

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 ('FTAA')

In the matter of a substantive application under the FTAA for an alteration to an existing designation, resource consents, a wildlife approval, archaeological authorities and a complex freshwater fisheries activity, to construct, maintain and operate the Belfast to Pegasus Project

By **New Zealand Transport Agency Waka Kotahi**
Applicant

Legal submissions for the New Zealand Transport Agency Waka Kotahi

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DENTONS

40 Bowen Street
PO Box 10246
Wellington 6011
Solicitors:
E
13659459.1

P +64 4 472 7877
F +64 4 472 2291
DX SP26517

Nicky McIndoe/Liam Bullen



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1 Introduction and scope of these submissions

- 1.1 These legal submissions are filed in support of the substantive application ('**Application**') lodged by the New Zealand Transport Agency Waka Kotahi ('**NZTA**') under the Fast-track Approvals Act 2024 ('**FTAA**') for approvals to construct, operate and maintain the *State Highway 1 North Canterbury – Woodend Bypass Project (Belfast to Pegasus)* ('**B2P**' or the '**Project**'). The Project is listed in Schedule 2 of the FTAA.
- 1.2 These legal submissions have been prepared to assist the expert panel ('**Panel**') in its consideration of the approvals sought in the Application against the requirements of the FTAA. They provide an overview of:
- a The Project and Application;
 - b The relevant considerations under section 53 of the FTAA regarding invitations to comment on the Application;
 - c The statutory framework applying to the Application;
 - d The conditions proposed by NZTA to manage the effects of the Project; and
 - e The few remaining outstanding matters, following engagement and consultation with stakeholders.
- 1.3 These submissions do not address matters of completeness and scope, which must be determined by the Environmental Protection Authority. Separate legal submissions have been prepared on these matters.
- 1.4 As explained below, the Application is for a well understood and supported Project, with significant regional and national benefits. The adverse effects of the Project will be no more than minor, following the mitigation, offsetting and compensation required by the proposed conditions. It is submitted that the Project is consistent with the purpose of the FTAA and the approvals sought in the Application can be granted by the Panel.

2 Overview of the Project and Application

- 2.1 The Project will extend the State Highway 1 ('**SH1**') Christchurch Northern Corridor between Belfast and Pegasus and spans a linear length of approximately 11 kilometres (**km**), commencing from approximately 600 metres (**m**) south of the Kaiapoi River Bridge and ending approximately 700 m north of the Pegasus/Ravenwood intersection. The Project includes upgrades to

approximately 4 km of the existing SH1 and a new approximately 7 km bypass of Woodend township. The Project is described in section 3.2 of the substantive application report ('**SAR**') and includes upgrades to the existing SH1, construction of a new Woodend Bypass, and Project-wide activities.

- 2.2 NZTA seeks the following approvals for the Project under the FTAA:
- a Resource consents that would otherwise be applied for under sections 9, 13, 14, and 15 of the Resource Management Act 1991 ('**RMA**') in relation to the relevant regional plans, 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;
 - b An alteration to the existing Project designation for which a notice of requirement would otherwise be lodged under the RMA;
 - c A wildlife approval for an act or omission that would otherwise be an offence under the Wildlife Act 1953;
 - d An approval or dispensation that would otherwise be applied for under regulation 42 or 43 of the Freshwater Fisheries Regulations 1983 in respect of a complex freshwater fisheries activity; and
 - e Archaeological authorities that would otherwise be applied for under the Heritage New Zealand Pouhere Taonga Act 2014.
- 2.3 The existing B2P designation was obtained approximately 10 years ago through a public RMA process. The Project is well known and supported by commuters, commercial transport, and the local communities north of Christchurch. This Application seeks to alter the existing designation so that it reflects recent design work, and also seeks the resource consents, wildlife permit, freshwater fisheries approvals and archaeological authorities necessary to construct the Project. Once approvals have been confirmed, NZTA will engage a contractor to undertake physical works. NZTA has also separately sought resource consents and other approvals to allow early works to commence over the 2025/26 summer construction season.
- 2.4 The Project will have significant regional and national benefits. It will:

