sup> *Maitahi Village*, FTAA Panel Decision, 18 September 2025, paragraph 830.

that are typically important to decision-making on NZTA projects, such as landscape/visual and ecology impacts, are less important for this Project.

- 47 Project impacts that do require management (such as construction noise) are generally of a nature that is understood and already experienced in a developed but growing urban development. Most are temporary in nature, and all can be effectively managed using familiar and tested measures.
- 48 Against that context, we provide an overview of the Project's potential impacts and proposed management measures in the following sections. In our submission, these impacts are not "key issues to be determined" because they are of minimal consequence (either pre- or post-mitigation), but the Panel will nevertheless need to address them in its decision given the FTAA's legal tests.

### **Construction-related amenity**

- 49 Based on our experience and NZTA's consultation to date, we expect commenters will have a particular interest in the construction-related noise/vibration and traffic impacts of the Project.
- 50 NZTA acknowledges these impacts will be of concern to adjacent landowners and occupiers in particular. However, as noted above, these impacts are a normal part of a growing and developing city, are temporary in nature, and can be effectively managed using familiar and tested measures.

#### *Noise and vibration*

- 51 As explained in the Assessment of Construction Noise and Vibration prepared by Ms Siiri Wilkening, construction is inherently noisy, but is nevertheless generally considered reasonable by the community due to its limited duration.<sup>41</sup>
- 52 In most cases, the Project is predicted to comply with the daytime construction noise criterion (70dB<sub>LAeq</sub>). However, there is likely to be exceedances for limited periods in some locations directly adjacent to works. Those noise levels would only be experienced for limited periods (hours or days), as works move along the alignment.<sup>42</sup>
- 53 Similarly, the Project is predicted to comply with all building vibration criteria (for both amenity and building damage) in most cases. It may infringe the amenity criteria in some places for limited periods.<sup>43</sup>
- 54 In all cases, standard best practice measures will be employed – as set out in a Construction Noise and Vibration Management Plan (CNVMP) prepared for each stage of works. Where there is a risk of

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<sup>41</sup> Assessment of Construction Noise and Vibration, at 4.1.1.

<sup>42</sup> Assessment of Construction Noise and Vibration, at 4.1.1.3.

<sup>43</sup> Assessment of Construction Noise and Vibration, at 4.1.2.2.

exceedances of noise or vibration criteria, a Schedule to the CNVMP will be prepared to ensure effects are managed as far as practicable.<sup>44</sup> The Proposed Conditions also require building condition surveys to be undertaken before and after construction works in certain circumstances,<sup>45</sup> and NZTA would be required to fix any damage that is identified.

#### *Transport*

55 As set out in the Assessment of Transport Effects prepared by Ms Meredith Bates, Mr Andrew Foy and Mr Matthew Hoyle, the Project will cause temporary adverse transport effects for users of SH16, local roads and the Northwest Shared User Path. These impacts are a normal part of the construction of new infrastructure within an urban environment, and will be appropriately managed through standard measures recorded in a Construction Traffic Management Plan (CTMP) for each stage of works.<sup>46</sup>

56 The construction transport impacts will be managed by NZTA and AT, as road controlling authorities and owners of the transport networks impacted. NZTA and AT are both well versed in managing construction to minimise disruption to users of the transport network. AT's letter of support notes that interfaces between the Project and local roads can be managed between it and NZTA.

#### **Operational amenity**

57 As already acknowledged, the Project is located within a highly modified urban environment, adjacent to the existing and very busy SH16. This context means any operational amenity impacts of the Project are very limited.

#### *Noise and vibration*

58 As explained in the Assessment of Operational Noise and Vibration prepared by Ms Wilkening, the Project is different from other roading projects. The busway and stations will not add to the noise levels experienced by receivers, as those noise levels are controlled by existing noise from SH16 (which is *substantially* noisier than the busway and/or stations).

59 For the majority of receivers, their noise environment with the Project in place will be the same or similar to the existing environment. However, the Project requires removal of a number of houses, recontouring of terrain, and removal of existing noise barriers, resulting in some receivers experiencing increased traffic noise levels from SH16 as an indirect result of the Project.<sup>47</sup>

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<sup>44</sup> Designation Conditions 14.

<sup>45</sup> Designation Conditions 13 and 17.

<sup>46</sup> Designation Condition 10.

<sup>47</sup> Assessment of Operational Noise and Vibration, at 2.1.2.

60 To address those impacts, NZTA is proposing:

60.1 Road surface: A noise-reducing road surface material on the busway.<sup>48</sup>

60.2 Noise barriers: During detailed design, the best practicable option for mitigating noise effects will be determined.<sup>49</sup> Based on the Indicative Design, the mitigation is likely to include retention of existing noise barriers (where practicable), and relocated, new or higher noise barriers. The noise barriers will ensure noise levels will remain similar to existing. In some cases, the noise barriers will improve the noise environment.<sup>50</sup>

60.3 Building modification: NZTA will offer building modification (eg installing ventilation, upgrading glazing, insulation or door/window seals) where receivers already experience a high level of noise from SH16 (>67dB) and the Project is modelled to increase noise levels by 1dB or more.<sup>51</sup> Based on the Indicative Design, building modification would be offered at 17 properties.<sup>52</sup> Twelve of those 17 properties will receive a noise level change of 1-2dB from the Project, which is imperceptible.<sup>53</sup> Accordingly, in our submission, this building modification offer is not *required* to respond to the impacts of the Proposal (particularly under the FTAA). Rather, for all properties where building modification is offered and accepted, it will result in positive benefits for receivers by reducing the impact of existing SH16 noise levels.

