BEFORE AN EXPERT PANEL

IN THE MATTER	of the Fast-track Approvals Act 2024
AND	
IN THE MATTER	of an application by Tararua Wind Power Limited for approvals for Stage 2 of the Mahinerangi Wind Farm known as “Puke Kapo Hau”

LEGAL SUBMISSIONS ON BEHALF OF TARARUA WIND POWER LIMITED

31 October 2025

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1. INTRODUCTION AND SCOPE OF SUBMISSIONS

1.1. Tararua Wind Power Limited ("Tararua") has applied for approvals for Stage 2 of the Mahinerangi Wind Farm (the "Project" and the "Application") under the Fast-track Approvals Act 2024 ("FTAA"). Tararua has been gifted by Te Rūnanga o Ōtākou the name "Puke Kapo Hau" for the Mahinerangi Wind Farm.[1] The Project is a listed project under Sch 2 of the FTAA.[2]

1.2. These legal submissions are intended to assist the Panel by summarising the legal framework applying to the Panel's decision-making for the Project under the FTAA and by evaluating the Application against that framework.

1.3. A comprehensive assessment of the Project is contained within the Substantive Application Report, prepared by independent expert planners at Mitchell Daysh drawing on specialist reports from a wide range of technical experts. The Substantive Application Report and technical assessments have been carefully crafted to address the FTAA requirements. The detailed independent technical assessments have not identified any adverse impacts that are sufficiently significant to outweigh the Project's regional or national benefits.

1.4. These legal submissions are intended to contextualise under the FTAA framework, and to be read alongside, the Substantive Application Report and supporting technical assessments.

1.5. In these submissions, we:

(a) set out our principal submissions;

(b) introduce Tararua, the approvals sought, and the Project;

(c) address the applicable FTAA statutory framework;

(d) evaluate the Project in the context of the FTAA legal framework; and

(e) set out a conclusion.

2. PRINCIPAL SUBMISSION SUMMARY

2.1. Tararua's principal submission is that the Project satisfies the applicable provisions of the FTAA, including the relevant sections of the Resource Management Act 1991

[1] Puke Kapo Hau translates to the hill that catches the wind.
[2] Tararua is the authorised person listed in Sch 2 and Mercury NZ Limited is its ultimate holding company.

("RMA"), Wildlife Act 1953, and Heritage New Zealand Pouhere Taonga Act 2014 ("HNZPT Act") that are referred to in the FTAA.

2.2. Independent economic consultants, NZIER, conclude that the Project will provide a range of significant national, regional, and local benefits, including through its substantial contribution to increasing the generation of electricity from renewable resources that is necessary to meet expected increases in electricity demand from the electrification of the economy; material emissions reductions; and significant injection of expenditure during construction, along with increased employment. The benefits of renewable energy generation are reinforced in the National Policy Statement for Renewable Energy Generation 2011 ("NPS-REG").

2.3. The Project is founded on rigorous expert assessment and incorporates comprehensive management measures to address potential adverse impacts, including measures shaped by engagement with stakeholders. The adverse impacts of the Project are appropriately managed through careful design, including the significant reduction in turbines compared to what is currently consented; and the detailed proposed conditions of consent and management plans that have been submitted with the Application.

2.4. Recent central government policy provides clear national direction toward prioritising and accelerating development of renewable energy generation. The Project is entirely consistent with the Government's various commitments and policies relating to renewable energy, including the target of reaching net-zero emissions by 2050.[3] The Climate Change Commission Advice to the Government on the direction of policy for its second emissions reduction plan (2026-30) stated:[4]

> *To meet anticipated demand, we estimate that each year from 2025, generation that can supply over 1 TWh per year will need to be built.*

2.5. The Project represents a significant contribution to meeting our national challenge of providing increased generation capacity and security of supply in an environmentally sustainable manner, contributing to the country's decarbonised future. This is in a context where New Zealand still imports coal to meet electricity demand, and where the electricity supply system is at times severely tested and priced accordingly. Increasing the diversity of energy resources continues to be a national priority. The Project also contributes to the increasingly urgent national and global challenge of reducing

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3 Refer the Climate Change Response Act 2002 and New Zealand's Second Emissions Reduction Plan 2026 – 30.

4 He Pou a Rangi Climate Change Commission | 2023 Advice on the direction of policy for the Government's second emissions reduction plan, page 53.

emissions and mitigating the effects of climate change. The proposed change in consent conditions to enable the use of larger but more efficient turbines is material to the Project's implementation and to the delivery of the national benefits that have hitherto been unrealised.

2.6. The purpose of the FTAA will be promoted by granting the Application. Overall, we submit that the Application demonstrates, and that the Panel can justifiably conclude, that all approvals sought should be granted, subject to appropriate conditions.

3. TARARUA/MERCURY

3.1. Tararua operates the Mahinerangi, Tararua, Waipipi, Turitea (New Zealand's largest), and Kaiwera Downs Wind Farms. Stage 2 of the Kaiwera Downs Wind Farm is currently under construction following a variation to consent conditions (similar to what is proposed by the current Application) to authorise the use of modern 165m high turbines. The Kaiwaikawe Wind Farm is also currently under construction – its turbines will be the tallest in the country at 206m.

3.2. Tararua has a proven track record in the design, construction, and management of major renewable energy projects. Tararua has firsthand experience and industry 'know-how' in delivering major infrastructure in an environmentally sensitive manner.

3.3. Mercury, Tararua's ultimate holding company, owns and operates nine hydro stations on the Waikato River, which generate on average 10% of New Zealand's annual electricity supply, and five geothermal plants in the central North Island.

3.4. Collectively, Mercury and Tararua operate a nationally significant portfolio of energy resources, of which Mahinerangi is an important component.

3.5. Tararua is committed to sensibly and sustainably managing the resources on which it depends to help meet New Zealand's energy needs. It is committed to sustainable business practices and environmentally responsible operations. Tararua has invested significant time, resources, and consultant expertise into the Project feasibility analysis, design, and impacts analysis. The Application is the result of that extensive effort, assessment and testing, and has been carefully crafted not only from a technical (impacts) point of view, but also to efficiently utilise the available wind resource – in short, to deliver a sustainable outcome for the region and nation. It wishes to advance this Project as a matter of priority.

4. THE PROJECT

2008 Environment Court decision on the Mahinerangi Wind Farm

4.1. Resource consents for the Mahinerangi Wind Farm were confirmed by the Environment Court in 2009 (following the 2008 interim decision), authorising the construction of up to **100** turbines with a maximum tip height of 145m and a total maximum installed capacity of 200 MW.[5] Stage 1 of the Mahinerangi Wind Farm was commissioned in 2011 and consists of 12 turbines (125m high) with an installed capacity of 36 MW.

4.2. In its 2008 interim decision, the Environment Court made several observations about the Mahinerangi Wind Farm that remain pertinent today, including:[6]

> *[252] Commissioner W R Howie has been involved in a number of applications for wind farm consents, including Unison (2), Hawkes Bay Wind Farms and Makara. We are grateful for his experience and that he is able to consider this site in comparison with others that have considered by the Court. Commissioner Howie has concluded that this site is one of the best suited to such an activity compared with others for which the Court has granted consents in cases in which he has been involved.*
>
> *[253] …In our view the wind farm in this location would enable the district, regional and national communities to provide for the health and wellbeing, while the controls discussed would appropriately avoid, remedy or mitigate adverse effects on the environment provided the site plan and conditions we have discussed are implemented.*
>
> *[254] …the proposed Mahinerangi wind farm provides a good example of the ways in which the energy needs of this country can be met from renewable resources without unduly compromising the natural and physical environment.*

4.3. The Court considered that the Mahinerangi Wind Farm would provide benefits to the district, region, and nation.[7]

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5 See the Interim Decision *Upland Landscape Protection Society Incorporated v Clutha District Council and Otago Regional Council* (C85/2008) and C140/2008 15 December 2008. Final documents and conditions were endorsed on 1 May 2009.

6 *Upland Landscape Protection Society Incorporated v Clutha District Council and Otago Regional Council* (C85/2008).

7 At [79]-[80].

The Project Site

4.4. The Project is located approximately 50 kilometres west of Dunedin and 5 kilometres north of Lake Mahinerangi ("Project Site") within a landscape that the Environment Court described in 2008 as:[8]

> "…*a modified working landscape which has been utilised in the past and currently for the production of power. It has also been extensively mined for it natural resources. It is part of a mosaic of activities that take place between the Lammermoor Range and the Taieri Plains*".

4.5. The Project Site and surrounding environs are described in detail in the Application and technical assessments – it remains an area of low residential density and a working productive landscape with a long industry of resource use – gold mining, farming and electricity generation.

Project summary

4.6. A summary of the Project – representing Stage 2 of the Mahinerangi Wind Farm | Puke Kapo Hau – is set out below.

Changes or cancellation to consent conditions

4.7. The principal changes to conditions of the existing land use consent[9] (the "Existing Consent") sought as part of the Application include:

(a) A reduction in the maximum number of turbines provided for in Condition 12 from **100** to **56** (i.e. an additional 44 turbines to the 12 already constructed in Stage 1).

(b) Amendments to some of the Contingency Zones.

Explanation: Permanent hardstands for turbines are required to be located within identified Contingency Zones[10]. With the use of larger turbines, Tararua seeks changes to the extent and/or location of some of the consented Contingency Zones and proposes deletions of many others. To preserve some limited flexibility, the Project has been advanced on the basis of 54 Contingency Zones for Stage 2 even though only up to 44 will ultimately have turbines constructed within them. Maintaining some flexibility over turbine type and location is almost universal in

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8 *Upland Landscape Protection Society Incorporated v Clutha District Council and Otago Regional Council* (C85/2008) at [253].

9 Land Use Consent RM1409.

10 Contingency Zones are a radius of up to 100m within which the permanent hardstand is to be located.

wind farm applications.[11] *It will ensure the Project can be fully optimised using the best available turbine technology and that the most efficient use is made of the available wind resource. It will also ensure geotechnical constraints can be fully investigated and responded to as part of detailed design.*

(c) A maximum turbine height of 165m (to blade tip) as opposed to the 145m in the Existing Consent; and a minimum blade tip height of 20m.

Explanation: Since the Mahinerangi Wind Farm was consented in 2009, a feature of the wind generation sector has been higher, more efficient turbines. At Kaiwera Downs Stage 2, Tararua varied its existing consents to similarly provide for an increase in tip height of 165m, and at Kaiwaikawe 206m high turbines are currently under construction.

(d) A significant reduction in the Wind Farm Development Area[12] is proposed compared to the consented Wind Farm Development Area.

Explanation: The Stage 2 Wind Farm Development Area has been significantly constrained in the variation to the design. There are a limited number of instances where the Stage 2 Wind Farm Development Area has had very minor adjustments to accommodate the larger turbine and/or to ensure that an optimised design can be achieved and/or avoiding effects on an adjacent feature. The Riley Technical Assessment addresses this in further detail, however in all instances the Stage 2 Wind Farm Development Area remains within the consented Wind Farm Site boundary and the adjustments are de minimis in scale and degree.

(e) A significant reduction in the excess spoil limit contained in Condition 25(i)(e) of the Existing Consent.

(f) A reduction in the maximum roading length from the 37km prescribed in Condition 25(i)(b) of the Existing Consent to 31km.

(g) The 50m Wind Farm Buffer Areas within which works were contemplated under the Existing Consent (but which triggered a requirement to prepare a Supplementary Environmental Management Plan) have been deleted.

Explanation: The deletion of the Wind Farm Buffer Areas has enabled a more efficient and certain wind farm design. At the same time avoidance of the features

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11 Possible methods include a “dots and circle” approach with a radius of 100 or 150m or greater, specific turbine areas, or a project envelope.

12 The identified area within which all construction is proposed.

(such as gullies, wetlands and/or high value terrestrial habitat) to which the buffer areas were intended to relate has been achieved:

(i) Tararua has advanced a detailed civil layout such that it is confident that the Stage 2 Wind Farm Development Area is sufficient to contain all civil works and avoid sensitive features.

(ii) Independent experts engaged by Tararua have confirmed that the location of roading, Contingency Zones, and Surplus Disposal Areas are all acceptable from an environmental impact perspective.

(iii) Restricting the Stage 2 Wind Farm Development Area has enabled the Project to respond appropriately to any nearby environmental features, for example, a 10m setback from any wetlands.

(h) A number of other and/or consequential changes to conditions of the Existing Consent are proposed, including new or revised management plan conditions.[13]

New resource consents

4.8. Tararua proposes the following by way of new resource consents sought as part of the Application:

(a) A new substation located centrally within the Stage 2 Wind Farm Development Area. The substation will comprise a security-fenced hard-stand platform approximately 70m x 55m (3,850m^2). It will contain gantries and electrical 'bus-work', ground mounted 33 kV/110 kV transformers, and ancillary equipment.

