

BEFORE THE FAST-TRACK EXPERT CONSENTING PANEL

IN THE MATTER

An application for approvals under section 42 of
the Fast-track Approvals Act 2024

AND

IN THE MATTER

Delmore, a project listed in Schedule 2 to the Fast-
track Approvals Act 2024

MEMORANDUM OF COUNSEL FOR THE APPLICANT WITH RESPONSE TO COMMENTS

5 July 2025

MAY IT PLEASE THE PANEL

1. INTRODUCTION

- 1.1 This memorandum addresses legal issues that arise in comments to the Panel under ss 53 and 54 of the Fast-track Approvals Act 2024 (“**FTAA**” or “**Act**”). It is structured as follows:
- a. The applicant’s response to the primary legal issue arising in comments to the panel, and a summary of its position on the application, are provided in **Section 2**.
 - b. The approvals sought are addressed in **Section 3**.
 - c. The statutory framework for deciding applications for approvals under the FTAA is addressed in **Section 4**.
 - d. Delmore’s regionally significant benefits and its purported adverse impacts are addressed in **Section 5**.
 - e. Other legal issues arising in comments to the Panel are addressed in **Section 6**.
 - f. An overview of the information provided by the applicant in response to comments to the Panel is provided in **Section 7**.
 - g. A brief conclusion is provided in **Section 8**.

2. RESPONSE TO PRIMARY LEGAL ISSUE AND SUMMARY OF POSITION

- 2.1 The purpose of the FTAA is:¹
- “to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.”
- 2.2 The term facilitate is not defined in the FTAA, but its ordinary meaning is to “make easy”,² and that is precisely what the FTAA does. And it does so in four ways.
- 2.3 First, it enables multiple approvals to be secured through one process. It is intended to provide a “one-stop-shop” for the approvals needed by large infrastructure and development projects.³
- 2.4 Second, it enables those approvals to be sought through an “expedited” and “more streamlined” process, with strict statutory timeframes, targeted public participation, and limited appeal rights.⁴
- 2.5 Third, it provides for applications for those approvals to be assessed against a decision-making framework that is different to that of the RMA. The FTAA framework

¹ FTAA, s 3

² Pocket Oxford Dictionary, 4th Ed, pg 283

³ Select Committee Final Report on the FTAA (18 October 2024 31-2). See for example pg 1 and 13. See also Proactive release cabinet minute and papers, 2 April 2025, from cabinet meeting 10 December 2024, pg 2 at point 2.

⁴ See Proactive release cabinet minute and papers, 2 April 2025, from cabinet meeting 10 December 2024, pg 2 at point 2

enables applications to seek approvals for activities that are classed as prohibited activities in RMA planning documents.⁵ It sets aside the concept of non-complying activities.⁶ It prohibits the panel from treating any RMA provisions that would require a decision-maker to decline an application for resource consent under the RMA as requiring it to decline the application.⁷ When deciding whether to grant approvals, it requires the greatest weight to be given to the purpose of the FTAA – to facilitate the significant benefits of the project – over and above the RMA’s purpose and principles and policy direction in applicable planning instruments.⁸ The same applies to the other approvals that can be sought using the fast-track process; the FTAA’s purpose is the most influential decision-making consideration.

- 2.6 Fourth, it includes a stringent test that must be met for an approval to be declined. Conflict with policy in a planning instrument is not enough. Adverse impacts must be so significant that they outweigh the significant regional benefits of the project, in a context where those benefits are afforded the greatest weight. The bar for decline is high.⁹
- 2.7 In short, the FTAA fundamentally changes the legal landscape for resource use and development in Aotearoa New Zealand. It will see projects delivered quickly and well ahead of when they may have been expected, and it is intended to.¹⁰
- 2.8 As the Court of Appeal in its recent judgement *Glenpanel Development Ltd v Expert Consenting Panel*¹¹ (“**Glenpanel**”) observed in context of the Covid-91 Recovery (Fast-track Consenting Act) 2020:¹²
- “They very purpose of the Act was to “fast track” projects that would otherwise take a longer time to be consented under a conventional RMA approach. We consider that the regime encompasses bringing forward projects that would otherwise likely be granted under the RMA in the future. The act not only fast-track the grant of consents because of a more streamlined application procedure, but it also contemplated bringing forward in time planned projects.”
- 2.9 That finding was made in context of a decision by a panel to decline an application for resource consent for housing in an area identified for urban development in the future, which the Court of Appeal found was made in error. That is the same factual