- a Provide a safer, more efficient, and resilient route for travellers on State Highway 1 north of Christchurch. Deaths and serious injuries are predicted to drop from 5.6 per year to 1.25 per year;¹
 - b Reduce through-traffic from Woodend town centre, improving urban amenity and allowing the enhancement of facilities for pedestrians and cyclists;
 - c Unlock housing and urban development at Woodend, Ravenswood and Pegasus townships;² and
 - d Benefit the economy, by improving transport times and reliability for freight and commercial vehicles, as well as providing jobs associated with Project construction.
- 2.5 While the Project covers a large land area, and has significant national and regional benefits, its adverse effects are well understood and can be mitigated to a no more than minor level. Many of the Project activities are already approved by the existing designation. Much of the construction can occur ‘off-line’, so as to reduce disruption. The Project site does not include Māori land, the coastal environment, significant natural areas, or outstanding natural features or landscapes. Offsetting and compensation are proposed to address effects on wetlands, streams and lizard habitat.
- 2.6 NZTA has recently completed consultation on possible tolling of the Project. Consultation has raised public awareness of the Project, but a decision on tolling has not yet been made. Tolling decisions are made under the Land Transport Management Act 2003, and are not relevant to the Panel’s assessment.

3 Invitations to comment – no reason to seek comments from additional persons

- 3.1 The Panel must invite comments on the Application in accordance with section 53 of the FTAA.
- 3.2 The persons or groups that the Panel **must** invite comments from (relevantly) are:
 - a Relevant local authorities³ – Canterbury Regional Council and Waimakariri District Council (**‘WDC’**);

¹ SAR, section 2.5.3.

² SAR, section 6.7.4.

³ FTAA, s 53(2)(a).

- b Relevant iwi authorities and Treaty settlement entities⁴ – Whitiara (mandated by Ngāi Tūāhuriri to provide advice on environmental policy and consenting matters);
 - c The owners of the land to which the Application relates and land adjacent to that land⁵ – set out in Volume 1D, Schedules 1 and 2 of the Application and covered below;
 - d 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 identified⁶ – set out in Volume 1D, Schedules 1 and 2 of the Application and covered below;
 - e The Minister for the Environment and other relevant portfolio Ministers;⁷
 - f Relevant administering agencies⁸ – Department of Conservation,⁹ Heritage New Zealand Pouhere Taonga, Ministry for Culture and Heritage and Ministry for the Environment;
 - g Any requiring authority that has a designation on land to which the Application relates or on land adjacent to that land – KiwiRail Holdings Ltd;¹⁰ and
 - h The New Zealand Conservation Authority, relevant Conservation Boards, the New Zealand Fish and Game Council and the Game Animal Council.¹¹
- 3.3 The Panel’s ability to invite comments from any other person or group¹² is addressed below in paragraphs 3.6 – 3.9.

Land to which the Application relates and adjacent land

- 3.4 NZTA’s approach to identifying owners and occupiers of “land to which the substantive application relates”¹³ and “land adjacent to that land”¹⁴ is summarised in Volume 1D of the Application.

⁴ FTAA, s 53(2)(b) and (c).

⁵ FTAA, s 53(2)(h).

⁶ FTAA, s 53(2)(i).

⁷ FTAA, s 53(2)(j).

⁸ FTAA, s 53(2)(k).

⁹ The Director-General of Conservation is also required to be invited under s 53(2)(m)(i).

¹⁰ FTAA, s 53(2)(l).

¹¹ FTAA, s 53(2)(m)(iv) and sch 7, cl 4.

¹² FTAA, s 53(3).

¹³ FTAA, ss 53(h) and (i).

¹⁴ FTAA, ss 53(h) and (i).

3.5 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 is consistent with the approach taken by the Panel in the Ports of Auckland Limited Bledisloe North Wharf and Fergusson North Berth Extension decision ('**POAL Decision**').¹⁵

Comments from any other party

3.6 The Panel **may** also invite comments from any other person or group the Panel considers appropriate,¹⁶ however we submit it is unnecessary to invite comments in relation to this Project.

3.7 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:¹⁷

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

¹⁵ 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].

¹⁷ *Fast-track Approvals Act 2024: Panel Conveners' Practice and Procedure Guidance*, 22 July 2025, page 9.

¹⁷ *Fast-track Approvals Act 2024: Panel Conveners' Practice and Procedure Guidance*, 22 July 2025, page 9.

- 3.8 The panel in the POAL Decision also considered the following additional matters:¹⁸
- 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.
- 3.9 NZTA submits that none of the above factors justify 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 5 of the SAR and Volume 2I of the Application;
 - 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
 - g There are no exceptional factors that warrant comments to be invited from any other person.