(b) A new approximately 6km 110 kV transmission line from the substation site to the existing Transpower 110 kV Half Way Bush line. Twenty-seven structures of up to 45m in height are required to support the transmission line and its connection points.

(c) A Battery Energy Storage System ("BESS") which enables electricity to be stored and then despatched during periods of high demand – up to 60MW released into the National Grid for two hours. The BESS consists of 32 battery containers mounted on concrete foundation pads. The battery containers are similar in size to shipping containers.

13 These changes are addressed in the Substantive Application Report.

(d) Regional council consents to replace the existing regional consents which have (largely) since expired.

(e) Consents pursuant to Reg 45(1) and (2) of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 ("NES-F") for works in or adjacent to natural inland wetlands.

(f) There are also Sch 7 (approvals relating to the Wildlife Act) and Sch 8 (approvals relating to the HNZPT Act) which are addressed in detail later in these submissions.

Activity status

4.9. The application to change/cancel consent conditions is to be treated as if it were an application for a resource consent for a discretionary activity.[14] The new resource consents sought for the Project have an overall activity status of discretionary. Overall, the resource consents for the Project have an activity status of **discretionary**.

Project benefits

4.10. We submit that it is important not to lose sight of the range of significant local, regional, and national benefits associated with the Project.[15] In contrast, relevant adverse impacts of the Project are limited.

4.11. The Project will have a range of significant local, regional, and national benefits, including:[16]

(a) A large increase in wind generated electricity of approximately 549 GWh per year – this is equivalent to more than half of one year of additional capacity requirements estimated by the Climate Change Commission.[17]

(b) Injection of around $220 million expenditure during wind farm construction.

(c) Up to an additional 200 full time equivalent (FTE) roles during peak construction and on average 75 FTE per year for two years during construction.

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14 FTAA, cl 23 of Sch 5 provides that when considering an application under the FTAA for a change or cancellation of a condition, the Panel must apply s127(1) and (3) of the RMA with certain modifications. Section 127(3) of the RMA confirms that an application for a change or cancellation of a condition is to be treated as a discretionary activity.

15 As described in section 8 below, the Project's benefits are key considerations for the Panel under the FTAA.

16 See NZIER Technical Economic Assessment.

17 He Pou a Rangi Climate Change Commission | 2023 Advice on the direction of policy for the Government's second emissions reduction plan, page 53.

(d) Additional controlled supply of electricity during peak periods of up to 60 MWh for two hours enabled by the BESS.

(e) Reduction in greenhouse gas emissions of 303,171 tCO2-e[18] if displacing gas-fired generation, or 600,161 tCO2-e if displacing coal fired generation. NZIER estimate the value of these emission reductions (at $59.82 per tCO2-e) at $18.1 million or $35.9 million respectively.

(f) Supporting electrification of the economy, which is a key element of the Climate Change Commission advice on reducing greenhouse gas emissions.

4.12. The Project is entirely consistent with the purpose of the FTAA (as outlined below), and with the Government's renewable energy commitments and policies, including the target of reaching net-zero emissions by 2050.[19] Central government policy provides clear direction toward prioritising and accelerating development of renewable energy generation – a key part of New Zealand's transition to a low emissions future.[20]

4.13. Overall, the Project proposes to utilise the excellent wind resource at the site to provide additional electricity generation capacity to meet demand in an efficient and sustainable manner.

4.14. In its 2005 decision in *Genesis Power Limited v Franklin District Council ("Genesis"),* the Environment Court noted:[21]

> *"Electricity is a vital resource for New Zealand. There can be no sustainable management of natural and physical resources without energy, of which electricity is a major component.*
>
> *New Zealand needs a more diverse electricity generation base, to avoid for example over-reliance on hydro which is susceptible to dry years; in any event new large hydro options are limited".*

4.15. In its 2008 interim decision, the Environment Court found the following benefits of the Mahinerangi Wind Farm:[22]

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18 Tonnes of carbon dioxide equivalent.

19 Refer to Climate Change Response Act 2002, s5Q and New Zealand's second emissions reduction plan 2026-30.

20 See beehive release.

21 *Genesis Power Limited v Franklin District Council* [2005] NZRMA 541 at [64]. As noted in *Genesis*, "*these are all matters which need to be considered and put into the crucible containing the evidential material to be weighed against the alleged and more site-specific potential [adverse] effects*" at [66].

22 *Upland Landscape Protection Society Incorporated v Clutha District Council and Otago Regional Council* C85/2008 at [239].

(a) it does not involve permanent long term alteration of the environment;

(b) it does not utilise any finite resource, other than the site itself;

(c) it avoids emissions of substances such as CO_2 which may cause adverse effects on the environment and/or be subject to constraint in terms of international or national obligations;

(d) it supplies a demonstrable public need for power;

(e) it involves minimal displacement of other productive uses of the land;

(f) it is subject to limited exposure to supply disruptions or prime fluctuations;

(g) it uses the wind resource without affecting that resource in any meaningful way.

5. APPROVALS SOUGHT

5.1. Tararua is seeking all necessary approvals to construct, operate, and maintain the Project, including:

(a) **changes to conditions of the Existing Consent**,[23] outlined in paragraph 4.7 above;

(b) **new resource consents**[24] for those matters outlined in paragraph 4.8 above;

(c) **wildlife approvals**[25] for monitoring Eastern Falcon; handling of any dead protected birds for necropsy; and management of lizards/skinks, including their capture, handling, and transfer to the 59 ha QEII covenanted 'Scrappy Pines' block; and for incidentally injuring/killing lizards as a result of vegetation removal and bulk earthworks; and

(d) an **archaeological authority**[26] for the modification of Site H44/1200 which is a track that is currently used as a farm track and paper road; a general authority for the unlikely event that an archaeological site is encountered during construction activities; and an approval for a nominated person to undertake activities under the archaeological authority.[27]

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23 FTAA, s42(4)(b).
24 FTAA, s42(4)(a).
25 FTAA, s42(4)(h).
26 As defined in s4 of the FTAA. See also FTAA, s42(4)(i).
27 Pursuant to cl 7, Sch 8 to the FTAA.

5.2. No complex freshwater fisheries activity[28] is proposed, although there is one standard freshwater fisheries activity proposed.[29] As confirmed by the Expert Panel in its decision on the Maitahi Village FTAA application (the "*Maitahi Decision*"),[30] there is no need to apply for a separate approval for a standard freshwater fisheries activity, nor any ability to obtain one.[31]

6. ELIGIBILITY

6.1. Tararua is eligible to apply for all approvals sought[32] and the Project does not involve any ineligible activities.[33]

7. PRE-LODGEMENT CONSULTATION

7.1. Tararua has engaged in good faith with the relevant local authorities, administering agencies, the relevant iwi authority, adjacent property owners, and other key stakeholders regarding the Project. The engagement undertaken is fully detailed in the Substantive Application Report and has included providing all draft technical assessments and management plans to Clutha District Council, Otago Regional Council, mana whenua and the Department of Conservation; and engagement at site visits and briefing meetings/hui.

7.2. In summary, engagement by Tararua has been comprehensive and meaningful – for example, consultation with Te Rūnaka o Ōtākou has occurred since 2024. The Project design has been informed by this engagement and, where appropriate to do so, draft technical assessments management plans have been updated based on comments received. Engagement is continuing and Tararua is committed to dialogue throughout the process.

7.3. Section 29 of the FTAA sets out pre-lodgment consultation requirements for listed projects. It requires Tararua to have consulted with the parties identified in s11 of the FTAA before lodgment of its substantive application. Tararua has satisfied the pre-lodgment consultation requirements in the FTAA. The Substantive Application Report identifies the parties that Tararua was required to – and did – consult with pre-lodgment.

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28 FTAA, s42(4)(j).
29 As defined in s4 of the FTAA.
30 *Maitahi Decision*, 18 September 2025.
31 At [14].
32 FTAA, s42(3).
33 FTAA, s43(1)(c). The EPA agrees that the Project does not include ineligible activities (through its confirmation provided under FTAA, s46(2)(c)). FTAA, s5 provides the meaning of "ineligible activity". The Panel must decline an approval if it is for an ineligible activity (FTAA, s85(1)(a)).

8. THE LEGAL FRAMEWORK

8.1. The FTAA establishes the legal framework for obtaining approvals for listed projects. In addition to specific information (and other) requirements for substantive applications for approvals for listed projects (all of which are satisfied in the case of the Project), the FTAA prescribes a bespoke framework for the consideration of substantive applications for listed projects.[34]

Decision-making on resource consent applications

8.2. In accordance with s81 and cls 17-22 of Sch 5 to the FTAA, the Panel must decide whether to grant or decline the resource consent. If it grants the approval, it may impose conditions.[35]

Matters for assessment (cl 17(1) of Sch 5)

8.3. Clause 17(1) of Sch 5 provides that when considering a consent application, including conditions, the Panel must take into account, giving the greatest weight to paragraph (a):

(a) the purpose of the FTAA; and

(b) the provisions of Parts 2, 3, 6, and 8 to 10 of the RMA that direct decision making on an application for a resource consent (excluding s104D); and

(c) the relevant provisions of any other legislation that directs decision making under the RMA.

8.4. The FTAA Expert Panel's decision on the *Bledisloe North Wharf and Fergusson North Berth Extension*[36] application (the "*Bledisloe Decision*") held that the requirement in cl 17 of Sch 5 to the FTAA to "*take into account*" requires decision-makers to directly consider and give genuine weight to the identified matters, rather than paying mere "lip service" to them.[37] In doing so, the Panel applied the approach of the Supreme Court in *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency*.[38] Although that decision concerned a requirement to "have regard to", the Panel considered that an equivalent obligation arises under cl 17 of Sch 5 to the FTAA. That

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34 FTAA, s40 provides that the process under the FTAA for obtaining approvals applies instead of the process for obtaining any corresponding approval under a specified Act (e.g. the RMA).

35 FTAA, cl 18 of Sch 5. Any resource consent granted under the FTAA has full force and effect for its duration, and according to its terms and conditions, as if it were granted under the RMA, unless otherwise specified under the FTAA (FTAA, cl31(3) of Sch 5).

36 *Bledisloe Decision*, 21 August 2025.

37 At [119].

38 [2024] NZSC 26 at [169] and [224].

finding is consistent with decisions under the RMA regarding an obligation to "consider" a factor concerned in making a decision; being to weigh it along with other factors and to give it appropriate weight in the circumstances.[39]

8.5. Importantly, however, cl 17(1) of Sch 5 to the FTAA expressly requires the Panel to give the greatest weight to sub-clause (a) (the purpose of the FTAA) when considering a consent application and setting conditions. Requiring a decision-maker to give greatest weight to a "prime" consideration (i.e. imposing a "hierarchy" or "two-tiered" framework of considerations) is different to the equivalent section in the RMA (s104). However, such an approach is not entirely novel. Section 34(1) of the Housing Accords and Special Housing Areas Act 2013 ("HASHAA") required decision makers to have regard to a list of matters, giving greater to lesser weight to them in the order listed.

8.6. In the *Bledisloe Decision* and the FTAA Expert Panel's decision on the *Milldale – Stages 4C and 10 to 13* application (the "*Milldale Decision*"),[40] the Panels considered the approach under the HASHAA, as interpreted by the Court of Appeal in *Enterprise Miramar Peninsula Inc v Wellington City Council*[41] *("Enterprise Miramar"),* to be instructive.[42] Those Panel decisions held that, based on the guidance from *Enterprise Miramar:* criterion (a) – the purpose of the FTAA – is to be afforded the greatest weight, and, by implication, criteria (b) and (c) are to be given equal statutory weight;[43] and that each matter in (a) to (c) must be considered individually before the panel steps back to conduct an overall weighting, giving greatest weight to the purpose of the FTAA.

8.7. In the *Maitahi Decision*, the Panel did not consider that HASHAA and *Enterprise Miramar* were particularly helpful, with the Panel noting that those provisions arose in a different statutory scheme with different wording.[44] The Panel nevertheless confirmed that the purpose of the FTAA must be afforded the greatest weight, noting that this does not mean it will always outweigh other considerations.[45]

8.8. Despite the differing approaches taken by FTAA Panels to the relevance of HASHAA and *Enterprise Miramar*, we submit that the outcome is broadly consistent. Clause 17 of Sch 5 is clear in its application: the purpose of the FTAA must be given the greatest weight in the overall weighting exercise.

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39 *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC); referred to in *Trustees of the Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2024] NZCA 134 at [15].
40 *Milldale Decision*, 3 October 2025.
41 [2018] NZCA 541.
42 *Bledisloe Decision* at [120]; *Milldale Decision* at [60].
43 *Bledisloe Decision* at [121]; *Milldale Decision* at [60].
44 At [69].
45 At [70].