⁵ FTAA, s 42(5)(a)

⁶ FTAA, Sch 5 cl 17

⁷ FTAA, Sch 5 cl 17(3) and (4)

⁸ FTAA, Sch 15 cl 17

⁹ See Proactive release cabinet minute and papers, 2 April 2025, from cabinet meeting 10 December 2024, pg 2 at point 2. See also pg 10 which expressly notes that “Ministers have decided to amend the threshold for decline in the Bill to ensure that it creates a high bar...”

¹⁰ This is evident on the text of the statute itself, read in the context of the statute as a whole, including any purpose provisions (Legislation Act 2019, s 10). However, the legislative history of the FTAA also confirms this proposition, recourse to which is allowable for statutory interpretation purposes, particularly as a cross check to confirm textual, contextual, and purposive analysis (see, Glazebrook J, *Statutory interpretation in the Supreme Court*, from pg 7

¹¹ *Glenpanel Development Ltd v Expert Consenting Panel* [2025] NZCA 154.

¹² *Glenpanel* at para 43

context applying to this panel's decision. The Court of Appeal's findings are therefore directly relevant.

- 2.10 Further, that finding has even greater application under the FTAA, which puts the objective of facilitating the delivery of listed and referred projects at the forefront of decision-making. RMA considerations sit a tier below that goal.
- 2.11 The memorandum of counsel provided by the Council outside the statutory timeframe for comments ("**Council 2 July memo**") suggests that *Glenpanel* has limited application and that the Court's findings and *obiter* comments do not "shift the needle".¹³ The applicant disagrees.
- 2.12 The Court of Appeal's findings about the impact of the Supreme Court's decision in *Royal Forest & Bird Protection Society of New Zealand v NZTA*¹⁴ ("**East West Link**"), and *East West Link* itself, have direct application. The Supreme Court's findings also related to s 104 RMA¹⁵ and a s 104 assessment is required under clause 17 Schedule 5, as set out in Section 4 below. That assessment is then weighed against the FTAA's purpose. Further, *Glenpanel* provides Court of Appeal authority for the proposition that the intent behind fast-track legislation is to speed up and bring forward development. This is reflected right through the statutory framework, not just in the purpose section.
- 2.13 The Council family has failed to grasp this "shift". Across the Council family's memoranda there is repeated reference to Delmore being 'out of sequence' with the FDS's 2050 development date¹⁶ and to development ahead of a plan change to adjust the Future Urban Zoning ("**FUZ**").¹⁷ This is to the point that Watercare Services Limited ("**Watercare**") opposes Delmore on the basis that capacity at Army Bay after the stage 1 upgrade should be reserved for other FUZ land to be developed at some indeterminate time in the future.¹⁸
- 2.14 By including Delmore in Schedule 2 to the FTAA a decision has been made by Parliament that Delmore's regionally significant benefits mean the project should be delivered now, not in 2050, using a process that bypasses the need for a plan change and which is intended to make securing approvals easy. It removes the distinction between FUZ and 'live zoned land'. This is underscored by the fact that Delmore could have approvals to begin works by September this year and be on-site for this year's earthworks season. As a result, it should be considered on that basis.
- 2.15 The Council's position is completely at odds with that reality. It fails to recognise the transformational effect of the FTAA and is inconsistent with the findings of the Court of Appeal in *Glenpanel*.

¹³ Para 3.3

¹⁴ *Royal Forest & Bird Protection Society of New Zealand v NZTA* [2024] NZSC 26

¹⁵ Which is not acknowledged in the Council 2 July memo at paras 2.2(a) and 3.2(a)

¹⁶ Which itself fails to recognize that the FDS is made up of more than this indicative date as the revised AEE discusses.