61 The final design of the Project will determine which houses will be demolished, which noise barriers need to be removed, and how terrain will be recontoured. As a result, management measures will be selected as part of detailed design to achieve the outcomes set out above.

62 The Project will not result in any vibration that could cause building damage (cosmetic or otherwise).<sup>54</sup>

*Landscape/visual*

63 As set out in the Landscape and Visual Assessment prepared by Mr Matthew Jones, the Project will be consistent with the existing character of the transport corridor, and in keeping with the evolving

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<sup>48</sup> Designation Condition 22.

<sup>49</sup> Designation Condition 23.

<sup>50</sup> Assessment of Operational Noise and Vibration, Appendix B.

<sup>51</sup> Designation Conditions 24-29.

<sup>52</sup> Assessment of Operational Noise and Vibration, at 4.3.

<sup>53</sup> Assessment of Operational Noise and Vibration, at 2.2.2.

<sup>54</sup> Assessment of Operational Noise and Vibration, at 2.2.4.

urban landscape of the surrounding area. The Project will have low adverse landscape character effects overall.<sup>55</sup>

64 The Project's visual amenity impacts will largely be confined to properties adjacent to the Project Area. In most cases, the Project will form an additional component adjacent to the SH16 corridor and will be barely discernible or will be seen as complementary to the existing transport infrastructure. Accordingly, the Project will have low adverse visual amenity effects.<sup>56</sup> There are some bridges that will create slightly higher, but localized, visual amenity impacts. These impacts will be moderate at worst.<sup>57</sup>

65 Mr Jones notes that the Project will implement landscaping as normally carried out by NZTA.<sup>58</sup> The Proposed Conditions provide some specification for landscape planting requirements, and are additional to the s176A RMA requirement to address landscaping in the Outline Plan(s).

#### **Outstanding Natural Features**

66 As set out in Section 15.1 of Part 4 of the Application prepared by Ms Helen Hicks, there are three Outstanding Natural Features (ONFs) within or partly within the Project Area.

67 The impacts of the Project on these ONFs will be negligible:

67.1 *Harbour View Pleistocene terraces*: The Project works will be confined to a very limited area on the outskirts of the feature, and stormwater runoff will be conveyed so it does not erode the terraces.<sup>59</sup>

67.2 *Meola Creek lava flow*: The Proposed Designation includes only a small extent of this ONF.<sup>60</sup> NZTA is proposing a bridge in this location, so impacts will be limited.<sup>61</sup>

67.3 *North-west Motorway lava flow*: This ONF is within the existing SH16 designation. The Indicative Design includes a bridge in this location, and the Proposed Conditions will ensure only minimal impacts on the visible cuttings of the basalt features.<sup>62</sup>

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<sup>55</sup> Landscape and Visual Assessment, at 4.2.2.1.

<sup>56</sup> Landscape and Visual Assessment, at 4.2.2.2.

<sup>57</sup> Landscape and Visual Assessment, at 4.3.1 and 4.4.1.

<sup>58</sup> Landscape and Visual Assessment, at 5.

<sup>59</sup> Application, Part 4, section 15.2.1.

<sup>60</sup> Application, Part 4, section 15.2.2.

<sup>61</sup> Designation Condition 18.

<sup>62</sup> Application, Part 4, section 15.2.3. Designation Condition 22.

## **Ecology**

68 As noted, the Project will be located in a highly modified urban environment adjacent to SH16. As a result, there are limited ecological values within the Project Area. The Project's impacts on those ecological values are also very limited.

69 As set out in Section 10 of Part 4 of the Application prepared by Ms Hicks, the Project will have some adverse ecological effects which will be appropriately managed, as follows:

69.1 *Indigenous vegetation:* As most of the Project Area is highly developed, there is little terrestrial vegetation remaining. The majority of indigenous vegetation is planted/amenity planting, which has low ecological value. There are four Significant Ecological Areas (SEAs) located within the Project Area, which have low to moderate ecological values.

The Project will result in the loss of indigenous vegetation, including within some of the SEAs. However, the extent of indigenous vegetation loss from within those SEAs is very limited (0.40ha for the Indicative Design) and the impact of that loss is low-moderate.<sup>63</sup> The impact will be mitigated by replacement planting and weed management within the SEAs. Permanent vegetation loss will therefore be very limited in extent, and will be outweighed by an increase in the values of the SEAs within which mitigation occurs.

69.2 *Streams:* Site investigations determined that streams within the Project Area have low to moderate values.<sup>64</sup> The Project will not result in any loss of stream extent. It will have some impacts on stream values through removal of riparian vegetation during construction, and modification of instream habitat resulting from culverts, stormwater outfalls and shading from new bridges. However, the extent of stream impact is very limited (78m across 7 streams for the Indicative Design).<sup>65</sup> These impacts will be appropriately addressed through the Proposed Conditions requiring planting of an area proportionate to the in-stream and riparian area impacted by the Project.<sup>66</sup>

69.3 *Wetlands:* There are two exotic induced wetlands within the Project Area with low-moderate values.<sup>67</sup> The Project will not impact those wetlands.<sup>68</sup>

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<sup>63</sup> Application, Part 4, section 10.1.1.

<sup>64</sup> Application, Part 4, section 10.1.2.1.

<sup>65</sup> Application, Part 4, section 10.1.2.1.

<sup>66</sup> Regional Condition 15(a).

<sup>67</sup> Application, Part 4, section 10.1.3.

<sup>68</sup> NZTA is not seeking NES-F consents for works impacting these wetlands.