8.9. The Panels in the *Bledisloe Decision* and the *Milldale Decision* emphasised that the purpose of the FTAA does not alter the approach to the assessment of environmental impacts insofar as environmental impacts do not become less than minor simply because a project advances the FTAA's purpose.[46] Instead, cl 17(1) of Sch 5 to the FTAA prescribes the weight that must be applied to those impacts – relative to the purpose of the FTAA and other considerations – in the overall decision.

The purpose of the FTAA (cl 17(1)(a))

8.10. The purpose of the FTAA is:[47]

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

8.11. To "facilitate" the delivery of projects with the requisite benefits is a strong directive. It marks a clear departure from the more nuanced and balanced approach in s5 of the RMA.[48] It is clear that the purpose of the FTAA is about actively *facilitating* project delivery. The Panel in the *Maitahi Decision* acknowledged, citing a Beehive Media Release, that the FTAA reflects a clear legislative intent to expedite approvals for projects addressing infrastructure deficits, housing shortages, and energy needs.[49]

8.12. Referencing the FTAA Legislative Statement, the Panel in the *Maitahi Decision* further noted that the FTAA is intended to take primacy over other legislation, enabling approvals to be granted even where projects would otherwise be prohibited or inconsistent with RMA National Direction.[50] The FTAA is designed to ensure that projects delivering significant benefits are not declined where those benefits outweigh identified issues.

8.13. The FTAA does not define what constitutes a significant regional or national benefit. However, the criteria in s22(2)(a) of the FTAA for the Minister to determine whether a referral application is for a project that would have significant regional or national

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46 *Bledisloe Decision* at [55] and *Milldale Decision* at [60.3] referring to *Enterprise Miramar.*

47 FTAA, s3.

48 Section 5 of the RMA provides that the purpose of the RMA is promote the sustainable management of natural and physical resources. Sustainable management means *"…managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety* ***while****— (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment."* (Emphasis added.)

49 At [51]. Referring to Beehive Media Release by Ministers Hon Chris Bishop and Hon Shane Jones in December 2024 when the Fast-track Approvals Bill passed its third reading.

50 At [51].

benefits are relevant and provide useful guidance. This approach was endorsed by the Panels in the *Bledisloe Decision,*[51] the *Maitahi Decision*,[52] and the *Milldale Decision*.[53]

8.14. Matters under s22(2)(a) include whether the project:

(a) has been identified as a priority project in a central government, local government, or sector plan or strategy (for example, in a general policy statement or spatial strategy), or a central government infrastructure priority list;

(b) will deliver new regionally or nationally significant infrastructure or enable the continued functioning of existing regionally or nationally significant infrastructure;

(c) will deliver significant economic benefits;

(d) will support climate change mitigation, including the reduction or removal of greenhouse gas emissions;

(e) will address significant environmental issues; and

(f) is consistent with local or regional planning documents, including spatial strategies.

8.15. The Panel in the *Maitahi Decision* noted that the question of whether regional or national benefits are "significant" is a question of fact in the circumstances.[54] The Panel cited the Shorter Oxford Dictionary definition of "significant" as meaning "*full of meaning or import*" and "*important, notable*", and was satisfied to apply the following working definition: "*sufficiently great or important to be worthy of attention; noteworthy*".[55]

8.16. Under s81(4), when taking into account the purpose of the FTAA, the Panel must consider the extent of the project's benefits. "Extent" is not defined in the FTAA. The Panel in the *Maitahi Decision* adopted the dictionary definition of "extent" as including "*assessment*", "*assessed value*", or "*degree, size, magnitude, dimensions or breadth of the thing being measured*".[56] The Panel noted that not all benefits lend themselves to precise financial or monetary quantification. In some cases, expressing value in absolute terms may not be possible. However, the broader context (whether regional or national) will influence how such benefits are understood and assessed.

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51 At [285].
52 At [429].
53 At [186].
54 At [515].
55 At [516].
56 At [819].

RMA decision-making framework (FTAA cl 17(1)(b))

8.17. As outlined above, the FTAA imports decision-making provisions from the RMA, with modifications.[57] Clause 17(1)(b) requires the Panel to take into account the provisions of Parts 2, 3, 6, and 8-10 of the RMA *to the extent they direct decision-making for resource consents.*[58]

8.18. Clause 17(1)(b) does not specify which provisions in the various Parts of the RMA that "direct decision" making apply. As outlined in the *Maitahi Decision*, it is therefore left to panels to determine which provisions are applicable and should be taken into account.[59] In the *Maitahi Decision*, the Panel considered that ss5, 6 and 7, and s104 were most relevant because they direct decision making under the RMA, and that Parts 3, 6, and 8-10 of the RMA were less relevant because they do not direct decision making in the same way (as cl 17(1)(b) requires).[60] In the *Bledisloe Decision*, the Panel determined that the relevant RMA considerations were certain provisions in Parts 2, 3, and 6.[61] Conversely, Parts 8-10 of the RMA were not engaged.[62] For this Application, s127(1)-(3) of the RMA must be applied (with s127(4) explicitly excluded from applying).[63]

8.19. We address key RMA provisions below, which we submit the Panel must take into account.

RMA ss104 and 104B (consideration and decisions on resource consent applications)

8.20. Sections 104 and 104B of the RMA are key decision-making provisions for discretionary resource consent applications.

8.21. Section 104B of the RMA directs that the Panel may grant or refuse an application for a discretionary activity and, if it grants consent, may impose conditions.

8.22. Section 104(1) of the RMA directs the matters which the Panel must, subject to Part 2 of the RMA, have regard to in determining the applications:

(a) any actual and potential effects on the environment;[64]

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57 FTAA, cl 17(1)(b).

58 Clauses 17(3) and (4) provide that where a provision of the RMA requires a decision-maker to decline a resource consent application, the Panel must consider that provision but must not regard it as obliging the Panel to decline the application.

59 At [73].

60 At [74]-[75]. Specifically, ss5, 6(a)-(h), and 7(a)-(j) of Part 2; and s104 of Part 6.

61 At [122]. Specifically, ss5, 6(a), (d), (e) and (h), 7(a)-(c), (f)-(g) and (i) of Part 2; ss12 and 15-17 of Part 3; and ss104, 104B and 108 of Part 6.

62 At [123].

63 FTAA, s23.

64 Section 104(1)(a)).

(b) any measure proposed or agreed to for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects;[65]

(c) the relevant statutory documents;[66] and

(d) any other matter the Panel considers relevant and reasonably necessary to determine the application.[67]

8.23. In having regard to the statutory planning documents under s104(1)(b), the Panel must undertake *"a fair appraisal of the objectives and policies read as a whole".*[68]

8.24. Under s104(3) of the RMA, the Panel must not have regard to any effect on a person who has given written approval to the Project.

The existing environment and the permitted baseline

8.25. It is important to outline the relevant context for the assessment required to be undertaken by the Panel in accordance with section 104(1)(a), as it applies to the Project. That requires consideration of:

(a) first, the relevant "environment" against which the Project's effects must be assessed; and

(b) second, the scope of potential effects that can validly be taken into account for the purposes of that assessment.

8.26. The former essentially involves consideration of the "existing environment". The latter is the "permitted baseline" analysis.

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65 Section 104(1)(ab).
66 Section 104(1)(b)(i) – (vi).
67 Section 104(1)(c).
68 *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26 at [79]. Explaining the approach required, the majority decision states (paras [79]-[80]; footnotes omitted): "*In other words, isolating and de-contextualising individual provisions in a manner that does not fairly reflect the broad intent of the drafters must be avoided… That does not mean all objectives and policies can simply be put in a blender with the possible effect that stronger policies are weakened and weaker policies strengthened. Rather, attention must be paid to relevant objectives and policies both on their own terms and as they relate to one another in the overall… plan. As the Environment Court noted in* Akaroa Civic Trust v Christchurch City Council, *the interpretive exercise must acknowledge that some policies will, in context, be more important than others. The way in which inevitable tensions between policies are identified and worked through in the documents must be grappled with. As* King Salmon *held, the mere presence of tension does not open up an unfettered discretion to choose between unequal policies. On the other hand, the presence of tension between stronger and weaker policies will not always be resolved in favour of the stronger. Ecosystems are complex and dynamic, as is the impact of human communities located within them. Fact and context will be important in determining how tensions between policies will be resolved."* See also *Port Otago Limited v Environmental Defence Society* [2023] NZSC 112 at [78] referring to the "structured analysis" required.

a. The existing environment

8.27. The Court of Appeal decision in *Queenstown Lakes District Council v Hawthorn Estate Limited ("Hawthorn")*[69] held that the environment against which effects are to be assessed incudes the future state of the environment as it might be modified by: permitted activities; and the implementation of resource consents which have been granted, where the resource consent is likely to be implemented.[70] In subsequent decisions the High Court has cautioned against *Hawthorn* being applied "like a statute" and encouraged a "real world" and "non-artificial" approach to assessing the relevant environment which appropriately recognises the context of each proposal.[71]

8.28. In the recent *Meridian Energy Ltd v Tararua District Council* decision dealing with the Mount Munro Wind Farm,[72] the Environment Court held the following with respect to whether permitted dwellings on vacant nearby properties should be considered part of the environment against which effects are assessed:

> *[59] Ms Johnston went on to record her agreement with Mr Beatson that the case law developed post Hawthorn collectively supports the view that Hawthorn should not be read as a code applying to all circumstances, and that a "real world" analysis of the future environment is required. It was her submission that "likelihood", "real world" or consideration of a "future environment that is [not] artificial" provide very little practical differentiation when applied.*
>
> *[60] We accept that submission. We are satisfied that* Hawthorn *and the body of caselaw which follows it, confirms that a decision-maker is entitled to consider the permitted uses which may occur in the future through a pragmatic or real-world lens. In our view, to do otherwise would be nonsensical given the range of permitted activities that exist within any given zone. It cannot be the case that an applicant is required to consider every possible permutation of the future environment with a range of possible permitted activities. Rather there must be some analysis of the future state with reference not only to the range of permitted activities that might occur but which of them "might" or is most likely to eventuate.*

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69 [2006] NZRMA 424 at [84].

70 The test in *Hawthorn* was adopted by both Panels in the *Bledisloe Decision* and the *Maitahi Decision*.

71 See for example *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZRMA 239 (HC) and *Royal Forest and Bird Protection Society of New Zealand Incorporated v Buller District Council* [2013] NZRMA 275 (HC). See also *Save Kapiti Inc v New Zealand Transport Agency* [2013] NZHC 2104 at [70].

72 [2025] NZEnvC 44.

b. The permitted baseline

8.29. The concept of the permitted baseline is set out in s104(2) of the RMA and allows a consent authority to disregard certain effects of a proposed activity where a national environmental standard or plan permits an activity with that effect.[73]

(ii) Section 104 and Part 2

8.30. The relationship between s104 and Part 2 of the RMA, given the "subject to Part 2" wording in s104, has been the subject of considerable jurisprudence. The Court of Appeal's decision in *R J Davidson Family Trust v Marlborough District Council* "(*Davidson")*[74] confirmed that recourse to Part 2 is permissible – and in some cases necessary – in the context of decisions on resource consents.[75] While reference to Part 2 would *"likely not add anything"* where a plan has been prepared having regard to Part 2 and with a coherent set of policies designed to achieve clear environmental outcomes; if it appears that the plan has not been prepared in a manner that appropriately reflects the provisions of Part 2 (and/or has not been competently prepared), then it will be appropriate and necessary to refer to – and give emphasis to – Part 2.

8.31. The Panel in the *Maitahi Decision* held that cl 17(1)(b) of Sch 5 to the FTAA requires decision-makers to take into account whether the Project meets specified provisions of Part 2 of the RMA:[76]

(a) Section 5, which sets out the purpose of the RMA as promoting the sustainable management of natural and physical resources;

(b) Section 6, which requires recognition and provision for the matters of national importance listed in s6(a)-(h); and

(c) Section 7, which sets out additional considerations to be taken into account under s7(a)-(j) (s7(j) refers to the benefits to be derived from the use and development of renewable energy).

8.32. As noted above, the FTAA precludes the Panel from considering s8 of the RMA.[77]

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73 As the Court of Appeal noted in *Hawthorn Queenstown Lakes District Council v Hawthorn Estate Limited* [2006] NZRMA 424 at [65], the purpose of the permitted baseline is "*to isolate, and make irrelevant, effects of activities on the environment that are permitted by a district plan…".*

74 [2018] NZCA 316.

75 [2018] NZCA 316. See in particular [47] and [51].