¹⁷ See for example, Council comments strategic planning memo section B, Annexure 4, Annexure 5, Annexure 7

¹⁸ Council comments Annexure 7 conclusion

- 2.16 The applicant respectfully says that all approvals sought for Delmore should be granted.
- 2.17 There is unanimous support from the Council and Heritage New Zealand Pouhere Taonga (“**Heritage NZ**”) for grant of the archaeological authority approval.
- 2.18 For the RMA approvals sought, the applicant says that both the purpose of the FTAA and assessment under the RMA weigh in favour of their being granted. Delmore’s regionally significant benefits are multi-faceted, and very large in their extent. It has no adverse impacts sufficiently significant that they would allow the panel to decline the approvals. This includes the fact that Delmore is on FUZ land.

3. APPROVALS SOUGHT

- 3.1 The approvals sought under the FTAA are:¹⁹
- a. a resource consent that would otherwise be applied for under the RMA.
 - b. a change of a resource consent condition, in particular the conditions of consent notices applying to parts of the Site, that would otherwise be applied for under the RMA.
 - c. an archaeological authority otherwise required under the Heritage New Zealand Pouhere Taonga Act 2014.
- 3.2 The Council family’s comments focus on the approvals required under the RMA.²⁰
- 3.3 However, it is important not to lose sight of the unanimous support for grant of the archaeological authority approval.²¹
- 3.4 This is particularly so, because the approach taken to identifying and addressing potential impacts on heritage and archaeological values is a microcosm of the approach taken to identifying and addressing all the development’s potential impacts.
- 3.5 Careful on-site assessment was undertaken to identify where existing or potential archaeological sites were located. This assessment was so thorough that it revealed a new site, which has now been formally recorded.
- 3.6 Delmore was then designed with avoidance of those sites as the primary goal. Development is set back from the two identified sites and conditions are in place to ensure their protection. Works around waterways, where the potential for other undiscovered sites is highest, are minimised to only those works needed to provide for crossings to access the different parts of the Site. Where works are necessary, they are subject to both archaeological and cultural monitoring to ensure any discoveries are properly dealt with.

¹⁹ FTAA, s 42(4)(a), (b), (i)

²⁰ Legal memo, para 3.10

²¹ Council family comments, Annexure 26 section 8 and Annexure 27, para 8.3 and 10.2; Heritage New Zealand Pouhere Taonga s 51(2)(d) report (1 May 2025)

- 3.7 The information before the panel (and discussed in this memorandum) demonstrates that this same approach has been taken to managing all potential adverse impacts.

4. STATUTORY FRAMEWORK

- 4.1 Sections 13 and 14 of the assessment of effects (“AEE”) as lodged with the substantive application set out the framework for considering applications under the FTAA and then carefully assessed the Delmore project against that framework.
- 4.2 Some amendments have been made to that assessment considering the further material now available. The conclusion remains the same: all approvals should be granted.
- 4.3 However, considering the Council’s view that the RMA approvals should, and can, be declined, the FTAA framework for making decisions on RMA approvals is discussed in detail in this section. Aspects of this framework also apply to the archaeological approval sought, but it is not specifically addressed because there is no opposition to it being granted.

The decision

- 4.4 Section 81(1) says:

“A panel must, for each approval sought in a substantive application, decide whether to:

- a. grant the approval and set any conditions to be imposed on the approval; or
- b. decline the approval.”

Underlying framework for making decisions on all approvals

- 4.5 Section 81(2) sets out what the panel is required to do “for the purpose of making the decision” whether to grant or decline an approval, and setting conditions, under s 81(1).

Section 81(2)(a)

- 4.6 The panel “must consider” the information listed in s 81(2)(a). To assist, Barker & Associates’ has prepared its lodged AEE and its revised AEE considering that same information.

Section 81(2)(b)

- 4.7 The panel “must apply” the clauses in s 81(3) applying to the particular approval being sought. For resource consent approvals these are clauses 17-22 of Schedule 5.²² For changes to consent conditions this is clause 23 of Schedule 5.²³ For archaeological authorities these are clauses 4 and 5 of Schedule 7.