¹⁸ 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].

4 Legal framework - FTAA

- 4.1 Section 81 sets out the decision making framework under the FTAA. In making its decision on each approval sought in the Application, the Panel:¹⁹
- a Must consider a relevant Government policy statement;²⁰
 - b Must consider the substantive application and any information received under specific sections of the FTAA;²¹
 - c Must apply the clauses specific to each type of approval in section 81(3);²²
 - d Must comply with section 82 which relates to Treaty settlements,²³ and may impose conditions in relation to Treaty settlements under section 84;²⁴
 - e Must comply with section 83 in setting conditions;²⁵ and
 - f May decline the approval only in accordance with section 85.²⁶
- 4.2 Government policy statements and sections 82-85 are considered in turn below, followed by the clauses specific to each type of approval.

Relevant Government policy statements

- 4.3 When making its decision, the Panel must consider a relevant Government policy statement.²⁷ The Project has been prioritised for delivery as a Road of National Significance (**RoNS**) under the Government Policy Statement on Land Transport 2024 - 2035 (**GPS**). This strategic classification recognises the Project's significant national and regional benefits, and its consistency with the purpose of the FTAA.
- 4.4 Further detail is provided on the GPS in section 2.2.1 of the SAR.

Treaty settlements – sections 82 and 84

- 4.5 If a relevant Treaty settlement applies, and provides for the consideration of any document, the Panel “must give the document the same or equivalent effect through the panel’s decision making as it would have under any relevant

¹⁹ FTAA, s 81(2).

²⁰ FTAA, s81(2)(aab).

²¹ FTAA, s 81(2)(a).

²² FTAA, s 81(2)(b).

²³ FTAA, s 81(2)(c).

²⁴ FTAA, s 81(2)(e).

²⁵ FTAA, s 81(2)(d).

²⁶ FTAA, s 81(2)(f).

²⁷ FTAA, s81(2)(aab).

specified Act,²⁸ and also consider whether granting the approval would comply with section 7 of the FTAA.²⁹

- 4.6 Section 7 of the FTAA requires NZTA and the Panel (and all other participants) to act in a manner that is consistent with the obligations arising under existing Treaty settlements.
- 4.7 The Panel may also set conditions to recognise or protect a relevant Treaty settlement.³⁰
- 4.8 The SAR summarises the Ngāi Tahu Treaty Settlement relevant to this Project, and relevant principles and provisions of that settlement.³¹
- 4.9 The Ngāi Tahu Treaty Settlement included the identification of Statutory Acknowledgement areas of particular cultural, spiritual, historic and traditional association. The Statutory Acknowledgement area Te Tai o Mahaanui is relevant to the Project because it will receive all of the water from the water bodies (both surface and ground) that are impacted by the Project. Settlement matters relevant to the Project include:
 - a The management of construction and operational stormwater;
 - b The impacts of construction activities on wāhi tapu, wāhi taonga, and wetlands and streams that sustained mahinga kai; and
 - c The impacts on mahinga kai resources and practices.
- 4.10 The Treaty settlement does not provide for the consideration of any documents that are specifically relevant to the Project area or NZTA.
- 4.11 The Treaty settlement does contain a number of high-level principles intended to provide a framework for partnership between the Crown and its Treaty settlement partner. To support this approach, NZTA has collaborated with iwi as part of this Project, and will continue to do so, as set out in the SAR.³²
- 4.12 NZTA submits that:
 - a There are no documents provided for consideration by Treaty settlements that the Panel needs to consider;

²⁸ FTAA, s 82(2).

²⁹ FTAA, s 82(3).

³⁰ FTAA, s 84(1).

³¹ SAR, section 4.3.2.

³² SAR, section 5.3.2.

- b The Project satisfies the requirements of section 7 FTAA; and
- c The proposed designation, resource consent, wildlife approval and archaeological authority conditions require continuing engagement with Whitiora Centre Limited, being the entity mandated by Te Ngāi Tūāhuriri Rūnanga to provide advice on the Project. The Panel does not need to impose additional conditions to recognise or protect relevant Treaty settlements.

Conditions – section 83

- 4.13 The Panel must not set 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.³³ The proposed conditions have been drafted to reflect this obligation.
- 4.14 There are also specific requirements for conditions in relation to each approval which are covered below.