69.4 *Coastal/marine*: The Project will cross Henderson Creek and Huruhuru Creek, both of which are estuaries dominated by mangroves, with low ecological values. The Project will have temporary effects during bridge construction, which are assessed as very low without mitigation. Permanent effects are limited to loss of habitat from one set of bridge piers and from shading from bridge structures over a very small area.<sup>69</sup> NZTA is proposing conditions to manage construction impacts, including minimising sediment release during mangrove removal, ensuring site reinstatement following construction works and standard good practice measures to manage the risk of contaminant discharge.<sup>70</sup>

69.5 *Bats*: Site investigations did not record any bats within the Project Area. Impacts are therefore unlikely to occur. Nevertheless, suitable roosting habitat for bats was identified along the riparian margins of Tōtara Creek, and bats have previously been recorded along Tōtara Creek. The risk of potential injury or death of bats during vegetation removal will be avoided by implementing the DOC Bat Roost Protocols if any vegetation is removed in the vicinity of the Tōtara Creek riparian margins.<sup>71</sup>

69.6 *Birds*: Site investigations recorded 45 native/migrant bird species, of which 24 species are Threatened/At-Risk, within the Project Area.<sup>72</sup> The risk of potential injury or death of birds and nest disturbance will be avoided by implementing protocols during the bird nesting period (September to February inclusive) that require nesting surveys to be undertaken before vegetation removal and setbacks established if active nests of indigenous birds are found.<sup>73</sup>

69.7 *Lizards*: Site investigations identified only two copper skinks across the Project Area.<sup>74</sup> If protected lizards are present at the time of construction, NZTA will need to relocate them in accordance with the Wildlife Act and any obligations imposed under that process. Accordingly, no designation conditions are proposed.

### **Trees**

70 The Project will result in the removal of some mature trees within the Proposed Designation. NZTA will develop tree protection measures for a number of mature pōhutukawa trees opposite Western Springs Park,<sup>75</sup> five pōhutukawa at St Francis School in

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<sup>69</sup> Application, Part 4, section 10.1.4.

<sup>70</sup> Consent Condition 20.

<sup>71</sup> Application, Part 4, section 10.3.1.

<sup>72</sup> Application, Part 4, section 10.1.1.2.

<sup>73</sup> Application, Part 4, section 10.3.1.

<sup>74</sup> Application, Part 4, section 10.1.1.3.

<sup>75</sup> Designation Condition 21.

Point Chevalier and the notable pōhutukawa tree located at 21 Kirk Street. The tree protection measures<sup>76</sup> will be implemented to ensure the Project does not impact the long-term health or stability of those trees.

### **Built Heritage**

71 As set out in the Assessment of Built Heritage Effects prepared by Ms Carolyn O'Neill, the Project may impact (depending on the final design):

71.1 *The historic core of Point Chevalier town centre*: comprising two scheduled heritage buildings, known as the Ambassador Theatre and the Auckland Savings Bank (ASB), and four unscheduled commercial buildings.<sup>77</sup> It is important to note that the ASB building is located outside, but adjacent to, the Proposed Designation and therefore the Project can only result in indirect impacts on it.<sup>78</sup>

71.2 *956-990 Great North Road*: A gateway, marking the entrance to this site, is scheduled but located outside the Proposed Designation. Several built heritage features are within the "extent of place" for the gateway: the former Chamberlain Park Clubhouse, a remnant fairway ramp and a stone grotto.<sup>79</sup>

71.3 *Arch Hill Special Character Area*: This area is one of Auckland's earliest suburbs, with many Victorian cottages.

72 A number of the buildings addressed in the Assessment of Built Heritage Effects are not scheduled in the AUP and are able to be demolished as a permitted activity. Whilst NZTA does not rely on a permitted baseline, the fact the buildings can be demolished as of right is a relevant consideration when determining the impacts of the Project, and we submit the impacts on these buildings should not feature in the Panel's deliberations.

73 The Project may have the following built heritage impacts (depending on the final design):

73.1 *The historic core of Point Chevalier town centre*: Ms O'Neill considers the loss of the Ambassador Theatre and adjacent non-scheduled buildings within the Proposed Designation would have a significant heritage impact.<sup>80</sup> NZTA has committed to retaining the Ambassador Theatre and the two

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<sup>76</sup> Designation Condition 21.

<sup>77</sup> The Assessment of Built Heritage Effects identifies a third scheduled building adjacent to the Proposed Designation (Oakley Hospital Main Building) but concludes that any effects will be negligible.

<sup>78</sup> Assessment of Built Heritage Effects, section 3.2.1.1.

<sup>79</sup> Assessment of Built Heritage Effects, section 3.2.2.1.

<sup>80</sup> Assessment of Built Heritage Effects, section 4.2.1.1.1.

adjacent non-scheduled buildings if practicable,<sup>81</sup> which would reduce the heritage impacts to low. If that is not practicable, NZTA will seek to retain the bulk to the buildings and consider adaptive re-use as part of the Project,<sup>82</sup> which would also reduce the heritage impacts to low.<sup>83</sup> Ms Hicks considers this hierarchy of management measures is appropriate because:

(a) NZTA cannot commit to retaining the Ambassador Theatre (in whole or part) because the structural soundness of the building is unknown; and

(b) The AUP permits the removal of the non-scheduled buildings.

73.2 There is the potential for the ASB Building to be damaged during construction, however that risk will be managed through a Built Heritage Management Plan and the Construction Noise and Vibration Management Plan.