²² FTAA, s 81(3)(a)

²³ FTAA, s 81(3)(c)

Section 81(2)(c)

- 4.8 The panel “must comply” with s 82 FTAA if it is applicable. Section 82 is applicable to Delmore because there are Treaty settlements that apply to the Site.²⁴ However:
- a. None of the applicable Treaty settlements provide for consideration of a document in a way that changes the standard FTTA framework for deciding substantive applications.²⁵
 - b. Granting the approvals sought is consistent with the applicable Treaty settlements for the reasons set out in Section 11 of the revised AEE. This is not disputed by the Council.²⁶

Section 81(1)(d)

- 4.9 According to s 81(1)(d) the panel “must comply” with s 83 in setting conditions. Section 83 says:

“When exercising a discretion to set a condition under this Act, the panel must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of this Act that confers the discretion.”

- 4.10 As the Council has observed,²⁷ the provisions in Parts 6, 9, 10 RMA “that are relevant to setting conditions on a resource consent apply to the panel”, but “subject to all necessary modifications”.²⁸
- 4.11 The Council then says that s 83 FTAA does not alter the RMA approach to conditions because it already requires a “proportionate approach”.²⁹
- 4.12 The applicant does not agree.
- 4.13 A proportionate approach entails a balancing of the imposition on the consent holder with the effects on the environment. This is underpinned by the requirement under the RMA that a condition must be “directly connected” to an adverse effect or a rule or regulation.³⁰
- 4.14 In contrast, s 83 FTAA introduces an express limitation on the panel’s ability to impose conditions. All relevant RMA sections are “subject to” and modified by that limitation. There is no equivalent express limitation in the RMA.
- 4.15 The limitation in the FTAA is that a condition must not be more “onerous” (meaning “burdensome” or “causing of trouble”,³¹) than “necessary” (meaning “indispensable”³²). This is judged by reference to the reason for which it is set in

²⁴ FTAA, s 82(1)

²⁵ FTAA, s 82(2)

²⁶ FTAA, s 82(3) and s 7

²⁷ Council legal memo, para 3.42-3.43

²⁸ FTAA, clause 18 Schedule 5

²⁹ Council legal memo, para 3.48

³⁰ Section 108AA RMA

³¹ Pocket Oxford Dictionary, 4th Ed, pg 550 definition of onerous at pg 530 and definition of burdensome at pg 99

³² Pocket Oxford Dictionary, 4th Ed, pg 523

accordance with the provision of the FTAA that confers the discretion. That sets a high threshold: conditions that are more onerous than necessary are unlawful.

- 4.16 For resource consent approvals, the critical provisions conferring the discretion to impose conditions are s 81(1) which empowers the panel to grant an approval and set conditions, and clause 17 Schedule 5 which sets out how the panel must decide what conditions to impose.
- 4.17 Under clause 17(1) when considering conditions the panel “must take into account” the matters listed in subsection (1) (a)-(c), “giving the greatest weight to...the purpose of the Act” which “is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.”³³
- 4.18 Pulling the threads together, the panel must identify the reason it considers a consent condition is needed. For example, this might be to minimise sediment runoff. It must then assess the nature of the consent condition under consideration and ensure that it is no more onerous than necessary for addressing that issue, taking into account the fact that it is to give more weight to facilitating delivery of the development to which the approvals relate than to the RMA or RMA planning instruments.
- 4.19 This is a fundamentally different frame for deciding conditions than under the RMA. A “proportionate approach” sets a lower bar than s 83.
- 4.20 The application of this subsection to specific conditions raised by the Council is addressed in Section 6 below.

Section 81(1)(e)

- 4.21 According to s 81(1)(e) the panel may set conditions in accordance with s 84. Section 84 gives the panel discretion to set conditions to “recognise or protect” a Treaty settlement.
- 4.22 A suite of conditions has been proposed to recognise and protect the cultural and environmental values of concern to iwi with Treaty settlements applying to the Site. The relevant conditions are detailed in the applicant’s responses to Ngāti Manuhiri, Ngaati Whanaunga and Te Kawarau a Maki³⁴ and have been incorporated into the proposed conditions.

Section 81(f)

- 4.23 According to s 81(2)(f), for the purpose of deciding an approval the panel may decline the approval only in accordance with s 85.
- 4.24 The applicant and the Council agree that none of the situations where the panel must decline an approval apply to Delmore.³⁵
- 4.25 Section 85(3) says when the panel may decline an approval.