When approvals must or may be declined - Section 85

- 4.15 Section 85 sets out the instances when approvals *must* be declined and when they *may* be declined. The Panel may decline the approval only in accordance with section 85.³⁴
- 4.16 The Panel must decline an approval if (relevant to the approvals being sought by the Application):
 - a The approval is for an ineligible activity;³⁵ or
 - b The Panel considers that granting the approval would breach section 7 of the FTAA.³⁶
- 4.17 Neither of these preconditions are met:
 - a The Application is not for an ineligible activity;³⁷ and
 - b As set out above, the Project satisfies the requirements of section 7 FTAA.

³³ FTAA, s 83.

³⁴ FTAA, s 81(2)(f).

³⁵ FTAA, s 85(1)(a).

³⁶ FTAA, s 85(1)(b).

³⁷ See SAR, section 1.6.

- 4.18 Except in circumstances when the Panel must decline an approval (as set out above), the Panel may **only** decline an approval³⁸ if it forms the view that:
- a. There are 1 or more adverse impacts in relation to the approval sought; and
 - b. Those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered under section 81(4), even after taking into account:
 - i. Any conditions that the panel may set in relation to those adverse impacts; and
 - ii. Any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.
- 4.19 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 document³⁹ that the Panel must take into account or otherwise consider in complying with section 81(2).⁴⁰
- 4.20 "Adverse impact" is defined as "any matter considered by the panel in complying with section 81(2) that weighs against granting the approval."⁴¹
- 4.21 The Maitahi Village decision provides the following guidance on the Panel's discretion under section 85(3):⁴²
- a. If the factors in section 85(3) are met (the adverse impacts are significantly out of proportion to the anticipated regional and national benefits) the Panel still has a discretion to allow the approvals. The discretion will be informed by the purpose of the FTAA;
 - b. The mere fact that a project generates or may generate adverse impacts, does not mean it should be declined. A degree of adverse impact is "hard baked" into the FTAA legislative regime (as also reflected in s 85(4)); and

³⁸ FTAA, ss 81(2)(f) and 85(3).

³⁹ These documents include national direction and the objectives and policies in any relevant regional or district plans (sch 5, cl 17(1)(b) FTAA).

⁴⁰ FTAA, s 85(4).

⁴¹ FTAA, s 85(5).

⁴² Decision of the expert panel for Maitahi Village, 18 September 2025, at [93]-[95].

- c In the context of a weighing process against any adverse impacts, it is the extent of such regional or national benefits that must be assessed.⁴³
- 4.22 The significant national and regional benefits of the Project are summarised in section 2.5 and 2.6 of the SAR. The SAR and technical reports provided with the Application do not identify any adverse impacts that are sufficiently significant to be out of proportion to the significant national and regional benefits. In particular, the Project:
- a Has no more than minor adverse effects;⁴⁴
 - b Is consistent with the relevant national policy statements, national environmental standards, and regional and district planning documents;⁴⁵ and
 - c Is consistent with the purpose and principles of the RMA,⁴⁶ the purpose of the Wildlife Act 1953,⁴⁷ the relevant matters under the HNZPTA,⁴⁸ and the matters that must be taken into account by the Panel when deciding whether to grant approval for a complex freshwater fisheries activity.⁴⁹
- 4.23 As a result, NZTA submits that the Panel has no discretion to decline the approvals sought in the Application.

5 Legal framework – resource consents

- 5.1 The Panel must assess the resource consent applications in accordance with the process set out in clauses 17 to 22 of Schedule 5.⁵⁰
- 5.2 The Panel must, when considering a consent application and setting conditions, take into account, giving the greatest weight to paragraph (a):⁵¹
- a. The purpose of [the FTAA]; and
 - b. The provisions of Parts 2, 3, 6 and 8 – 10 of the [RMA] that direct decision making on an application for a resource consent (but excluding section 104D of that Act); and

⁴³ Decision of the expert panel for Maitahi Village, 18 September 2025, at [62].

⁴⁴ SAR, section 6.6.

⁴⁵ SAR sections 6.7.2 - 6.7.12 and Volume 2G of the Application.

⁴⁶ SAR, section 6.7.13.

⁴⁷ SAR, section 7.3.1.

⁴⁸ SAR, section 8.3.2-8.3.3.

⁴⁹ SAR, section 9.3.

⁵⁰ FTAA, section 81(3)(a).

⁵¹ FTAA, sch 5, cl 17(1).