73.3 *956-990 Great North Road:* Direct impacts on the scheduled gateway have been avoided through careful selection of the Proposed Designation boundary. The loss of the remnant fairway ramp and stone grotto will not have material heritage impacts. The loss of the former Chamberlain Park Clubhouse would have moderate heritage impacts,<sup>84</sup> which would be mitigated through archival documentation and installation of interpretative material at the site.<sup>85</sup> As the Indicative Design is located just 2-3m from the rear corner of the former Chamberlain Park Clubhouse, the practicability of retaining the buildings will need to be considered during detailed design.<sup>86</sup> NZTA has committed to retaining the former Chamberlain Park Clubhouse if practicable,<sup>87</sup> in which case the heritage impacts on these buildings will be negligible.<sup>88</sup>

73.4 *Arch Hill Special Character Area:* Four dwellings are located within the Proposed Designation and are assumed to be demolished. Ms O'Neill considers the loss of those buildings will not adversely impact the values of the Special Character Area overall, and the special character impacts will be low-moderate.<sup>89</sup> No mitigation is proposed.

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<sup>81</sup> Designation Condition 15(a).

<sup>82</sup> Designation Condition 12(b).

<sup>83</sup> Assessment of Built Heritage, section 5.1.1.1.1 and 5.1.1.1.2.

<sup>84</sup> Assessment of Built Heritage, section 4.2.1.4.

<sup>85</sup> Designation Condition 13 (c).

<sup>86</sup> Application, Section 4, Section 5.1.4.

<sup>87</sup> Designation Condition 16(a).

<sup>88</sup> Assessment of Built Heritage, section 5.1.2.1.

<sup>89</sup> Assessment of Built Heritage, section 4.2.1.5.2.

## **Archaeology**

74 As set out in the Assessment of Archaeological Effects prepared by Mr Ardern Cruickshank, the Project will modify or destroy:<sup>90</sup>

74.1 Two known archaeological sites, both midden, associated with pre-European Māori land use around Meola Creek. Both sites have been previously modified by SH16 works.

74.2 Other unrecorded archaeological sites, if encountered during construction.

75 However, the Proposed Designation has been carefully chosen to avoid impacting two other known archaeological sites in close proximity.<sup>91</sup>

76 The Application includes two archaeological authorities, covering public land within the Project Area. Authority 1 will cover the western portion of the Project from Brigham Creek to Te Whau River, and Authority 2 will cover the eastern portion of the Project from Waterview.

77 Mr Cruickshank considers the Project's archaeological impacts can be appropriately managed by preparing and implementing an archaeological management plan, which will identify potentially impacted archaeological sites and areas, stipulate where archaeological monitoring is required during works and require investigation of all archaeological sites encountered during works. For land outside the scope of the archaeological authorities sought, any impacts will be managed through NZTA's standard accidental discovery protocols.<sup>92</sup>

78 NZTA considers archaeological impacts should be managed through the archaeological authority only. The archaeological authority will ensure appropriate management of the archaeological impacts and HNZPT is properly placed to oversee that management. For this reason, in our submission, duplication of effects management (through designation conditions addressing archaeology) should be avoided.

## **Erosion and sediment control**

79 For many NZTA projects, erosion and sediment impacts are a key effect to be managed. However, as set out in the Assessment of Construction Stormwater prepared by Mr Campbell Stewart, the Project has a low risk of elevated sediment yields because the Project Area has:

79.1 Low to moderate gradients; and

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<sup>90</sup> Assessment of Archaeological Effects, section 6.

<sup>91</sup> Assessment of Archaeological Effects, section 4.2.3.

<sup>92</sup> Assessment of Archaeological Effects, section 7.

79.2 Been highly modified, meaning most of the materials that will be exposed during construction have low erosion risk (eg aggregate).

80 The staged construction of the Project, with progressive stabilisation, will also minimise the risk of elevated sediment yields.<sup>93</sup>

81 To appropriately mitigate potential erosion and sediment impacts, NZTA will develop and implement an Erosion and Sediment Control Plan, in accordance with Council's Guideline Document 05,<sup>94</sup> for each stage of works.<sup>95</sup>

### **Flooding**

82 As set out in the Assessment of Stormwater and Flooding Effects prepared by Mr Paul May, the Indicative Design has been designed so that it does not result in flooding outside the Proposed Designation that will increase the risk of damage to property or danger to people. This approach is based on managing the impacts of flooding (being risks to people and property) rather than controlling flood levels themselves. It responds to the reality that many properties will already experience floor level inundation during flood events and a small increase in inundation will not have additional effects. It is consistent with the focus of the AUP (including PC120) on flood hazard management.<sup>96</sup>

83 The Proposed Conditions ensure the final design will achieve the same outcomes by requiring (based on flood modelling, and unless agreement is reached with the landowner):<sup>97</sup>

83.1 No increase in the Danger Rating<sup>98</sup> for any property outside the Proposed Designation; and

83.2 The Project will not result in any new floor level inundation and, for buildings already experiencing floor level inundation during flood events, any additional inundation is minimal (less than 100mm).

84 Overall, Mr May considers the Project will (post-mitigation) have an overall positive impact (ie it will reduce flood levels) in most instances. In some localised areas, the Project will have negligible

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<sup>93</sup> Assessment of Construction Stormwater, section 5.

<sup>94</sup> Auckland Council Guideline Document 05 'Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region' (except in relation to winter works, which may be required).

<sup>95</sup> Regional Condition 5.

<sup>96</sup> Stormwater and Flooding Effects, section 2.4.4.

<sup>97</sup> Designation Condition 9.

<sup>98</sup> A flood risk rating determined by the assessment process outlined in Framework for Assessing Flood Risk at the Property-level (Auckland Council (August 2025)).

or minor flooding effects, though those effects will be consistent with the measures above.

### **Cultural values**

85 Te Kawerau ā Maki, Ngāti Whātua Ōrākei and Te Ākitai Waiohua have been actively involved in the development of the Project as “Project Partners”, and Ngāti Whātua o Kaipara has recently joined the Iwi Working Group, as detailed in Part 2 of the Application.