³³ FTAA, s 3 The purpose of the Act is discussed above in Section 2 and below in context of clause 17 Schedule 5

³⁴ Revised AEE Appendix 25 (these were part of the application documents as lodged)

³⁵ Council legal memo para 3.56

- 4.26 Section 85(3) is addressed in detail below under the heading “Power to decline an approval”.

Framework for making decisions on RMA approvals sought under the FTAA

- 4.1 As set out above the framework for deciding applications for RMA approvals sought under the FTAA is in clauses 17-23 of Schedule 5, with clause 17 being the most critical.
- 4.2 Based on the text of clause 23, its context, and the purpose of the FTAA,³⁶ the applicant considers that the decision-making framework in clause 17 also applies to decisions on applications to change conditions.
- 4.3 An approval to change a condition can only be sought where an approval for a resource consent is also sought and the change to the conditions is “material to the implementation or delivery of the project.”³⁷
- 4.4 Per clause 23(2)(a)(i), only the provisions in Part 6 RMA “that relate to decision making on a resource consent” apply to decisions on approvals for a change of conditions. The only difference from a standard resource consent application is that it is only the impacts of the change of conditions that are assessed.³⁸
- 4.5 The provisions in Part 6 RMA then apply to changes to conditions sought under the FTAA with “all necessary modifications”.³⁹ Given the above context, those modifications must include that the considerations in Part 6 RMA are taken into account alongside the purpose of the FTAA when deciding whether to grant the approval, with the latter being given the greatest weight.
- 4.6 If this were not the case, and an application for an approval to change a condition under the FTAA would be assessed against a different, more restrictive framework than approvals for resource consents.
- 4.7 That is not consistent with the wider context of the FTAA, which puts the FTAA’s purpose as the primary decision-making criterion for all approvals. Nor is it consistent with the purpose of the Act itself.
- 4.8 On that basis, the analysis below is considered to apply to all RMA approvals sought for Delmore.

Clause 17 Schedule 5

- 4.9 Clause 17(1) states that for the purposes of deciding an approval under s 81 that is a resource consent, including any conditions:

“the panel must take into account, giving the greatest weight to paragraph (a),-
(a) the purpose of this Act; and

³⁶ Legislation Act 1999, s 10

³⁷ FTAA, s 42(6)

³⁸ By virtue of s 127(3) RMA which applies to changes to conditions sought under the FTAA by Sch 5 cl 23(a)

³⁹ FTAA, Sch 5 cl 23(a)(ii)

- (b) the provisions of Parts 2, 3, 6, 8 to 10 of the Resource Management Act that direct decision making on an application for resource consent, (but excluding s 104D of that Act); and
- (c) the relevant provisions of any other legislation that directs decision making under the Resource Management Act 1991.”

The statutory direction to the panel

- 4.10 A direction to “take into account” identified matters requires a decision-maker to give genuine attention to each of the identified matters, weigh them, and give each matter appropriate weight given the circumstances.⁴⁰ In some instances a consideration may warrant considerable weight, in others moderate weight, and in others no weight.⁴¹
- 4.11 Under the FTAA, that weighting exercise is influenced by the statutory direction that “the greatest weight” is to be given to the purpose of the FTAA 2024. The balancing exercise is not an even one.
- 4.12 The Council’s legal memo says that clause 17(1) requires separate consideration of each of subsections (a)-(c) before those factors are weighed in accordance with the prescribed hierarchy. It further says that the “weight afforded to the purpose of the FTAA should not be such as to neutralise the other relevant decision-making criteria which stem from the RMA.”⁴²
- 4.13 The applicant agrees with the first proposition.⁴³ It disagrees with the second proposition.
- 4.14 In *Enterprise Miramar Peninsula Incorporated v Wellington City Council*⁴⁴ the Court of Appeal considered correct interpretation and application of the provision under which approvals were decided in the Housing Accords and Special Housing Area Act 2013 (“HASHAA”).⁴⁵ It found that the decision-maker was required as a first step to assess each of the matters listed in the decision-making provision individually. Then, as a second and separate step, the decision-maker had to weigh each of those matters, giving the greatest weight to the HASHAA’s purpose.
- 4.15 The Court’s statement that the purpose of the HASHAA could not be used to “neutralise” the other matters in the decision-making provision related to that finding. The purpose of the HASHA could not be relied on to exclude individual assessment of the other matters as a first step.⁴⁶ It was not made, as the Council suggests, in relation to the subsequent step of weighing those factors based on that initial, individual assessment.