- c. The relevant provisions of any other legislation that directs decision making under the [RMA].

Clause 17(1)(a) – Purpose of the FTAA

- 5.3 The purpose of the FTAA is to "facilitate the delivery of infrastructure and development projects with significant regional or national benefits". This is a firm directive to "facilitate" projects with such benefits and is distinct from the purpose of the RMA, which focuses on sustainable management and the balancing of competing interests. An assessment of the Project against the FTAA purpose is provided in section 2.6 of the SAR. That assessment concludes that the Project is consistent with the purpose of the FTAA as it is an infrastructure project that will deliver significant regional and national benefits.

Clause 17(1)(b) – RMA provisions

- 5.4 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.⁵² The requirement to take into account Part 2 does not include a requirement to take into account section 8 of the RMA.⁵³
- 5.5 An assessment against relevant RMA provisions is set out in section 6.7.14 of the SAR. That assessment concludes that the resource consents:
 - a Are consistent with the purpose and principles of the RMA,⁵⁴ and
 - b Are consistent with the relevant national policy statements, national environmental standards, and regional and district planning documents.⁵⁵

Clause 17(1)(c) – other legislation

- 5.6 The Panel is required to take into account the relevant provisions of any other legislation that directs decision making under the RMA.⁵⁶
- 5.7 There is no relevant other legislation for the purposes of schedule 5, clause 17(1)(c).

⁵² 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.

⁵³ FTAA, sch 5, cl 17(2)(a).

⁵⁴ SAR, section 6.7.13.

⁵⁵ SAR, sections 6.7.2 - 6.7.12 and Volume 2G of the Application.

⁵⁶ FTAA, sch 5, cl 17(1)(c).

Weighting

- 5.8 Clause 17 of Schedule 5 to the FTAA directs that the Panel must take into account listed matters, but give greatest weight to the purpose of the FTAA.
- 5.9 The panels in the POAL Decision and Milldale decision considered caselaw⁵⁷ regarding similar statutory formulations, and concluded that:⁵⁸
- 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.
- 5.10 The panel in Maitahi Village did not find reference to this caselaw useful, given different statutory context and language.⁵⁹ However, the panel did note that to give the greatest weight to the purpose of the FTAA does not mean that it will always outweigh other considerations,⁶⁰ but in the event of any tension with the purpose of the RMA, the FTAA must prevail.⁶¹
- 5.11 Summarising the approach taken by panels so far, NZTA submits 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.
- 5.12 We submit that 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 listed in clause 17(1). This is also the case for similar weighting exercises which apply to the designation alteration, wildlife

⁵⁷ *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541.

⁵⁸ 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].

⁵⁹ Decision of the expert panel for Maitahi Village, 18 September 2025, at [69].

⁶⁰ Decision of the expert panel for Maitahi Village, 18 September 2025, at [70].

⁶¹ Decision of the expert panel for Maitahi Village, 18 September 2025, at [105].

permit, archaeological authorities and freshwater fisheries permits, to be carried out under Schedules 5, 7, 8 and 9 respectively, and discussed below.

6 Legal framework - designation alteration

6.1 The Panel must assess the designation alteration in accordance with the process set out in clauses 24 and 25 of Schedule 5.⁶²

6.2 When considering a notice of requirement, including the conditions on the designation, the Panel must, giving the greatest weight to paragraph (a)(i).⁶³

a. Take into account–

- i. The purpose of [the FTAA]; and
- ii. The provisions of part 8 of the [RMA] that direct decision making on an application for a designation (except section 170); and
- iii. The relevant provisions of any other legislation that directs decision making under the [RMA]; and

b. Consider any Mana Whakahono ā Rohe or joint management agreement that is relevant to the approval.

6.3 Part 8 of the RMA is addressed in section 6.7.15 of the SAR. That assessment concludes that the designation alteration:

- a. Is consistent with the purpose and principles of the RMA;⁶⁴
- b. Is consistent with the relevant national policy statements, national environmental standards, and regional and district planning documents;⁶⁵
- c. Is reasonably necessary to achieve its project objectives, which are to:⁶⁶
 - i. Improve travel time and reliability,
 - ii. reduce severance and improve accessibility, and
 - iii. improve safety of the transport network; and

⁶² FTAA, s 81(3)(e).

⁶³ FTAA, sch 5, cl 24(1).