86 Te Kawerau ā Maki has provided a Cultural Associations document (confidential) and letter in support of the Project.<sup>99</sup> Ngāti Whātua Ōrākei has advised NZTA that they do not consider a cultural values/impact assessment is required for the Project.<sup>100</sup> Te Ākitai Waiohua has provided a Cultural Values Assessment (CVA), and a number of the Proposed Conditions respond to matters raised in the Te Ākitai Waiohua CVA.<sup>101</sup> Ngaati Te Ata Waiohua has provided a Cultural Values Statement, and neither supports nor opposes the Project.<sup>102</sup>

87 The Project has addressed a range of matters raised by iwi/hapū during engagement, including:

87.1 NZTA is proposing stormwater treatment (designed to achieve 75% total suspended solids removal),<sup>103</sup> despite advice from its stormwater expert that it is not necessary to manage environmental impacts.<sup>104</sup>

87.2 The Proposed Conditions:

- (a) ensure impacts on geological features at Western Springs and Waitītiko / Meola Creek will be minimised;
- (b) require native, eco-sourced vegetation to be used in landscape planting, as well as mitigation planting for impacts on SEAs and streams; and
- (c) ensure the ongoing involvement of iwi/hapū during Project design and construction.<sup>105</sup>

88 In conclusion, NZTA’s engagement with iwi/hapū has been genuine, ongoing and effective. NZTA has meaningfully responded to feedback from iwi/hapū on the Project, including through Proposed Conditions where appropriate.

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<sup>99</sup> Application, Part 4, Section 16.3.1.

<sup>100</sup> Application, Part 4, Section 16.3.2.

<sup>101</sup> Application, Part 4, Section 16.3.3.

<sup>102</sup> Application, Part 4, Section 16.3.4.

<sup>103</sup> Regional Condition 8 (*Augier condition*).

<sup>104</sup> Assessment of Stormwater and Flooding, section 6.1.

<sup>105</sup> Designation Conditions 5, 6, and 7. Regional Conditions 2(c)(i)-(iii), 4(a)(i)-(iii).

### **Social and community**

89 As set out in Section 7 of Part 4 of the Application prepared by Ms Hicks, the Project will result in significant social benefits, by providing an efficient, reliable and attractive transport choice that will enable better access to homes, workplaces, education and community facilities for current and future generations.

90 The Project will have some adverse social impacts, but they will be appropriately managed as follows:

90.1 *Parks/open spaces and community facilities*: Some impacts will be temporary during construction and some will be permanent. In most locations, permanent effects are confined to a very limited area of a park/open space. More extensive impacts will occur at McCormick Green reserve and Western Springs Gardens.<sup>106</sup> NZTA will continue to work with Auckland Council to address these impacts through the PWA process.<sup>107</sup>

90.2 *Recreational use of the Northwest Shared User Path*: The Project will require temporary and permanent relocation of parts of the Northwest Shared User Path, a popular commuter and recreational cycle route alongside SH16. The Proposed Conditions require NZTA to maintain an appropriate level of service along this path during construction.<sup>108</sup>

90.3 *Recreational use of Henderson Creek*: Finally, the Project will require construction activities in Henderson Creek, which is used by recreational kayakers and boaties. The Proposed Conditions require NZTA to maintain a safe navigation passage and communicate navigation restrictions to waterway users.<sup>109</sup>

90.4 *Schools*: Construction noise and traffic impacts on schools within or adjacent to the Proposed Designation will be appropriately managed through the Proposed Conditions.<sup>110</sup>

### **THE PROJECT IS CONSISTENT WITH OTHER RELEVANT CONSIDERATIONS**

#### **Adequate consideration of alternatives**

91 As NZTA does not have an interest in the land sufficient for undertaking the work, the Panel must have regard to "whether adequate consideration has been given to alternative sites, routes or

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<sup>106</sup> Application, Part 4, Section 7.2.

<sup>107</sup> Application, Part 4, Section 7.2.1.

<sup>108</sup> Designation Conditions 10(b)(vi).

<sup>109</sup> Regional Conditions 20(a)(v).

<sup>110</sup> Application, Part 4, Section 7.3.

*methods for undertaking the work*" when considering the NORs.<sup>111</sup> The key principles relevant to this consideration are:<sup>112</sup>

- 91.1 The focus is on the process, not the outcome. The Requiring Authority has the responsibility of selecting the preferred alternative;
- 91.2 The word 'adequate' means sufficient or satisfactory, and does not require an exhaustive process. There is no requirement to eliminate speculative or supposititious options;
- 91.3 There is no requirement to select the 'best' alternative. There may be other alternatives considered (by some) to be more suitable;
- 91.4 The consideration of alternatives needs to be more careful where there is a greater impact on private land;<sup>113</sup> and
- 91.5 Part 2 RMA matters should be infused into the assessment of alternatives.

92 As set out in Part 4 of the Application, NZTA (and AT in earlier stages) has undertaken an extensive consideration of alternative modes, corridors, routes and sites since the Project's inception. NZTA used a multi criteria assessment (MCA) process to undertake this assessment, and to inform its alternatives analysis, which is a best practice approach to ensure a robust, replicable, and transparent assessment of alternatives. We submit the process that has been adopted is more than adequate.

**Reasonable necessity for the work and designation**

93 The Panel must have regard to "*whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought.*" It is well settled that the Panel cannot pass judgement on the merits of the Project objectives.<sup>114</sup>

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<sup>111</sup> RMA, s171(1)(b).