76 At [866] and [868].

77 FTAA, cl 17(2)(a) of Sch 5 provides that, for the purpose of applying any provisions in FTAA, cl 17(1) of Sch 5, a reference in the RMA to Part 2 of that Act must be read as a reference to ss5 (purpose), 6 (matters of national importance), and 7 (other matters) of that Act (i.e. not s8 (Treaty of Waitangi)).

RMA ss105 and 107 (applications for discharge permits)

8.33. Sections 105 and 107 of the RMA are relevant to discharges:

(a) Section 105 requires that the Panel must have regard to:

(i) the nature of the discharge and the sensitivity of the receiving environment; and

(ii) the applicant's reasons for the proposed choice; and

(iii) any possible alternative methods of discharge, including discharge into any other receiving environment.

(b) Section 107 provides that, except in limited circumstances,[78] the Panel shall not grant a discharge permit if, after reasonable mixing, the discharge is likely to give rise to any of the following effects in the receiving waters:

(i) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:

(ii) any conspicuous change in the colour or visual clarity:

(iii) any emission of objectionable odour:

(iv) the rendering of fresh water unsuitable for consumption by farm animals:

(v) any significant adverse effects on aquatic life.

Alternatives

8.34. Under the applicable FTAA framework, no *wholesale* consideration of alternatives is required:

(a) The FTAA Substantive Report Application information requirements[79] do not require an assessment of alternatives where it is likely an activity will result in any significant adverse effect.[80] In contrast, cl 6(1)(a) of Sch 4 to the RMA, which does not apply to the Project, requires an AEE to include a description of any possible

78 As set out in FTAA, ss107(2) and (2A).
79 FTAA, cl 6 of Sch 5.
80 FTAA, cl 6(1)(c)(ii) of Sch 5 does require that, if the activity includes the discharge of any contaminant, the AEE must include a description of any possible alternative methods of discharge, including discharge into any other receiving environment. Corresponding s105 of the RMA is outlined below.

alternative locations or methods for undertaking the activity *"if it is likely that the activity will result in any significant adverse effect on the environment".*

(b) Including because there is no equivalent under the FTAA to cl 6(1)(a) of Sch 4 to the RMA (outlined above), we submit there is no general requirement for the Panel to consider alternatives, including alternative sites, under s104(1)(c) of the RMA (other matters) or otherwise.[81]

(c) Any requirements to assess alternatives under the National Policy Statement for Indigenous Biodiversity 2023 ("NPS-IB")[82] do not apply, because the NPS-IB itself expressly does not apply to the development of renewable electricity generation, or electricity transmission network, assets, and activities such as the Project.[83]

8.35. Notwithstanding the above, some forms of consideration of alternatives – in particular contexts – is relevant to the Project:

(a) Because the Application incudes discharge consents, as outlined above, the Panel must have regard to any possible alternative methods of discharge, including discharge into any other receiving environment (s105 of the RMA).

(b) The National Policy Statement for Freshwater Management 2020 ("NPS-FM") includes requirements that the loss of extent of natural inland wetlands and the loss of river extent and values are avoided, except where (among other things) there is a functional need[84] for the activity in that location.[85] In addition, the NES-F regulates works for the construction of specified infrastructure within certain setbacks from natural inland wetlands and requires that consent must not be granted unless (among other things) there is a functional need, as defined in the NPS-FM, for the specified infrastructure in that location.[86] The "functional need" analysis required under the NPS-FM and NES-F means that some consideration

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81 In the 2011 *Project Hayes* wind farm decision *(Meridian Energy Ltd v Central Otago District Council* [2011] 1 NZLR 482) the High Court found that, notwithstanding that its analysis of other wind farm cases demonstrated that consideration of alternative sites was relatively unusual, in the particular context of that proposal, the extent to which the applicant had given consideration to alternative locations was *"relevant and reasonably necessary to determine the application"* in terms of s104(1)(c) (although s7(b) of the RMA did not require consideration of alternative locations). (See [65], [123], and [148] of the High Court's decision). The existence of (now) clause 6(1)(a) of Schedule 4 of the RMA was central to the Court's decision (see for example [53], [68], and [78].) The Court was careful not to overstate the importance of the assessment of alternatives in that case, stating that it *"…is only part of the evaluation of the merits of the application in the context of s 104 and the focus needs to be on the merits of [the] proposal"* (see [148(e)]) and that *"…consideration of alternative sites should not be pushed too far"* (see [148(e)]). The Court was also clear that an applicant is not required to demonstrate that a site is "the best' site (see [121] and [148(e)].

82 For example, NPS-IB, cl 3.11(1).

83 NPS-IB, cl 1.3(3).

84 Under the NPSFM (cl 3.21) "functional need" means *"the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment".*

85 NPS-FM, cl 3.22(1)(b)(iii) (wetlands) and cl 3.24(1)(a) (rivers).

86 Clause 45.

of alternatives, in those relevant contexts, is required. The High Court has confirmed that the functional need test is to be interpreted in a pragmatic and realistic manner.[87]

RMA ss108 and 108AA (conditions of consent)

8.36. The FTAA imports the relevant Parts of the RMA with respect to setting conditions.[88] This includes s108 (conditions of resource consents) and s108AA (requirements for conditions of resource consents) of the RMA.

8.37. In summary, s108 provides a general discretion to impose consent conditions: consents may be granted on any condition the Panel considers appropriate,[89] except as expressly provided in s108 itself and in s108AA. Section 108AA establishes limits on the wide power conferred by s108, requiring at least one of the following tests to be met before a condition can be included in a resource consent:

(a) the applicant agrees to the condition;[90] or

(b) the condition is directly connected to an adverse effect of the activity; and/or an "applicable" district or regional rule, or a national environmental standard;[91] or

(c) the condition relates to administrative matters that are essential for the efficient implementation of the consent.[92]

8.38. In addition to the limitations set out in s108AA and 108 of the RMA, the case law provides further restrictions on the Panel's powers to impose conditions. In *Cookie Munchers Charitable Trust v Christchurch City Council*[93] the Environment Court expressed key requirements for lawful conditions as follows:[94]

- *The condition must be for a resource management purpose, and not for an ulterior one.*

87 *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2022] NZHC 629 at [38]-[60].
88 FTAA, cl 18 of Sch 5. The RMA provisions apply with all necessary modifications.
89 Including those kinds of conditions set out in s108(2).
90 Section 108AA(1)(a). This requirement legislates the principle in *Augier v Secretary of State for the Environment* (1978) 38 P & CR 219(QBD) that an applicant who volunteers a condition is bound by it (see *Lindis Catchment Group Inc v Otago Regional Council* [2020] NZEnvC 130 at [63]).
91 Section 108AA(1)(b)(i)-(ii).
92 Section 108(1)(c).
93 EnvC W090/08 at [24], citing *Newbury District Council v Secretary of State for the Environment* [1981] AC 578 (HL). The *Newbury* tests were endorsed by the Panel in the *Maitahi Decision* at [682].
94 See also the Supreme Court's decision in *Waitakere City Council v Estate Homes Ltd* [2007] NZRMA 137 (SC) at [61]. The Supreme Court's decision related to the pre-2017 form of s108 of the RMA.

- *The condition must fairly and reasonably relate to the development authorised by the consent to which the condition is attached.*

- *The condition must not be so unreasonable that no reasonable planning authority duly appreciating its statutory duties could have approved it.*

8.39. Several other general factors go to the appropriateness and/or lawfulness of a condition, noting that many of these principles were endorsed by the Panels in the *Bledisloe Decision,*[95] the *Maitahi Decision,*[96] and the *Milldale Decision*:[97]

(a) whether it is sufficiently certain;[98]

(b) whether it delegates or reserves too much discretion to a certifier/approver and is therefore invalid;[99]

(c) whether it would effectively nullify/negate the consent;[100]

(d) whether it relies on compliance by third parties and/or third-party consent (being outside the control of the applicant) and is therefore unenforceable and invalid;[101] and

(e) proportionality of the conditioned response (including in terms of cost) in the context of the benefits achieved can be considered in determining the appropriateness of conditions.[102]

8.40. Distilling the above, we submit that the process for the Panel when considering the imposition of conditions under the RMA (and therefore the FTAA) involves two stages:[103]

(a) First, an inquiry into whether or not the conditions in question can legally be imposed (i.e. do they satisfy the limitations in ss108 and 108AA of the RMA, and do they satisfy the *Newbury* tests?). If they do not, they are not valid conditions and simply cannot be imposed.

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95 At [305].
96 At [683]-[684].
97 At [192].
98 *Sustain Our Sounds v New Zealand King Salmon Ltd* [2014] NZRMA 421 (SC) at [125].
99 *Turner v Allison* [1971] NZLR 833 (CA).
100 *Richmond v Kapiti Coast District Council* [2016] NZEnvC 1 at [8]. See also *Lindis Catchment Group Inc v Otago Regional Council* [2020] NZEnvC 130 at [43].
101 *Mackay v North Shore City Council* W146/95 (PT). See also *Campbell v Southland District Council* W114/94 (PT). *Campbell* has been referred to in several later cases, including *Dart River Safaris Ltd v Kemp* [2000] NZRMA 440 (HC).
102 *Donald Jones v Palmerston North City Council* [2014] NZEnvC 131 at [38].
103 See *Cookie Munchers Charitable Trust v Christchurch City Council* EnvC W090/08 at [30]-[33], noting that the decision pre-dates s108AA of the RMA. This general summary of the law relating to conditions of consent reflects the decision in *Lindis Catchment Group Inc v Otago Regional Council* [2020] NZEnvC 130 at [19]-[22].

(b) Second, if the Panel determines that the conditions can be validly imposed, it must then determine whether they are *appropriate* conditions (i.e. consider the conditions on their merits). Section 108 empowers the Panel to grant the proposal *"…on any condition [it] considers* ***appropriate****…".*[104]

8.41. Section 83 of the FTAA provides a further important limitation on the Panel's discretion to impose conditions: the Panel must not set conditions that are more onerous than necessary to address the reason for which it is set.[105]

Resource consent lapse and duration

8.42. The Panel's decision may specify a date on which the approval lapses, which must be no less than two years after the approval commences.[106] Clause 26 of Sch 5 to the FTAA provides that if no lapse date is specified an approval lapses after it commences. This appears to be an error that would have serious unintended consequences. As recognised in the *Milldale Decision*,[107] it is therefore important for panels to expressly prescribe lapse dates in their decisions. Although Tararua wishes to advance the Project as a matter of priority, a lapse period of 5 years is sought.

8.43. Clause 17(7) of Sch 5 to the FTAA applies s123 of the RMA with respect to the duration of consents, meaning the RMA consent duration provisions apply.[108] Section 123B of the RMA, which was introduced by the Resource Management (Consenting and Other System Changes) Amendment Act 2025, now provides a *default* period of 35 years for resource consents authorising renewable energy activities.[109] Despite cl 17(7) of Sch 5 to the FTAA not explicitly referring to s123B, we submit that s123B applies to the Panel's decision on the new regional and NES-F consents being sought for the Project. Section 123 of the RMA expressly provides that it applies *"except as provided in… 123B".* This wording makes clear that Parliament intended s123B to operate as a specific carve-out for renewable energy consents. The FTAA imports s123; and given that s123 is itself expressly subject to s123B, it follows that s123B must also apply to the Panel's determination.

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104 Section 108(1). Our emphasis.
105 The Panel in the *Maitahi Decision* noted at [101] that this proportionality test is not *"formulaic or mathematical";* rather, it is an inherently evaluative process given many impacts are unable to be quantified.
106 FTAA, s87(2)(b)(i) and cl 26 of Sch 5.
107 At [194].
108 FTAA, cl 17(7) of Sch 5.
109 Excluding land use consents under s9, for which the default period is unlimited.