⁶⁴ SAR, section 6.7.13.

⁶⁵ SAR, sections 6.7.2 - 6.7.12 and Volume 2G of the Application.

⁶⁶ SAR, section 2.4.

d Has been subject to an extensive consideration of alternatives for nearly 20 years. The assessment has included consideration of four-laning the existing State Highway 1 corridor, bypasses in a range of locations, and different interchange configurations.⁶⁷

6.4 There is no other relevant legislation that directs the decision making in this case, and there are no Mana Whakahono ā Rohe or joint management agreements relevant to the Application.

7 Legal framework - Wildlife permit

7.1 The Panel must assess the wildlife approval application in accordance with the process set out in clauses 5 and 6 of Schedule 7.⁶⁸

7.2 When considering an application for a wildlife approval, including conditions, the Panel must take into account, giving the greatest weight to paragraph (a):⁶⁹

- a. The purpose of [the FTAA]; and
- b. The purpose of the Wildlife Act 1953 and the effects of the project on the protected wildlife that is to be covered by the approval; and
- c. Information and requirements relating to the protected wildlife that is to be covered by the approval (including, as the case may be, in the New Zealand Threat Classification System or any relevant international conservation agreement).

Purpose of the Wildlife Act 1953

7.3 While the Wildlife Act 1953 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, with some limited exceptions, wildlife is “to be absolutely protected throughout New Zealand”.⁷⁰ 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.⁷¹

7.4 The purpose of the Wildlife Act 1953, the effects of the Project on the protected wildlife, and information and requirements relating to the protected wildlife, are addressed in Part 7 of the SAR. The SAR concludes that granting the approval

⁶⁷ SAR, section 6.4.

⁶⁸ FTAA, s 81(3)(i).

⁶⁹ FTAA, sch 7, cl 5.

⁷⁰ 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.

⁷¹ *Shark Experience Ltd v PauaMAC5 Inc* [2019] NZSC 111 at [44]-[45].

would be consistent with the purpose of the Wildlife Act 1953⁷² and that the adverse effects on lizards will be minimised through their relocation and enhancement of the relocation sites.⁷³

8 Legal framework - Archaeological authorities

- 8.1 The Panel must assess the applications for archaeological authorities in accordance with the process set out in clause 4 of Schedule 8.⁷⁴
- 8.2 When considering an application for an archaeological authority, including conditions, the Panel must take into account, giving the greatest weight to paragraph (a):⁷⁵
- a. The purpose of [the FTAA]; and
 - b. The matters set out in section 59(1)(a) of the HNZPT Act; and
 - c. The matters set out in section 47(1)(a)(ii) and (5) of the HNZPT Act; and
 - d. A relevant statement of general policy confirmed or adopted under the HNZPT Act.
- 8.3 There are no relevant statements of general policy which apply to the Project,⁷⁶ so clause 4(d) is not engaged.
- 8.4 Relevant matters under the HNZPT Act are addressed in Part 8 of the SAR. Part 8 also describes the proposed conditions for the archaeological authorities, which will require the preparation and implementation of a comprehensive management plan, investigation and recording of archaeological material, and regular reporting to HNZPT. It is submitted that those matters support the granting of the authorities, for the reasons set out in the SAR.⁷⁷

9 Legal framework - Freshwater fisheries permits

- 9.1 The Panel must assess a complex freshwater fisheries activity approval in accordance with the process set out in clause 5 of Schedule 9.⁷⁸

⁷² SAR, section 7.3.1.

⁷³ SAR, section 7.3.2.

⁷⁴ FTAA, s 81(3)(j).

⁷⁵ FTAA, sch 8, cl 4(1).

⁷⁶ SAR, section 8.3.4.

⁷⁷ SAR, tables 8.1 and 8.2.

⁷⁸ FTAA, section 81(3)(k).

9.2 When considering an application for complex freshwater fisheries activity approval, the Panel must take into account, giving the greatest weight to paragraph (a):⁷⁹

- a. The purpose of [the FTAA]; and
- b. The alignment of the proposed activity with best practice and the New Zealand Fish Passage Guidelines; and
- c. How the proposed activity will manage risks to freshwater values or habitat, including prevention of access to or spread of invasive species; and
- d. The availability and quality of the habitat upstream and downstream of the proposed activity; and
- e. 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
- f. The advantages and disadvantages of providing fish passage upstream or downstream of the proposed activity.