<sup>112</sup> See *NZ Transport Agency v Architectural Centre Inc* [2015] NZHC 1991; [2015] NZRMA 375 at [136]-[142], [188]-[198], [232]-[238] and [399]; *New Zealand Transport Agency v Waikato Regional Council* [2023] NZEnvC 55 at [62]-[65].

<sup>113</sup> Previously, based on the former version of s171(1)(b) RMA, case law indicated that the consideration of alternatives should be more careful where it is likely the work will have a significant adverse effect on the environment. In August 2025, s171(1)(b) RMA was amended so that the alternatives test only applies if the requiring authority does not have an interest in the land sufficient for undertaking the work, and not when the work will have a significant adverse environmental impact.

<sup>114</sup> *Final Report and Decision of the Board of Inquiry into the Upper North Island Grid Upgrade Project*, Ministry for the Environment, Board of Inquiry, 4 September 2009 at [199(d)] and [203].

94 We submit that both the ‘work’ (being the Project) and the ‘designation’ (being the planning tool) are reasonably necessary for achieving the NZTA’s objective for the Project.

95 The Project works are reasonably necessary to achieve NZTA’s Project objective, being the provision of “*bus rapid transit facilities alongside SH16 between the SH16/Brigham Creek Road intersection and Ian McKinnon Drive, including stations that integrate with the surrounding transport network*”.

96 A designation is preferable to land use consents as a means of authorising construction, operation and maintenance of the Project, because, among other reasons, it will be shown in the AUP and therefore provide planning certainty, it will protect against other persons doing anything that would prevent or hinder the Project and it is a more suitable planning tool for linear infrastructure that crosses multiple zones.<sup>115</sup>

97 The Proposed Designation is broader in some locations than the Indicative Design. In a number of these locations, NZTA owns the land subject to the Proposed Designation so the “reasonably necessary” test does not apply. Elsewhere, the width is reasonably necessary to provide NZTA with some flexibility to complete detailed design of the Project at a later time. However, given the highly constrained urban built environment, the Proposed Designation provides relatively limited flexibility for horizontal changes to the Indicative Design.

#### **RMA planning instruments**

98 RMA planning instruments have less weight in FTAA decision-making than in standard RMA processes because:

98.1 As discussed above, the Panel is required to give “*greater weight*” to the purpose of the FTAA than the directions in the RMA requiring it to “*have regard to*” or “*have particular regard to*” RMA planning instruments; and

98.2 The FTAA states that an adverse effect is not “*sufficiently significant to be out of proportion to the project’s ... benefits*” solely because it is inconsistent with or contrary to an RMA planning instrument.<sup>116</sup>

99 Part 4 of the Application provides an assessment of the provisions of the relevant RMA planning instruments, including the AUP, the National Policy Statement for Freshwater Management 2020 (*NPS-FM*), the NPS-UD, the National Policy Statement for Indigenous Biodiversity 2023 (*NPS-IB*), the National Policy Statement on Electricity Transmission 2008 (*NPS-ET*), ss6 and 7 of the Hauraki

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<sup>115</sup> RMA, s176.

<sup>116</sup> FTAA, s85(4).

Gulf Marine Park Act 2000 and the New Zealand Coastal Policy Statement 2010 (*NZCPS*).<sup>117</sup>

100 It concludes that the Project is consistent with the relevant national and regional planning documents.<sup>118</sup>

#### **HNZPTA considerations**

101 Part 5 of the Application addresses the relevant HNZPTA considerations.<sup>119</sup> In summary, it concludes:

- 101.1 The Project will impact two recorded archaeological sites, which are representative of midden/oven sites associated with Māori settlement, and have been modified by previous SH16 works.
- 101.2 It is possible the Project will impact unrecorded archaeological sites, with unknown values, but which could provide information about the timing of occupation and settlement in the area.
- 101.3 The Proposed Conditions provide for recording of any archaeological sites encountered so that knowledge is appropriately captured.
- 101.4 NZTA has engaged with its Project Partners in preparing the application for archaeological authorities, including the two iwi (Te Kawerau ā Maki and Te Ākitai Waiohua) that have statutory acknowledgement areas applying to land within the application area.
- 101.5 The archaeological effects (post-mitigation) will be less than minor.
- 101.6 There are no relevant statements of general policy confirmed or adopted under the HNZPTA.

102 In our submission, it is consistent with the purpose of the FTAA and the relevant HNZPTA provisions set out above to grant the archaeological authorities sought.

#### **PROPOSED CONDITIONS**

103 NZTA has proposed a robust suite of conditions to secure the mitigation measures for the Project.

104 We submit that the mitigation measures offered by NZTA (and secured through the Proposed Conditions) are more than adequate to satisfy the FTAA tests, particularly in light of the Project's significant national and regional benefits and the purpose of the

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<sup>117</sup> Application, Part 4, section 22.1-22.3, and 22.5. FTAA, Schedule 5, cl5(2).

<sup>118</sup> Application, Part 4, section 23.

<sup>119</sup> HNZPTA, ss s59(1)(a) and s47(1)(a)(ii) and (5).

FTAA. In some cases, the Proposed Conditions go beyond what is strictly required to manage the impacts of the Project and therefore these conditions have been identified as *Augier* conditions.

105 To assist the Panel in considering the Proposed Conditions, in this section we:

105.1 Provide a summary of the key legal principles governing the imposition of conditions; and

105.2 Address core components of the Proposed Conditions:

- (a) Lapse and Duration;
- (b) No waiver of the Outline Plan requirement;
- (c) The 'no Condition 1' approach; and
- (d) Management plans.