Decision-making on application to change or cancel consent conditions

Scope to apply for a variation as opposed to a fresh consent

8.44. The High Court in *Body Corporate 97010 v Auckland City Council* ("*Body Corporate 97010*") held that whether an application is truly one for a variation of conditions under s127 of the RMA or whether it is in fact seeking consent for an activity that is materially different in nature – meaning a fresh consent application is required – is a question of fact and degree to be determined in the circumstances of each case.[110] Several decisions provide guidance on where to draw the line between a proposal coming within the scope of s127, and one requiring a new application.[111]

8.45. Relevant considerations will include a comparison between the activity for which consent was granted and the nature of the activity if the variation is approved.[112] The High Court in *Body Corporate 97010* stated that in deciding whether an application for a variation is in substance a new application, a consent authority should compare any differences in the adverse effects associated with the proposal as consented with those likely to result if the variation were approved. Where an application would result in a fundamentally different activity or an activity having materially different adverse effects, it may be appropriate to treat the application as a fresh application; especially where the application seeks to expand or extend the activity, with an associated increase in adverse effects.[113]

8.46. The High Court's approach relating to s127 was upheld in the Court of Appeal. The Court of Appeal noted:[114]

> [45] *Section 127 permits an alteration to a condition but not an alteration to an activity. The question of what is an activity and what is a condition may not be clear cut and will often, as the Judge recognised, be a matter of fact and*

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110 [2000] NZRMA 202 at [73]. The Court of Appeal in *Sutton v Moule* (1992) 2 NZRMA 41, which was decided under an earlier legislative framework, had earlier confirmed at page 19 (CA.22/92) that whether a variation or a fresh application is appropriate will turn on the circumstances of each case: *"When the subject matter of the application is essentially about the continued appropriateness of or necessity for a condition, it will no doubt be appropriate to consider the application under s[127]. Where, however, the application generates what is, in effect, a fresh proposal, it will be preferable to proceed [as a fresh application]. The decision as to which section is appropriate will turn on the circumstances of each case".*

111 *Body Corporate 97010 v Auckland City Council* [2000] NZRMA 202 (High Court) at [71]; and *Warbrick v Whakatane District Council* [1995] NZRMA 303 at page 3 (A 19/95).

112 See paragraph 72 of the High Court's decision in *Body Corporate 97010 v Auckland City Council* [2000] NZRMA 202. The Court stated that the terms of the relevant resource consent are to be considered as a whole, and that artificial distinctions should not be drawn between the *activity* consented to and the *conditions* of consent.

113 At [74].

114 *Body Corporate 97010 v Auckland City Council* [2000] NZRMA 529 (Court of Appeal).

degree. In differentiating between them the consent authority need not give a literal reading to the particular wording of the original consent.

8.47. In *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council*[115] the Court of Appeal addressed a proposal to significantly expand an existing water extraction and bottling operation which the applicant s127 to vary its land use consent. The Court of Appeal concluded that s127 is not to be used to authorise a completely new activity under the guise of changing the conditions to which the original activity was subject.

Scope to apply under the FTAA

8.48. Under s42(6) of the FTAA, a substantive application may only seek approval for a change or cancelation of a resource consent condition if:

(a) it also seeks a new resource consent; and

(b) the change or cancellation is material to the implementation or delivery of the project.

8.49. The term "material" is not defined in the FTAA. However, "material" has been considered in the context of s106 of the RMA. In *Carter Holt Harvey HBU Ltd v Tasman District Council*, the Court held that "material" could mean "*significant or important*" or "*relevant or pertinent"*.[116]

8.50. In our submission, the meaning of "material" should be informed by the purpose of the FTAA, being to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.

Decision-making

8.51. In accordance with s81 and cl 23 of Sch 5 to the FTAA, the Panel must decide whether to grant or decline the application to change/cancel resource consent conditions.

8.52. We address key matters below, to the extent they are different to matters addressed above in the context of decision-making on resource consent applications under the FTAA.

115 [2022] NZCA 598 at [187].
116 [2013] NZRMA 143 at [123].

8.53. Clause 23 of Sch 5 provides that when considering an application to change or cancel a condition, the Panel must apply s127(1) and (3) with modifications:[117]

(a) section 127(1) of the RMA provides that a resource consent holder may apply for a change or cancelation of a condition;[118] and

(b) section 127(3) of the RMA (as modified by the FTAA) provides that the provisions of Part 6 of the RMA that relate to decision-making on a resource consent apply as if:

(i) the application were an application for a resource consent for a discretionary activity; and

(ii) references to a resource consent and to the activity are references only to the change or cancellation of a condition and the *effects of the change or cancellation* respectively.

8.54. Under s127(3)(b) of the RMA, the relevant consideration is therefore limited to the effects resulting from the proposed change/cancellation. The appropriate comparison is between the effects of the activity as originally authorised versus the effects arising from the activity in its proposed varied form.[119]

Decision-making on wildlife approval applications

8.55. In accordance with s81 and cl 5-6 of Sch 7 to the FTAA, the Panel must decide whether to grant or decline the wildlife approval.

8.56. Clause 5 of Sch 7 provides that when considering a wildlife approval application, including conditions, the Panel must take into account, giving the greatest weight to paragraph (a):

(a) the purpose of the FTAA; and

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117 Other requirements in cl 23 are not relevant to the Project, including the requirement to consider any Mana Whakahono ā Rohe or joint management agreement that is relevant to the approval (there is no such Mana Whakahono ā Rohe or joint management agreement relevant to the Application), and the requirement not to not apply s127(4) of the RMA (s127(4) relates to notification and is not relevant to the Application).

118 Applications cannot be made under s127 under certain circumstances, none of which apply to the Project (see s127(1)(a) and (b)).

119 See *Body Corporate 97010 v Auckland City Council* [2000] NZRMA 202 (High Court) at [72].

(b) the purpose of the Wildlife Act 1953[120] and the project's effects on the protected wildlife covered by the approval; and

(c) information and requirements relating to the protected wildlife covered by the approval (including in the New Zealand Threat Classification System or any relevant international conservation agreement).

8.57. With respect to the requirement to "take into account", the purpose of the FTAA and the requirement to give the purpose of the FTAA the "greatest weight", the same considerations as outlined above apply to the interpretation of cl 5 of Sch 7. This was reiterated in the *Bledisloe Decision*.[121]

8.58. The recent Wildlife (Authorisations) Amendment Act 2025, which was promulgated in response to the High Court's decision in *Environmental Law Initiative v The Director-General of the Department of Conservation and others*,[122] clarified that the Director-General may grant an authority under the Wildlife Act that authorises killing of wildlife that is incidental to carrying out an otherwise lawful activity.[123] Relevant to (b) above, the Amendment Act also provides:

> ***53B Authority under section 53 to kill wildlife incidentally: consistency with protection of wildlife***
>
> *(1) To avoid doubt, the Director-General may grant an authority referred to in section 53A only if it is consistent with the protection of wildlife.*
>
> *(2) The authority is to be treated as consistent with the protection of wildlife if, in granting it, the Director-General is satisfied that its overall effect would be consistent with the protection of—*
>
> (a) *populations of wildlife; and*
>
> (b) *individual wildlife.*
>
> *(3) In determining whether the overall effect of the authority would be consistent with the protection of populations of wildlife, the Director-General must have regard to—*

120 A principal purpose of the Wildlife Act 1953 is the protection of wildlife. See s3 and the long title of the Wildlife Act 1953 and the High court's decision in *Environmental Law Initiative v The Director-General of the Department of Conservation and others* [2025] NZHC 391 at [65] which refers to the Supreme Court's decision in *Shark Experience Ltd v PauaMAC5 Inc* [2019] NZSC 111 at [44].

121 At [127].

122 [2025] NZHC 391. The High Court decision held that essentially held that it was unlawful for the Department of Conservation – Te Papa Atawhai to authorise the killing of wildlife unless there was a direct link between killing and protecting wildlife.

123 Section 53A of the Wildlife (Authorisations) Amendment Act 2025. Section 53A(2) provides that *"[k]illing of wildlife is **incidental** if it is not directly intended but is unavoidable and foreseeable as a consequence of carrying out the lawful activity."*

(a) *any potential adverse effects of the lawful activity on—*

(i) *populations of wildlife that the Director-General is satisfied may be affected by the lawful activity; and*

(i) the viability of the species to which that wildlife belongs; and

(b) the extent to which the authority (including any conditions that the Director-General proposes to impose on the authority) addresses those potential adverse effects; and

(c) any other matter that the Director-General considers is relevant.

(4) The Director-General may be satisfied that the overall effect of the authority would be consistent with the protection of individual wildlife only if satisfied that the holder of the authority will take reasonable steps (including by complying with any relevant conditions imposed on the authority) to avoid, minimise, and mitigate any adverse effects of the lawful activity on individual wildlife.

(5) In granting the authority, the Director-General is not required to be satisfied—

(a) that the lawful activity is itself consistent with the protection of wildlife; or

(b) that each individual act of killing, viewed in isolation, would be consistent with the protection of wildlife.

8.59. If it grants the wildlife approval, the Panel may impose any conditions it considers necessary to manage the effects of the activity on protected wildlife.[124] In setting conditions the Panel must:[125]

(a) consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife covered by the approval; and

(b) where more than minor residual impacts on protected wildlife cannot be avoided, minimised, or remedied, ensure that they are offset or compensated for where possible and appropriate; and

(c) take into account the New Zealand Threat Classification System or any relevant international conservation agreement that may apply in respect of the protected wildlife covered by the approval.

124 FTAA, cl 6(1) of Sch 7.
125 FTAA, cl 6(2) of Sch 7.

8.60. As outlined above, the Panel must not set conditions that are more onerous than necessary to address the reason for which it is set.[126]

8.61. A wildlife approval granted under the FTAA has force and effect for its duration, and according to its terms and conditions, as a lawful authority for the purposes of the Wildlife Act and is treated as if it were granted under that Act.[127]

Decision-making on archaeological authority application

8.62. In accordance with s81 and cl 4-5 of Sch 8 to the FTAA, the Panel must decide whether to grant or decline the archaeological authority.

8.63. Clause 4 of Sch 8 provides that when considering an archaeological authority application, including conditions, the Panel must take into account, giving the greatest weight to paragraph (a):

(a) the purpose of the FTAA; and

(b) the matters set out in s59(1)(a) of the HNZPT Act;[128] and

(c) the matters set out in s47(1)(a)(ii) and (5) of the HNZPT Act;[129] and

(d) a relevant statement of general policy confirmed or adopted under the HNZPT Act.[130]

8.64. With respect to the requirement to "take into account"; the purpose of the FTAA; and the requirement to give the purpose of the FTAA the "greatest weight"; the same considerations as outlined above apply to the interpretation of cl 4 of Sch 8.

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126 FTAA, s83.

127 FTAA, cl 7(1) of Sch 7.

128 Section 59(1)(a) of the HNZPT Act provides that in determining an appeal on an archaeological authority the Environment Court must have regard to any matter it considers appropriate, including: (i) the historical and cultural heritage value of the archaeological site and any other factors justifying the protection of the site; (ii) the purpose and principles of the HNZPT Act; (iii) the extent to which protection of the archaeological site prevents or restricts the existing or reasonable future use of the site for any lawful purpose; (iv) the interests of any person directly affected by the decision of Heritage New Zealand Pouhere Taonga ("HNZPT"); (v) a statutory acknowledgement that relates to the archaeological site or sites concerned; and (vi) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tūpuna, wāhi tapu, and other taonga.

129 In the context of an application for an archaeological authority, s47(1)(a)(ii) of the HNZPT Act refers to *"whether the effects of the proposed activity are, or are likely to be, no more than minor, assessed in accordance with subsection (5)"*. Section s47(5) provides that *"…without limiting the matters that [HNZPT] may have regard to for the purpose of determining whether an application meets the requirements of subsection (1)(a)(ii)…, it must have regard to— (a) the significance of a site or sites in relation to evidence of the historical and cultural heritage of New Zealand; and (b) the extent to which the proposed activity will modify or destroy the site or sites."*

130 There are currently five Statements of general Policy under the under the HNZPT Act. The most relevant is *"Statement of general Policy: The Administration of the Archaeological Provisions".* The Statements of General Policy are currently being reviewed. New Statements are expected to be published in late 2025.

8.65. If it grants the archaeological authority, the Panel may impose any conditions, including certain conditions specified in the FTAA.[131]

8.66. As outlined above, the Panel must not set conditions that are more onerous than necessary to address the reason for which it is set.[132]

8.67. In any authority that is granted, the Panel may specify the period for which the archaeological authority is current, which may not exceed 35 years.[133]

8.68. An archaeological authority granted under the FTAA has the same force and effect as if it were granted under the HNZPT Act; and, for the purposes of the HNZPT Act, must be treated as if it were an authority granted under that Act.[134]

Application for approval

8.69. A substantive application seeking an archaeological authority can include an application for approval of any person to undertake an activity under the authority.[135] Before a panel decides whether to approve such an application, it must seek and have regard to a recommendation from HNZPT.[136]

The Panel's ability to decline an approval

8.70. The FTAA includes a novel limitation on a panel's ability to decline an approval. A panel may decline an approval only in accordance with s85.[137] Section 85 sets out circumstances where approvals *must* be declined, and circumstances where approvals *may* be declined.

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131 FTAA, cl 5(1) of Sch 8 provides that in relation to an archaeological authority, a panel may impose any conditions, including conditions that: (a) the consent of the land owner and the holder of any specified registered interest must be obtained before the holder of an archaeological authority may enter the relevant site or undertake any activity under that authority; and (b) the site must be returned as nearly as possible to its former state (unless otherwise agreed between the owner of the land on which the site is located and the panel); and (c) any activity undertaken at the site under the archaeological authority must conform to accepted archaeological practice; and (d) HNZPT, or the person approved under this schedule to carry out an activity, must provide a report to (i) the holder of the authority; and (ii) the owner of the archaeological site concerned, if different from the holder of the authority; and (iii) HNZPT, unless HNZPT prepared the report. FTAA, cl 5(2) of Sch 8 provides that the panel may impose a condition requiring an investigation under the HNZPT Act, but only if the panel is satisfied on reasonable grounds that the investigation is likely to provide significant information in relation to the historical and cultural heritage of New Zealand.