9.3 Items (b) – (f) are addressed in Part 9 of the SAR. In particular, as set out in the SAR, the Project will:

- a. Include culvert designs which comply with regulation 70 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 and are informed by the Fish Passage Guidelines; and
- b. Avoid, minimise and remedy the risk to freshwater values and habitat, by designing stream alignments to be short, reflect natural stream geomorphology, use existing natural material, and maintain water depth during low flows.⁸⁰

10 Proposed conditions

10.1 NZTA has proposed a robust suite of conditions and a comprehensive mitigation package for the Project. The proposed conditions are in volumes 2C-2F of the Application.

10.2 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

⁷⁹ FTAA, sch 9, cl 5.

⁸⁰ SAR, section 9.3.3.

impact cultural and archaeological sites, as well as wetlands and streams. The Project construction 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.

- 10.3 NZTA's view, supported by its technical experts and assessments, is that the mitigation package provided for through the proposed conditions responds appropriately and proportionately to the assessed effects of the Project.
- 10.4 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

- 10.5 The approvals sought in the Application may be granted subject to conditions.⁸¹ 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.⁸²
- 10.6 The specific requirements for each type of approval are:
- a For resource consent conditions, the relevant provisions of the RMA.⁸³ 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;⁸⁴
 - 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:⁸⁵
 - a. Consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife that is to be covered by the approval; and
 - b. Where more than minor residual impacts on protected wildlife cannot be avoided, minimised, or remedied,

⁸¹ FTAA, s 81(2)(e).

⁸² FTAA, s 83.

⁸³ FTAA, sch 5, cl 18.

⁸⁴ FTAA, sch 5, cl 25.

⁸⁵ FTAA, sch 7, cl 6.

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.⁸⁶
- 10.7 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 activity species.⁸⁷ Clause 19 of Schedule 5 to the FTAA allows this approach.
- 10.8 The panels in the POAL Decision and Milldale decision approached the assessment of the proposed resource consent conditions in a manner consistent with established RMA jurisprudence on conditions.⁸⁸ 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.⁸⁹ 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
 - iii Related to administrative matters essential for efficient implementation;

⁸⁶ FTAA, sch 9, cl 6.

⁸⁷ SAR, section 9.4.

⁸⁸ Decision of expert panel for Milldale Application, 3 October 2025, at [192].

⁸⁹ *Newbury District Council v Secretary of State for the Environment* [1980] 1 All ER 731 (HL), at 739.

- b Conditions must be certain and enforceable;⁹⁰ 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.⁹¹
- 10.9 We submit that the same approach should apply to the conditions on the designation, wildlife permit and archaeological authorities.
- 10.10 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.
- 10.11 NZTA's approach to mitigation measures and management plans is set out in section 3.6 of the SAR. While the existing designation conditions required an extensive suite of management plans, NZTA has revisited this approach to ensure the management plans will be fit for purpose, and avoid duplication and inconsistencies across the implementation of the designation and resource consents. The Application does not include any draft management plans, but the Application and consent conditions have been prepared in accordance with section 21 of the Panel Conveners' Practice and Procedure Guidance.⁹²
- 10.12 The Application seeks a change to the process by which WDC will consider the management plans required by the Designation conditions. The existing Designation conditions require that most management plans proceed through a separate certification process before the Outline Plan stage. However, to improve efficiency, NZTA now proposes to submit the management plans as part of the Outline Plan. Amendments are proposed to conditions 3-7 of the Project designation to provide for this new process. Section 176A of the RMA enables WDC to request changes to management plans which are part of the Outline Plan. If NZTA chooses not to make any requested changes, section 176A allows WDC to appeal against NZTA's decision to the Environment Court.
- 10.13 Submitting the management plans as part of the outline plan will shorten the overall timeframe for pre-construction approvals and better reflect contractual requirements for the contractor to determine construction methodology and author management plans.

⁹⁰ *Bitumix Ltd v Mt Wellington Borough Council* [1979] 2 NZLR 57.

⁹¹ *Turner v Allison* (1970) 4 NZTPA 104.

⁹² *Fast-track Approvals Act 2024: Panel Conveners' Practice and Procedure Guidance*, 22 July 2025.

10.14 A certification process is proposed for all management plans under the other approvals sought.⁹³

11 Instances where pre-consultation feedback has not been adopted

11.1 NZTA has undertaken extensive consultation on the Project and that consultation has informed the Project.⁹⁴ In most instances there is good alignment between NZTA's approach in the Application and stakeholders' preferences for the Project.