### **Legal principles**

106 The approvals sought in the Application may be granted subject to conditions.<sup>120</sup>

107 The Panel may impose any condition on a resource consent that it considers "appropriate",<sup>121</sup> provided those conditions are "directly connected to... an adverse effect of the activity on the environment" or "an applicable district or regional rule".<sup>122</sup>

108 Case law also establishes that conditions must be for a resource management purpose (not an ulterior one), fairly and reasonably relate to the approved development, and be reasonable.<sup>123</sup> Conditions must also be certain, enforceable, not delegate decision-making powers, and not rely on third parties.<sup>124</sup> NZTA has carefully

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<sup>120</sup> FTAA, s81(2)(e). For resource consents, see FTAA, Schedule 5, cl18. For designations, see FTAA, Schedule 5, cl25. For archaeological authorities, see FTAA, Schedule 8, cl5(1).

<sup>121</sup> FTAA, Schedule 5, cl18. RMA, s108.

<sup>122</sup> RMA, s108AA(1)(b), pursuant to FTAA, Schedule 5, cl18 and cl25. Although s108AA does not expressly apply to designations, we submit that same requirements for conditions should similarly apply.

<sup>123</sup> *Newbury District Council v Secretary of State for the Environment* [1980] 1 All ER 731; adopted by the Supreme Court in *Waitakere City Council v Estate Homes Limited* [2007] 2 NZLR 149; (2007) 13 ELRNZ 33, at [65]-[67]; [2007] NZRMA 137 (SC) and cited more recently by the High Court in *Ngai Te Hapu Incorporated v Bay of Plenty Regional Council* [2018] NZHC 1710, at [45].

<sup>124</sup> These requirements have been considered throughout case law, for example, see *McKay v North Shore City Council* EnvC W146/1995; [1995] ELHNZ 382, at [3] (where the proposed conditions sought to impose restrictions on third parties, which the Planning Tribunal deemed to be ultra vires and unenforceable); *Mount Field Limited v Queenstown Lakes District Council* [2012] NZEnvC 262, at [77] (where the Court noted conditions must be certain and could not delegate the making of substantive decisions), citing *Royal Forest and Bird Protection Soc v Gisborne District Council* (W26/2009), at [88]. These requirements have also

considered these legal principles in the development of the Proposed Conditions.

109 In the FTAA context, the general legal principles above are subject to the requirement that any conditions set by the Panel must also be “*no more onerous than necessary to address the reason for which those conditions are set.*”<sup>125</sup> The Panel must also, when considering conditions, take into account and give the “greatest weight” to the purpose of the FTAA.<sup>126</sup>

110 The Proposed Conditions have been prepared to meet the requirements of this FTAA context, and therefore are different to conditions that have been imposed on other, recent NZTA projects considered under the RMA.

#### **Lapse and duration**

111 As noted earlier, delivery of the Project is expected to be staged over 20 years. For this reason, NZTA seeks a 25-year lapse period for the designations and resource consents. NZTA seeks a 35-year duration for the resource consents required under sections 12-15 of the RMA and a 25-year duration for the archaeological approvals.<sup>127</sup>

112 In our submission:

112.1 The designation and resource consent lapse periods sought by NZTA are consistent with the FTAA, which specifies a minimum lapse period of two years, but does not specify a maximum lapse period.<sup>128</sup> It will facilitate delivery of the Project, and its significant benefits, as funding becomes available. It is therefore consistent with the purpose of the FTAA.

112.2 The resource consent durations sought by NZTA are consistent with the maximum available.<sup>129</sup> For the same reasons as noted above for lapse, the durations sought are consistent with the purpose of the FTAA.

112.3 The archaeological authority durations sought by NZTA are less than the maximum duration available (35 years).<sup>130</sup>

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been recognised in the Environment Court Practice Note 2023, at paragraph 10.4.

<sup>125</sup> FTAA, s83.

<sup>126</sup> FTAA, s8; Schedule 5, cl17(1); Schedule 5, cl24; Schedule 7, cl5; Schedule 9, cl5.

<sup>127</sup> Application, Part 2, Section 5. Application, Part 5, section 1.

<sup>128</sup> FTAA, Schedule 5, cl26.

<sup>129</sup> RMA, s123.

<sup>130</sup> FTAA, Schedule 8, clause 6(2)(a).

### **No waiver of Outline Plan**

113 NZTA has not sought a waiver of the requirement for an outline plan to be prepared for the Project. Accordingly, NZTA will submit an outline plan to Auckland Council prior to commencing each stage of works, which will address (among other things) the "*height, shape, and bulk*" of the Project, the "*likely finished contour*" following construction of the Project, the proposed landscaping and other matters to avoid, remedy or mitigate adverse environmental effects.<sup>131</sup>

114 The Proposed Conditions generally do not include matters that are required by section 176A RMA to be addressed in the outline plan. Where additional specificity is required, some of the Proposed Conditions set specific requirements to be addressed in the outline plan, and the normal process for Council review will apply.

### **The 'no Condition 1' approach**

115 As explained earlier, the final design of the Project may differ from the Indicative Design developed for consenting purposes, particularly as the Project is expected to be constructed in stages over a 20-year period. Accordingly, NZTA has not proposed a traditional 'Condition 1' that would require the Project to be constructed and operated "*in general accordance with*" specified drawings and documents lodged as part of the Application.

116 The 'no Condition 1' approach has significant advantages. It will allow the final design and construction methodology to respond appropriately to the environment that exists at the time and to adopt advances in technology. It also provides opportunity for innovation and cost savings for the Crown. Accordingly, in our submission, the approach aligns with the purpose of the FTAA by enabling the Project benefits. In the following sections we explain why the 'no Condition 1' approach is lawful and accepted, and why a 'traditional Condition 1' is not appropriate for this Project and not necessary to manage adverse impacts.