132 FTAA, s83.

133 If no period is specified, the authority is current for 5 years from the date on which it commences, which must be no longer than 30 years after the authority is granted (FTAA, cl 6 of Sch 8).

134 FTAA, cl 7(1) of Sch 7.

135 FTAA, cl 9(1) of Sch 8.

136 In the context of the Proposal, HNZPT must not recommend that the panel approve a person unless it is satisfied that the person *"has sufficient skill and competency, is fully capable of ensuring that the proposed activity is carried out to the satisfaction of [HNZPT], and has access to appropriate institutional and professional support and resources"* (FTAA, cl 7(5) of Sch 8).

137 FTAA, s81(2)(f).

(a) Under s85(1), a panel *must* decline an approval if:[138]

(i) the approval is for an ineligible activity;

(ii) it considers that granting the approval would breach s7 (obligation relating to Treaty settlements and recognised customary rights).

(b) Under s85(3), a panel *may* decline an approval if the panel forms the view that:

(i) there are one or more adverse impacts[139] in relation to the approval sought; and

(ii) those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits, even after taking into account:

- any conditions that the panel may set in relation to those adverse impacts; and
- any conditions or modifications that the applicant may agree to or propose to manage those adverse impacts.

A panel may not form the view that an adverse impact meets the threshold above solely on the basis that it is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider.[140]

Treaty settlements

8.71. Section 7 of the FTAA provides that:

(1) All persons performing and exercising functions, powers, and duties under this Act must act in a manner that is consistent with—

(a) *the obligations arising under existing Treaty settlements…*

(2) To avoid doubt, subsection (1) does not apply to a court or a person exercising a judicial power or performing a judicial function or duty.[141]

138 The below list includes those matters relevant to the Application.

139 Adverse impact means any matter considers by a panel in complying with s82(2) that weights against granting the approval (FTAA, s85(5)).

140 FTAA, s81(4).

141 Other s7 provisions relating to the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 are not relevant in the context of the Project.

8.72. The Panel in the *Bledisloe Decision* identified the uncertainty regarding the application of s7(1) in light of s7(2).[142] While acknowledging that the exercise of a "judicial function" may exclude the application of s7(1) from a panel's decision-making functions, the Panel noted that ss82(3) and 84(1) expressly require consideration of s7 in decision-making under the FTAA. Given the ambiguity, the Panel proceeded to consider s7(1) within that statutory context. However, it stated that if s7(1) ultimately did not apply, its consideration of the relevant matters would not have led to a different outcome.

8.73. The Substantive Application Report summarises existing Treaty settlements relevant to the Project. We submit that granting all approvals sought for the Project would be consistent with relevant Treaty settlement obligations. This matter is not addressed further in these submissions.

9. APPLICATION OF THE LEGAL FRAMEWORK – RESOURCE CONSENTS

9.1. As outlined, Tararua is seeking a range of resource consents under the FTAA to authorise the Project. Overall, resource consent is sought as a discretionary activity.

9.2. As detailed in the Application and in these submissions:

(a) The Project will have significant regional and national benefits and is entirely consistent with the purpose of the FTAA.

(b) The Project satisfies all applicable provisions of the RMA, including ss104 and 104B, and Part 2:

(i) the Project is consistent with the RMA planning framework, including the Clutha District Plan and the Otago Regional Policy Statements (operative and proposed); the NPS-FM and NES-F; Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ("NES-CL"); and NPS-REG;[143] and

(ii) all adverse effects can be appropriately managed (avoided, minimised, remedied, mitigated, offset, or compensated for).

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142 At [110].

143 The National Policy Statement for Indigenous Biodiversity 2023 does not apply given its exclusion for renewable electricity generation and electricity transmission network assets and activities. The National Policy Statement for Highly Productive Land 2023 also does not apply as the Project Envelope does not contain any Class 1, 2 or 3 soils.

(c) The Panel is not required to decline the approvals under s85 of the FTAA. We further submit that, with respect to the Panel's discretion to decline the approval under s85, the adverse effects of the Project are not sufficiently significant to be out of proportion to the Project's regional and national benefits. To the contrary, we submit that the Project's positive effects demonstrably outweigh its adverse effects.[144]

9.3. Below we address certain key matters regarding the Panel's consideration of the Application.

The purpose of the FTAA

9.4. The purpose of the FTAA is set out in paragraph 8.10 of these submissions. As outlined, when considering Tararua's resource consent and variation application, the Panel must give **greatest weight** to the purpose of the FTAA in the ultimate weighing exercise.[145]

9.5. An assessment of the Project against the purpose of the FTAA is set out in the Substantive Application Report.[146] We submit that the Project is on all fours with the purpose of the FTAA, being an infrastructure/development project with demonstrably significant regional and national benefits. The Project's regional and national benefits are outlined above in these submissions above. The significant benefits of the Mahinerangi Wind Farm were acknowledged by the Environment Court in its 2008 interim decision.

9.6. A Beehive Release[147] cited in the *Maitahi Decision* stated:

> *[Schedule 2] includes 22 renewable electricity projects that will improve our energy security and electrify New Zealand's economy. If all 22 of these projects are consented and delivered, they will contribute an additional 3GW of generation capacity*.

9.7. The Project is one of those projects.

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144 See the *Maitahi Decision* at [884] where it concluded in that case that "*… because the adverse impacts as found have been avoided, remedied, mitigated, offset or compensated for by the conditions set out in Appendix A, there is simply no prospect that these adverse impacts could be found to be "sufficiently out of all proportion to the regional or national benefits" discussed earlier. The weighing exercise under s85(3) therefore comes down squarely against the conclusion that any adverse impacts are sufficiently significant to outweigh the Project's regional or national benefits as found in this decision*."

145 FTAA, cl 17(1) of Sch 5.

146 Section A.09.

147 Beehive Media Release by Ministers Hon Chris Bishop and Hon Shane Jones in December 2024 when the Fast-track Approvals Bill passed its third reading.

RMA decision-making framework

Potential impacts

Introduction

9.8. Tararua's careful Project design is borne out in the independent assessments of the effects: in short, the Project will deliver significant local, regional, and national benefits, with limited (and local) adverse impacts. Where adverse impacts cannot be avoided, they have been carefully managed, including through proposed conditions (and in accordance with the effects management hierarchy as appropriate). The iterative design refinement process has resulted in amendments to the Project which have further reduced the potential for adverse impacts and/or augmented the various proposed management measures such as the constrained Stage 2 Wind Farm Development Area.

9.9. To provide the Panel confidence in respect of the (limited) flexibility that Tararua proposes to retain over turbine placement, a conservative approach has been adopted with respect to the modelling and assessment of impacts by Tararua's experts, as described in the Substantive Application Report. Despite this, the relevant Tararua experts all consider that the Project is appropriate in the relevant legislative context, including the applicable RMA planning framework in the case of the resource consents sought. We submit that the Application material, including the robust and conservative approach adopted with respect to the assessment of effects, should give the Panel confidence that the construction, operation and maintenance of the Project will occur in a manner that appropriately manages adverse effects.

Existing environment

9.10. The Substantive Application Report describes the existing environment in detail, and it is not intended to repeat those details here.[148] In summary:

(a) The Project Site sits within the upper reaches of the Taieri Catchment approximately 50 km south of Dunedin. It is approximately 1,570 ha in size and represents an intermediate point between the lower lying farmland areas and the Lammerlaw and Lammermoor Ranges Ranges.

(b) The topography of the project site is typified by broad gently rolling spurs dissected by waterways and gullies.

148 Section A.04.

(c) The vegetation cover on the ridges and spurs of the Project Site is mostly dominated by exotic pastoral grassland and is grazed by sheep and cattle. There are remnant areas of snow-tussock grassland within the gullies and around rocky outcrops as well as areas of wetland in the gully floors. The area is generally devoid of trees.

(d) Twelve existing wind turbines, constructed as part of Stage 1 of Puke Kapo Hau, are located in the southeastern extent of the Project Site. As part of the construction works for these turbines, modifications were made to the topography, including the introduction of surplus fill disposal, access tracks, a small switch station all present in the environment.

(e) A large, fenced 59.2 ha QEII covenanted area spans a gully system and waterbody within the Project Site. Four existing wind turbines and access tracks are located adjacent to the QEII area.

(f) There are extensive sheep and beef farms around the Wind Farm Site, mostly located to the northeast, east, and southeast.

(g) There are relatively few dwellings near the Wind Farm Site because of the extensive farming character. Those in the area are mostly to the northeast, east, and southeast of the Project Site on no-exit gravel roads, and typically have shelter planting to the west in the direction of the existing wind farm.

(h) The site enjoys an excellent wind resource and is proximate to the National Grid.

9.11. In its 2008 interim decision, the Environment Court found that:[149]

(a) There are no outstanding landscapes or features under s6(b) within the Wind Farm Site. Those outstanding landscapes associated with the area relate to the Lammerlaw and Lammermoor Ranges.[150]

(b) There are various areas of afforestation (generally introduced species), but overall, the Mahinerangi landscape is open and pastoral.[151]

(c) The landscape is modified. The Court noted:[152]

149 *Upland Landscape Protection Society Incorporated v Clutha District Council and Otago Regional Council* (C85/2008).
150 At [98].
151 Ibid.
152 At [99].

> *Extensive modification can be seen both in the context of the effects of mining activities which includes old mine workings, water races and roads, including the El Dorado Track and Old Dunstan Road. Superimposed on this is the general mosaic from farming activities including the Scrappy Pines area on the site itself which is a failed attempt at a pine plantation. Other areas show signs of cultivation and fertiliser application, shelter trees, farm buildings, fences and the like. Also superimposed on this Mahinerangi landscape is the clear evidence of energy workings including the Deep Stream reservoir (which is a small lake) adjacent to the north-western side of the site, water races, concreting and building works associated with the Deep Stream Hydro Electric and Water Project, Lake Mahinerangi and the works associated with that, and various high tension lines servicing both the Mahinerangi Project and the Roxburgh National Grid Project which includes not only lines through this landscape but also on the Lammermoor Ranges themselves.*

9.12. The Substantive Application Report[153] notes that, in accordance with Rule RRA.3 of the Clutha District Plan, residential activities are permitted within the Rural Resource Area, with rules providing for one residential dwelling per title created before the Plan was notified; or alternatively, one dwelling not closer than 200m to any existing or proposed dwelling. One additional dwelling for the purpose of accommodation staff of any property owner is also permitted on the same title as a permitted dwelling.

9.13. The Substantive Application Report identifies that while the Clutha District Plan rules technically provide for additional dwellings on adjacent sites, the opportunities for a significant increase in residential occupation of the surrounding environment remains constrained by the land use provisions in the Rural Resource Area, the demand for housing in this location, and the availability of services to building sites (i.e. sites closest to the road are typically preferentially developed due to the cost of services).

9.14. Consistent with the planning framework and the case law outlined above at paragraphs 8.27-8.28 (including the recent Mt Munro Wind Farm Environment Court decision),[154] the existing environment should be defined by what is actually present now, together with permitted activities or development rights that are reasonably likely to be exercised. Activities that are remote or unlikely to occur should not be treated as part of the receiving environment.

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153 Section A.04

154 *Meridian Energy Ltd v Tararua District Council* [2025] NZEnvC 44.

9.15. For the Project, the potential for additional dwellings in the surrounding area is limited and should be considered in a realistic way when assessing effects. There is no evidence of imminent development plans for nearby residential dwellings. Therefore, we submit that – in accordance with the applicable case law – speculative hypothetical future dwellings do not form part of the existing environment for the Project (i.e. they should not be considered part of the environment against which effects of the Project are assessed). A real world and pragmatic approach to considering the future state of the environment involves a continuation of the existing land use patterns.

The permitted baseline

9.16. As outlined in Part D the Substantive Application Report, the relevant regional and district planning documents provide for a range of permitted activities on the Wind Farm Site, reflective of its rural zoning. This demonstrates that the planning framework does not purport to classify the Wind Farm Site as pristine or deserving of absolute protection. To the contrary, it is clear the plans contemplate a degree of change in the environment, given the range of activities provided for. Tararua's experts have not discounted effects permitted under the relevant plans.