11.2 There are three key outstanding matters where NZTA has not implemented consultation feedback. These matters and NZTA's reasons for not implementing the feedback are set out in section 5.4.1 of the SAR.

11.3 The first two outstanding matters relate to the provision of draft management plans as part of the Application:

- a NZTA has not implemented feedback from the Department of Conservation ('DOC') to supply the Lizard Management Plan ('LMP') with the Application. The potential effects of, and procedures for, salvaging and relocating lizards are well understood and appropriately addressed in the Volume 3J report, and via the proposed content of the LMP set out in the conditions in Volume 2E.
- b Similarly, NZTA has not implemented feedback from Heritage New Zealand Pouhere Taonga ('HNZPT') to supply the Archaeological and Cultural Sites Management Plan ('ACSMP') with the Application. As with the LMP, the potential effects of, and procedures for, modifying and destroying archaeological sites are well understood and appropriately addressed in the Volume 3H report, and via the proposed content of the ACSMP set out in the conditions in Volume 2F.

11.4 NZTA's preference is to prepare the LMP and ACSMP after the Application has been determined. This timing will:

- a Allow the management plans to better reflect the Project design and construction methodology, which will be refined once construction contractors are engaged;

⁹³ Except for the Visual Effects Management Plan required by condition 40 of the Designation. This management plan is not part of the Outline Plan and does not require certification, but does require consultation with owners of affected properties.

⁹⁴ See section 5 of the SAR.

- b Provide more scope for the Panel to direct the content of the management plans (through the conditions); and
 - c Allow more time for Whitiora to contribute to development of the management plans, rather than require that contribution ahead of lodgement.
- 11.5 The third outstanding matter is that NZTA disagrees with DOC that the wildlife approval will authorise the loss of lizard habitat which must be offset or compensated for.
- 11.6 The wildlife approval sought in the Application is for the salvage and relocation of lizards, as well as any incidental killing of lizards which occurs during that process. The effects of the Project on lizard habitat is not an effect of that activity.
- 11.7 A panel “may set any conditions on a wildlife approval that the panel considers necessary to manage the effects of the activity on protected wildlife”.⁹⁵ When setting conditions, the panel must:⁹⁶
- 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;
- 11.8 NZTA submits that the “activity” for which effects are to be managed, and possibly offset or compensated, is the activity for which the wildlife approval is being sought, because the conditions are being imposed on the wildlife approval and each approval is considered separately under the FTAA.
- 11.9 The loss of lizard habitat as a result of the Project is already authorised by the existing designation and does not require a separate wildlife approval. Volume 3I of the Application addresses the loss of lizard habitat as it relates to the scope of the approvals sought, which relates to areas of land within 10m of water bodies and the areas sought to be added to the designation. Offsetting and compensation is proposed for residual effects via conditions proposed for the resource consents.
- 11.10 In summary, NZTA has not proposed wildlife approval conditions which require offsetting or compensation because:

⁹⁵ FTAA, sch 7, cl 6(1).

⁹⁶ FTAA, sch 7, cl 6(2)(b).

- a The proposed salvage, relocation and incidental killing of lizards will not have more than minor residual impacts on the lizards (taking into account proposals to enhance the relocation sites);
- b Lizard habitat removal is largely already authorised by the existing designation – it would not be authorised by the wildlife approval; and
- c Where lizard habitat removal would be authorised by the resource consents sought and designation alteration, compensation is proposed to achieve no net loss (see Ecology Offset Plan in Volume 4E of the Application).

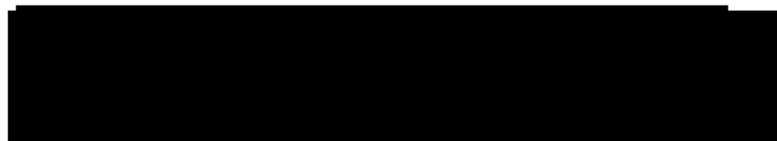
12 Conclusion

12.1 The Application demonstrates that:

- a The Project will deliver significant national and regional benefits;
- b The Project has no more than minor adverse effects which can be 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.

12.2 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 19 December 2025



Nicky McIndoe / Liam Bullen
Counsel for the New Zealand Transport Agency Waka Kotahi