*The 'no condition 1' approach is a lawful and accepted approach*

117 This approach is a lawful and accepted approach for large scale infrastructure projects. It has been approved by decision-makers for other NZTA projects, including Pūhoi to Warkworth,<sup>132</sup> Warkworth to Wellsford<sup>133</sup> and Cambridge to Piarere.<sup>134</sup>

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<sup>131</sup> RMA, s176A.

<sup>132</sup> Ara Tūhono – Pūhoi to Wellsford Road of National Significance: Pūhoi to Warkworth Section.

<sup>133</sup> Ara Tūhono - Warkworth to Wellsford project.

<sup>134</sup> SH1 Cambridge to Piarere Long Term Improvements Project.

118 For Pūhoi to Warkworth, the Board of Inquiry considered:

118.1 The imposition of Condition 1 is a “*matter of planning practice rather than a specific legal requirement*”;<sup>135</sup>

118.2 “*there are obvious difficulties with deploying a Condition 1 with a large project of this sort where contractors have yet to be engaged and engineering solutions are yet to be finalised*”;<sup>136</sup> and therefore it

118.3 “*resolved not to impose a Condition 1 but instead to ensure that relevant conditions imposed on NZTA were adequate to avoid, remedy or mitigate the effects of NZTA’s project*”.<sup>137</sup>

119 Similarly, a panel of Commissioners considered the departure from “Condition 1” for the Warkworth to Wellsford project was appropriate because:<sup>138</sup>

...*There are sufficient constraints within the conditions to secure certainty around key aspects of the design and location (and hence potential effects) of the Project...*

120 Legal advice obtained by the Panel that considered the RMA approvals for the Cambridge to Piarere also concluded that:

*The proposed omission of ‘Condition 1’ is lawful and is an accepted approach for large scale infrastructure projects such as the C2P Project. However, if that approach is accepted, it will require a careful evaluation of the other conditions to ensure they are sufficient to avoid, remedy and mitigate any effects which might flow from changes arising out of this flexibility.*

*In particular, the Panel must be satisfied on the evidence that regardless of the final route selection and construction methodology, the effects assessment stands, and the environmental bottom lines set out in the remaining conditions are achievable.*

*Condition 1 would be inappropriate for the Project*

121 A ‘traditional Condition 1’ is unnecessary and would be inappropriate for the Project because the Project’s potential effects have been assessed on the basis of the Indicative Design. Accordingly, the documentation does not purport to contain a confirmed design or construction methodology and as such, requiring the Project to be

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<sup>135</sup> Final Report and Decision of the Board of Inquiry into the Ara Tūhono – Pūhoi to Wellsford Road of National Significance: Pūhoi to Warkworth Section, Volume 1 of 4: Final Report and Decision, at [182].

<sup>136</sup> Ibid.

<sup>137</sup> Final Report and Decision of the Board of Inquiry into the Ara Tūhono – Pūhoi to Wellsford Road of National Significance: Pūhoi to Warkworth Section, Volume 1 of 4: Final Report and Decision, at [181].

<sup>138</sup> Recommendation and Decision of the Commissioners on Ara Tūhono – Warkworth to Wellsford (24 March 2021), at [657].

undertaken “in general accordance with” the Application would be inappropriate.

122 Additionally, the sheer volume of application material required for the Project would make a ‘traditional Condition 1’ difficult to implement (and enforce). It would require Council and contractors to go through the Application material in order to interpret and implement the designations and consents. That application material may be difficult, if not impossible, to locate in 20 or more years’ time. Further, the requirement in a ‘traditional Condition 1’ for a Project to be undertaken “generally” in accordance with such documents adds another layer of uncertainty as to what aspects of the Application documentation must be complied with and to what extent.

*Condition 1 is unnecessary to manage Project impacts*

123 In developing the Application, the Project team has carefully ensured the assessment of effects considered both the Indicative Design, and potential amendments to the design that might occur within the Proposed Designation (ie ‘sensitivity testing’ was carried out in each of the technical assessments).

124 Further, the Proposed Conditions will secure the ‘envelope of effects’ that has been assessed and provide for scalable, outcomes-based effects management that will appropriately mitigate the Project’s effects regardless of design amendments and without the need to refer to specific supporting Application documents.

125 As such, in our submission, the ‘no Condition 1’ approach is the best and most appropriate approach for this Project.

### **Management Plans**

126 NZTA has provided two draft archaeological management plans for the Archaeological Authorities as part of the Application.

127 Drafts have not been prepared or provided for the management plans referred to in the designation and consent conditions. We submit that draft management plans are not required now as part of the Application because the Proposed Conditions appropriately identify the outcomes to be achieved (the ‘what’). Management plans are required to detail the actions to be taken to achieve those outcomes (the ‘how’), once the final design is known.<sup>139</sup>

### **CONCLUSION**

128 Overall:

128.1 The Project will have significant national and regional benefits, and will achieve the purpose of the FTAA;

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<sup>139</sup> *Summerset Villages (Lower Hutt) Limited v Hutt City Council* [2020] NZEnvC 31, at [156].

128.2 The Project's overall adverse impacts will not be significant. The Proposed Conditions are practical, reasonable and robust. They are proportionate to the effects they address, and will ensure that, post-mitigation, adverse effects will generally be minor and, in many instances, effects will be positive; and

128.3 The substantial national and regional benefits of the Project significantly outweigh any residual adverse impacts.

129 We therefore submit that none of the FTAAs mandatory or discretionary matters for decline of the Approvals are engaged and the Application must be approved by the Panel. Furthermore, we submit that the Panel should approve the Application subject to the Proposed Conditions, for all the reasons stated above.

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15 December 2025