Effects (RMA s104(1)(a))

9.17. The Project has been shaped and assessed by numerous technical specialists. Below is a summary of conclusions reached by Tararua's experts for key adverse effects:

(a) **Landscape, visual, and natural character**:[155] Isthmus (2025) concludes that the proposed variation to the Existing Consents will have low or no adverse effects on visual dominance, aesthetic coherence, rural character, and public and private views, while amenity and landscape values, including the qualities of the Lammermoor Range, will be enhanced. For the proposed new consents, the assessment finds that the natural character of the tributary of Lee Stream will be preserved and the enhancement of wetlands will be delivered through the Wetland and Aquatic Compensation Plan; effects from the substation, BESS, and the operations and maintenance facility on landscape and amenity values will be low to very low; and adverse effects from the transmission line and grid connection – both on views from dwellings and on the natural character of the wetlands – will be very low.

155 A.07 Substantive Application Report – Assessment of Effects, section 7.3.

(b) **Noise**:[156] Marshall Day (2025) concludes that noise effects from turbine construction, operation, and associated infrastructure will remain within consented limits and are either unchanged or reduced as compared to the Existing Consent. Operational noise from non-turbine activities, including the BESS and transmission infrastructure, will be negligible, and managed through proposed consent conditions that comply with relevant standards.

(c) **Avifauna**:[157] Boffa Miskell (2025) identifies Falcon/Kārearea and South Island Pied Oystercatchers ("SIPO") as the key species potentially affected by the Project.

For Falcon, Boffa Miskell (2025) concludes that potential construction impacts on nesting and juveniles can be avoided through monitoring and site management. (It should be remembered that such effects would occur under the consented layout and that the effects of the s127 variation are not new or of increased intensity or scale). Falcon foraging and breeding areas will remain undisturbed once the project is operational, and while the risk of turbine collision is considered very low, additional confidence will be provided through a proposed condition requiring post-construction studies. It is important to note that the risk of collision is reduced compared to the consented wind farm. A pest mammal control programme will continue to address any residual effects, and an Avifauna Management Plan has been developed. Collision risk with transmission lines is also considered very low, and no further mitigation is deemed necessary.

For SIPO, Boffa Miskell (2025) concludes that the primary concern is disturbance to breeding during construction, which will be managed through monitoring and protection measures outlined in the updated Avifauna Management Plan. Turbine collision risk is very low and and any rare losses are unlikely to affect the species at a population level. SIPO are not at risk of electrocution from transmission lines as it is not a perching bird.

(d) **Terrestrial ecology**:[158] SLR (2025) concludes that effects of indigenous vegetation clearance on terrestrial ecology will be minimal and sufficiently compensated through the 59ha QE11 Scrappy Pines Block and the

156 A.07 Substantive Application Report – Assessment of Effects, section 7.5.
157 A.07 Substantive Application Report – Assessment of Effects, section 7.6.
158 A.07 Substantive Application Report – Assessment of Effects, section 7.7.

implementation of a wetland compensation site.[159] With the implementation of relevant management plans, construction of the Project and the transmission line will also suitably avoid effects on threatened plant species. Impacts on terrestrial invertebrates from the proposed variations to the Existing Consents and new activities are expected to be minimal. Adverse effects of the introduction of weeds on existing terrestrial ecological values are also likely to be very low.

In relation to lizards, Blueprint Ecology (2025) concludes that the loss of a very small scale of high value habitat and 28ha of low to moderate value habitat is considered to have a low level of effect. The amended layout avoids the best habitats for lizards. Although some lizard habitat will be lost due to vegetation clearance, ecological compensation measures will ensure residual effects are appropriately compensated. The 59ha high-quality habitat in the QEII covenant area offsets habitat loss at a 2:1 ratio, with additional capacity for relocated lizards and long-term positive outcomes supported by ongoing and expanded predator control. A proposed wetland compensation site will further enhance habitat availability (including for lizards) and changes to the Project layout from that provided in the Existing Consent directly balances habitat loss, removing the need for further offsetting/compensation. To minimise adverse effects to lizards during construction, a Lizard Management Plan has also been prepared, including to ensure that lizards are relocated, and any residual effects associated with lizard injury/death during construction of the Project will be negligible. Overall, the Project will provide for positive effects on lizards.

(e) **Natural inland wetlands**:[160] SLR (2025) concludes that the Project involves very limited direct effects to natural inland wetlands (works within or within 10m of wetland) and indirect effects (works within 100m of a wetland). Approximately 476m² (0.05ha) of natural wetlands will be directly affected by track works; there are three instances where the Project works must be located within 10m of wetlands due to functional need of the works where avoidance is not practicable; and approximately 32.91ha of natural wetlands are within 100m of the Project works. Potential effects on wetland hydrology will be managed through erosion

159 Condition 14 of the Existing Consent required the removal of all woody weed species, protection from stock grazing and legal protection via a QEII covenant. This was provided "up-front" in Stage 1, and in the intervening years it has established into a significant ecological area. Another compensatory initiative includes the $160,000 payment in monies and works to strengthen the values of the Te Papanui Conservation Reserve and its environs which the Environment Court's 2008 interim decision stated *"will be of long term benefit in the district, regional and wider communities*". Again, that compensation has been 'paid-forward' already.

160 A.07 Substantive Application Report – Assessment of Effects, section 7.8.

controls, culvert design, and ongoing monitoring under the Wetland Monitoring and Management Plan.

For all effects, Tararua has applied the effects management hierarchy including compensating for residual impacts which will be undertaken in accordance with the Wetland and Aquatic Compensation Plan.

(f) **Heritage**:[161] Clough (2025) concludes that the Project will affect only one archaeological site – a 19th-century pole track of limited heritage value – while the remaining 25 identified archaeological sites will not be directly impacted. The proposed transmission line corridor is approximately 250m clear of the only nearby recorded archaeological site (Site 90 – Sluicing Complex), and no other sites were identified along its route. Any potential effects on unidentified subsurface features will be managed through Existing Consent conditions, an archaeological authority and an Archaeological Management Plan, ensuring impacts are minimal and appropriately addressed.

(g) **Cultural**:[162] Tararua continues to engage with mana whenua, Te Rūnanga o Ōtākou (a Papatipu Rūnanga of Ngāi Tahu) in relation to the Project. While no known wāhi tapu or culturally significant sites have been previously identified within the Project Site, it is acknowledged that Ngāi Tahu has cultural and spiritual connections to the wider landscape. The Archaeological Management Plan outlines protocols for monitoring and managing any discoveries, including koiwi tangata or taonga. Tararua has been cognisant of cultural values associated with waterbodies, with ecological assessments and site-specific controls proposed to minimise effects. Tararua has also consulted on the Falcon/Kārearea (a taonga species) and proposes measures to protect it during construction and operation.

The applicable planning framework (RMA s104(1)(b))

9.18. The Substantive Application Report analyses in detail the planning documents that are relevant to the Application:

(a) The Clutha District Plan;

(b) The Operative Otago Regional Policy Statement 2019 and the Proposed Otago Regional Policy Statement 2021;

161 A.07 Substantive Application Report – Assessment of Effects, section 7.14.
162 A.07 Substantive Application Report – Assessment of Effects, section 7.15.

(c) The NES-FM and NES-F;

(d) The NES-CL; and

(e) The NPS-REG.

9.19. Each of these documents contain a number of relevant objectives, policies and/or rules, which are addressed in detail in the Substantive Application Report from a planning perspective, and by other experts in relation to their specialist areas. The Substantive Application Report confirms that, overall, and drawing upon the Application material by Tararua's technical experts, the impacts of the Project will be managed such that the proposal is well aligned with all applicable planning documents. We agree and submit that, overall, the Project – subject to the proposed conditions – is consistent with the objectives and policies of all applicable statutory plans and is strongly aligned with a number of key plans and planning provisions for the reasons set out in the Application material.

9.20. We do not comment in detail on the applicable planning framework; however, we provide some summary observations on key matters below.

NPS-REG

9.21. While varying levels of policy support for the Project are found in all of the documents listed above, the Project finds particular support in the NPS-REG, as detailed in the Substantive Application Report. The NPS-REG seeks to recognise the national significance of renewable electricity generation activities by providing for the development, operation, maintenance and upgrading of new and existing renewable electricity generation activities. Of particular relevance to the Project:

(a) Part A requires decision-makers to recognise and provide for the benefits of renewable energy generation. The benefits associated with the Project are outlined above.

(b) Policy B(c) requires that decision-makers shall have particular regard to the practical implication that exceeding the Government's national target for renewable electricity generation will require significant development of renewable electricity generation activities. The Project is one such proposed development.

(c) Part C recognises the practical constraints of renewable energy generation activities, including Policy C(1)(a) which recognises that such activities need to

locate where energy sources are available. This inevitably can create conflicts with cultural, ecological and landscape values.

(i) Policy C1(c) requires that decision-makers have particular regard to the location of existing structures and infrastructure, including the distribution network and the national grid. The Application material describes how the Project Site is a favorable location in this respect.

(ii) Policy C1(d) and (e) require that decision-makers have particular regard to designing measures which allow operational requirements to complement and provide for mitigation opportunities, and adaptive management measures. The Application documents outline the range of management measures proposed with the Project, including avoidance measures which are "built into" the Project. The Application documents also identify the compensation initiatives already delivered by construction of Stage 1.

(iii) Policy C2 specifically acknowledges that environmental offsetting/compensation are legitimate measures for addressing residual environmental effects which cannot be otherwise avoided, remedied or mitigated. As outlined, the Project includes important compensation measures including aquatic compensation for works in the Lee Stream Tributary and a Wetland Compensation Area for the limited instances where complete avoidance of a wetland was not practicable.

NPS-FM and NES-F

9.22. As outlined in the Substantive Application Report, the Project is consistent with the provisions of the NPS-FM and NES-F. The design of the Project, including that relating to roading, Contingency Zones, the transmission corridor, and spoil disposal areas, has prioritised the avoidance of wetlands and rivers/streams wherever practicable. In the limited instances where complete avoidance has not been practicable, impacts have been minimised or otherwise dealt with in accordance with the effects management hierarchy. In summary, Tararua has demonstrated that:[163]

(a) The activity (the Project) is necessary for the construction of specified infrastructure.[164]

163 Regulation 45 of the NES-FM (construction of specified infrastructure) also requires the Panel to be satisfied that: the specified infrastructure will provide significant national or regional benefits; there is a functional need for the specified infrastructure in that location; and the effects management hierarchy has been applied.

164 NPS-FM cl 3.22(1)(b)(i).

(b) There is a functional need for the relevant activities to occur in the relevant locations.[165]

(c) The effects of the activities are managed through applying the effects management hierarchy including by way of compensation.[166]

Part 2 RMA

9.23. The Substantive Application Report provides a fulsome assessment of the Project against Part 2 of the RMA. While, in accordance with the case law outlined above at paragraph 8.30-8.31, reference to Part 2 does not add much in the context of the Project given that the applicable planning framework has been prepared having regard to Part 2, in our submission reference to Part 2 simply confirms the appropriateness of the Project.[167]

9.24. In terms of s5, the Project will provide additional generation capacity to meet demand in an efficient and sustainable manner. As a result, the Project will enable both present and future communities to provide for their social, economic and cultural wellbeing and for their health and wellbeing, given the security of supply, range of efficiencies, and other positive benefits it will generate.

9.25. The Project appropriately addresses all relevant matters of national importance, and other matters, (ss6 and 7 of the RMA). It finds strong support from s7(i) and (j) which focus on *"the effects of climate change"* and *"the benefits to be derived from the use and development of renewable energy"* respectively.[168] Section 7(b) requires consideration of the efficient use and development of natural and physical resources. The energy in the wind is currently not optimally utilised as a resource at the Project Site, and to use that energy to produce electricity in a manner that does not deplete the resource nor

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165 NPS-FM cl 3.22(1)(b)(iii) (natural inland wetlands); and 3.24(1)(a) (rivers).

166 NPS-FM cl 3.22(1)(b)(iv) and 3.22(3) (natural inland wetlands); and 3.24(1)(b) 3.24(3) (rivers). The High Court (Te Rūnanga o Ngāti Whātua v Auckland Council [2024] NZHC 3794. See for example [298]-[300]) has confirmed that:
(a) While clause 3.22 (and Policy 6) of the NPS-FM generally require that the loss of extent of natural inland wetlands is avoided, for specified infrastructure clause 3.22 expressly provides a pathway for the management of effects from the loss of wetland extent by way of the effects management hierarchy. Clause 3.22 sets out a cascade of mechanisms to address effects by way of avoiding, minimising, remedying, offsetting, and compensating where practicable.
(b) A loss of wetland (or river) extent may potentially be offset by way of enhancement of wetland (or river) values elsewhere, depending on the context. A key consideration will be the relationship/connection between the loss of wetland or river extent and values and any offset or other effects management proposed. It is the function served by the wetland or river extent that should be the focus.

167 As outlined above, the FTAA proscribes consideration of s8 of the RMA as part of any Part 2 assessment.

168 As the Court recognised in *Genesis Power Limited v Franklin District Council* [2005] NZRMA 541 at [222]: *[the addition of ss7(i) and (j) to the RMA via 2004 amendments] is a clear recognition by Parliament of both the importance of the use and development of renewable energy and the need to address climate change, both of which are key elements in the proposed wind farm*".

emit pollutants is a highly efficient use of the wind resource.[169] Further, as noted in the *Genesis* decision, wind farms are consistent with s7(ba) as they supply electricity close to the point of demand, reducing transmission losses involved in the national high voltage network.[170] The Project is also an efficient use of resources in that the existing farming activities on the Project Site will be able to continue following the wind farm's construction.

9.26. We submit, therefore, that granting approvals for the Project – in accordance with appropriate conditions – will not merely promote, but in fact actively work to achieve sustainable management.

Discharges (RMA ss105 and 107)

9.27. The Application material comprehensively addresses all s105 matters; and confirms that discharges associated with the Project will not have the effects identified in s107.

Consideration of alternatives

9.28. As outlined above, the Application material demonstrates that:

(a) in every context where an assessment of alternatives is required (e.g. for discharges under s105 of the RMA), alternatives have been appropriately considered by Tararua and its expert team; and

(b) there are demonstrable justifications for the Project design, including the location of activities with respect to wetlands and the Lee Stream tributary, such that the requirements of the NPS-FM and NES-F with respect to "functional need" are satisfied.

9.29. We have outlined above that under the FTAA framework applying to the Project, there is no general requirement to consider alternatives, including alternative sites. Such a requirement in the context of a variation would be pointless. Even if the Panel were to take the view that a general consideration of alternatives is relevant under s104(1)(c) of the RMA or otherwise (which we do not accept), we consider that Tararua's assessment of alternatives for the Project is adequate to inform such consideration.

169 *Unison Networks v Hastings District Council* W058/06 at [74].
170 *Genesis Power Limited v Franklin District Council* [2005] NZRMA 541 at [222].

Consent conditions

9.30. Tararua, together with its expert advisors, has developed sets of proposed consent conditions that it considers will appropriately and effectively manage the Project's potential adverse effects. The conditions are lawful and appropriate, and suitably stringent in the context of a major energy/infrastructure project, recognising the requirement under the FTAA that conditions be no more onerous than necessary.[171]

Management plans

9.31. In terms of consent conditions relating to management plans, the Environment Court has stated that these are to set the "*outcomes, criteria and standards that management plans are to achieve".*[172] This principle was endorsed in the *Maitahi Decision*.[173] The management plan conditions proposed by Tararua have been drafted in accordance with the following key requirements for "fit for purpose" management plan conditions:[174]

(a) A requirement for the management plan to be prepared by suitably qualified personnel.

(b) A clear objective, a stated scope, and performance management requirements.

(c) Specification of processes for council certification and for amending a certified management plan.

(d) A requirement to comply with the certified management plan.

9.32. While there is no requirement to do so, comprehensive draft management plans have been provided with the Application. The proposed conditions require the plans presented for certification to be in general accordance with the draft management plans provided through the application. This further evidences the robustness of the

171 FTAA, s83.

172 W*aka Kotahi NZ Transport Agency v Manawatu-Whanganui Regional* Council [2020] NZEnvC 192 at [277]-[278]. In its Interim Decision, the Environment Court in *Summerset Villages (Lower Hutt) Ltd v Hutt City Council* [2020] NZEnvC 31 at [156], stated that: *"As a general principle it is important that the conditions of a consent set out the outcomes required and how these outcomes are to be achieved. Management plans provide a way to identify what steps are to be taken to ensure that clear, certain and enforceable outcomes contained in conditions of consent are achieved. They are not a substitute for conditions locking in the standards that are to be met to ensure environmental effects are kept within an acceptable level."*

173 At [698].

174 Refer to the decision of the Expert Consenting Panel for Te Ara Tupua - Ngā Ūranga Ki Pito–One - Shared Path under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (issued 5 February 2021) at [265] where these requirements were cited.

condition/management plan approach, and should give the Panel additional comfort regarding the management plan approach.[175]

Lapse period and duration

9.33. As outlined above, the FTAA provides that the Panel *may* specify in its decision the date on which the approval lapses.[176] Given the apparent drafting error in cl 26 of Sch 5(3) of the FTAA which provides that if no date is specified the approval lapses after it commences, an express lapse date of 5 years is sought for all new consents sought for the Project.[177]

9.34. Tararua is seeking the default 35-year duration provided for in s123B of the RMA (for renewable energy activities) for all new regional council and NES-F consents being sought. 35-year terms will provide long-term security of consents, providing appropriate certainty and support for the proposed renewable energy development. This aligns with national direction to accelerate the transition to renewable energy, promote investment in renewable infrastructure, and reduce regulatory barriers.

10. APPLICATION OF THE LEGAL FRAMEWORK TO THE PROJECT – CHANGE OR CANCELLATION OF CONDITIONS

10.1. As outlined above:

(a) Tararua is also seeking an approval to change or cancel conditions of the Existing Consent.

(b) The Panel may grant or decline the approval.

(c) Where new activities are proposed, for example, the BESS, substation and transmission line, new consents have been sought.

10.2. Much of the analysis in section 9 above applies to the approval sought to change or cancel conditions of the Existing Consent. Below we address key matters to the extent they are not covered above.

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175 In *Panuku Development Auckland Ltd v Auckland Council* [2018] NZEnvC 179 the Environment Court stated at [170]: *"The management plans are not the subject of certification by us. That is for council officers later. Our focus is on setting objectives through conditions that will be implemented by the plans. Nevertheless, we have been greatly assisted by the plans having been developed by the [applicant] to the extent that they have been already..."*

176 FTAA, cl 26 of Sch 5. This date must be no less than 2 years after the approval commences.

177 The Existing Consent which Tararua is applying to vary (land use consent RM1409) has already been given effect to.

10.3. In the context of the relevant legal framework outlined above, we submit:[178]

(a) With reference to the case law outlined in paragraphs 8.44-8.47, in the context of the Project it is permissible and appropriate for Tararua to apply for an approval to change or cancel consent conditions of the Existing Consent, as opposed to applying for an entirely fresh consent:[179]

(i) Tararua is not seeking to consent a new activity through the variation process.

(ii) The Existing Consent already contemplates and authorises a degree of movement of turbines and roading.

(iii) Overall, the scale of the proposed activity is a general *reduction* (from 100 turbines authorised under the Existing Consent to 56 total turbines proposed by the Project), not an increase.

(iv) Overall, the magnitude of effects of the Project is reduced compared to the already-consented layout, including as a result of the material reduction in turbine numbers proposed (from 100-56). The proposed increase in tip height remains modest and acceptable.

(v) Other wind farms have successfully advanced changes to the tip height of consented turbines through changes to consent conditions, including Kaiwera Downs Stage 2 Wind Farm which varied the tip height from 145m to 165m; Taumatatotara Wind Farm which increased its tip height from 121.5m to 180.5m; and Harapaki Wind Farm which increased the tip height from 125m and up to 145m.

(b) The application to change or cancel conditions of the Existing Consent is permissible under s42(6) of the FTAA because:

(i) The wider Application for the Project also seeks new resource consents.

(ii) The change or cancellation is clearly material to the implementation and delivery of the Project. The changes are necessary to enable the construction of larger and more efficient turbines, the use of which would not be possible under the Existing Consent conditions. Less efficient turbines

178 See FTAA, cl 23 of Sch 5.

179 *Body Corporate 97010 v Auckland City Council* [2000] NZRMA 202; and *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2022] NZCA 598.

contemplated by the Existing Consent are not readily available on the international market and today would represent an inefficient use of the significant wind resource.

(c) In accordance with s127(1) and (3) of the RMA, the adverse effects of the proposed change or cancellation to conditions of the Existing Consent are acceptable in the context of the applicable planning framework. The proposed changes will also have significant positive effects, as outlined above.

11. APPLICATION OF THE LEGAL FRAMEWORK TO THE PROJECT – WILDLIFE APPROVALS

11.1. As outlined above:

(a) Tararua is seeking several authorisations which would otherwise be applied for under the Wildlife Act 1953.

(b) The Panel may grant or decline the wildlife approval.

(c) If it grants the wildlife approval, the Panel may impose any conditions it considers necessary to manage the effects of the activity on protected wildlife.

11.2. In the context of the relevant legal framework outlined above, we submit:[180]

(a) For the reasons outline above, the Project is strongly aligned with the purpose of the FTAA.

(b) The Project, including the wildlife approvals sought, is consistent with the purpose of the Wildlife Act 1953, which is essentially the protection of wildlife.[181] The overall effect of the Project, including proposed wildlife approval conditions, is consistent with the protection of populations of wildlife and individual wildlife. Tararua will, including by complying with the relevant management plans and proposed wildlife approval conditions, take reasonable steps to manage any adverse effects of the lawful activity on individual wildlife.

(c) Overall, the Project's effects on the protected wildlife covered by the wildlife approvals sought (lizards and avifauna) are assessed as being acceptable in the

180 See FTAA, cl 5 of Sch 7.
181 Refer to the recent Wildlife Act amendments, detailed above.

context of the applicable legal and planning framework, including the Wildlife Act 1953.

(d) Tararua's proposed wildlife approval conditions will appropriately manage potential Project impacts on protected wildlife covered by the approval.

(e) All FTAA information and other requirements relating to the protected wildlife covered by the approval are addressed in the Substantive Application Report and technical assessments; and the Project is appropriate in this context.

12. APPLICATION OF THE LEGAL FRAMEWORK TO THE PROJECT – ARCHAEOLOGICAL AUTHORITY

12.1. As outlined above:

(a) One recorded archaeological site is expected to be affected by the Project, although the track today has little archaeological value. Tararua is seeking an archaeological authority – on a precautionary basis – covering any (unlikely) modification or destruction of unidentified archaeological sites within the Stage 2 Wind Farm Development Area as a result of construction works. It is also seeking the approval of Ms Kim Tatton of Clough and Associates as the person nominated to undertake an activity under the authority.[182]

(b) The Panel may grant or decline the archaeological authority.

(c) If it grants the archaeological authority, the Panel may impose any conditions.

12.2. In the context of the relevant legal framework outlined above, we submit:[183]

(a) For the reasons outline above, the Project, is strongly aligned with the purpose of the FTAA.

(b) All relevant matters under the FTAA and HNZPT Act have been addressed in the Substantive Application Report; and the Project is appropriate in the context of those matters. This is in a context where (other than the pole track) there are no known archaeological sites in the Stage 2 Wind Farm Development Area or Transmission Corridor – the archaeological authority is being sought on a

182 Pursuant to FTAA, cl 7 of Sch 8.
183 See FTAA, cl 4 of Sch 8.

precautionary basis only. Further, Ms Tatton is an expert of sufficient skill and competency to be approved as the person to undertake the activity.

(c) Tararua's proposed archaeological authority conditions are appropriate.

13. CONCLUSION

13.1. The nation urgently requires a significant increase in renewable energy. As a consented wind farm with an excellent wind resource, the Project Site is ideally suited to contribute to that national imperative.

13.2. Tararua has invested significant time and resources in advancing the Project, including the additional components not previously consented: the substation, BESS, and transmission line. Tararua has engaged with key stakeholders and other parties to ensure a well-considered application is presented.

13.3. Tararua considers that the Project represents a valuable opportunity to deliver significant benefits through facilitating the use of more modern and efficient turbines to more fully harness the quality wind resource. That opportunity ought not to be lost.

13.4. We submit that:

(a) The Project satisfies the requirements of the FTAA, including the relevant sections of the RMA, Wildlife Act 1953, and HNZPT Act that are "imported" by the FTAA.

(b) The Project is strongly aligned with the purpose of the of the FTAA.

(c) The Project receives strong support from the RMA planning framework and central government policy direction, which together reinforce the benefits of renewable energy development and the urgent need to increase renewable electricity generation to reduce emissions.

(d) The Substantive Application Report demonstrates that the Project has been carefully shaped by independent expert input, and that there are appropriate measures in place – including through proposed conditions and management plans – to ensure that any adverse impacts are appropriately managed.

(e) There can be no doubt that access to secure, sufficient, and reliable electricity is of critical importance to the social and economic wellbeing of New Zealanders.

13.5. Tararua therefore respectfully requests that the Panel grant all approvals sought, subject to the conditions proposed by Tararua.[184]

JR Welsh and SJ Mutch
Counsel for Tararua Wind Power Limited
31 October 2025

[184] Or as otherwise refined through the substantive application process.