⁴⁰ *Ye v Minister of Immigration* [2009] NZLR 596 (CA) and *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC)

⁴¹ *Bleakley* at [72], referred to in the Council’s legal memo at paras 3.17 and 3.20

⁴² Council legal memo para 3.29

⁴³ Based on *Enterprise Miramar Peninsula Incorporated v Wellington City Council* [2018] NZCA 541 at [52]-[53]

⁴⁴ *Enterprise Miramar Peninsula Incorporated v Wellington City Council* [2018] NZCA 541 [52]-[53], [59]

⁴⁵ The relevant section, s 34(1) HASHAA is reproduced in the Council legal memo para 3.25

⁴⁶ Exclude being the definition of neutralize: Pocket Oxford Dictionary, 4th Ed, pg 526

- 4.16 The suggestion that a panel under the FTAA cannot, weigh up the factors in clause 17 Schedule 5 then decide to give no weight to one of the listed factors is directly contrary to the scope afforded by the statutory direction “take into account” as discussed above at the start of this section.
- 4.17 The applicant is not suggesting that in this case no weight should be given to the applicable RMA provisions. Indeed, it considers that when the application is correctly assessed against those provisions, they support grant of the RMA approvals sought. However, it is important that the panel is correctly informed as to the scope of its decision-making power.

Clause 17(1)(a) – the purpose of the Act

- 4.18 The factor that is to be given the greatest weight when deciding an application for an RMA approval under the FTAA is the purpose of the FTAA.
- 4.19 The FTAA’s purpose has already been addressed in Section 2 of this memorandum. However, two further points are made at this juncture.
- 4.20 First, significant is not defined in the FTAA. RMA case law indicates that determining whether something is “significant” is a factual question based on informed judgement. It is not something that is necessary purely quantifiable but rather can have an element of relativity.⁴⁷
- 4.21 Similarly, what projects have the potential to have a “regionally or nationally significant benefit” is not defined in the FTAA. The Environment Court has recently found, in the context of a different instrument but with the same regionally significant benefits test, that determining if this threshold is met is also “context dependent”. “What constitutes a significant benefit may differ from one region to the next”.⁴⁸
- 4.22 Under the FTAA, this contextual assessment is guided by the matters in s 22(2) that the Minister may consider when deciding if a project has regionally or nationally significant benefits and can be referred to the fast-track process. This is the approach the applicant has adopted.⁴⁹
- 4.23 Second, by the time a substantive application for a project falls to be considered by the panel, the existence of significant regional benefits has already been established.
- 4.24 It is not, as the Council contends, available to the Council or the panel to decide that Delmore has no regionally significant benefits.⁵⁰

⁴⁷See generally *Friends of Shearer Swamp v West Coast RC* [2010] NZEnvC 345; *West Coast RC v Friends of Shearer Swamp* (2011) 16 ELRNZ 2 530 (HC)

⁴⁸ *CJ Industries Ltd v Tasman District Council* [2025] NZEnvC 213 at [286]-[287]. This decision related to an application to extract aggregate within an area alongside the Motuka River. The regionally significant benefit question arose in context of the National Policy Statement Highly Productive Land, and whether the proposal met the tests required to enable extraction on highly productive land. The Court found that it did. The proposals regionally significant benefits were an important in reaching that conclusion.

⁴⁹ This approach is supported by the commentary in the Select Committee Final Report on the FTAA (18 October 2024 31-2), which states that the matters listed in cl 17(3) (now s 22(2)) “lists the matters that would help guide applicants as to what may be considered when the significance of a project’s benefits is assessed” (pg 4)

⁵⁰ Cf. Council legal memo at para 3.32

- 4.25 The first criterion for referring a project to the FTAA process is that it “would have significant regional or national benefits”. If it would not have significant regional or national benefits a project cannot be referred to the FTAA process.⁵¹
- 4.26 In contrast, the panel’s focus is instead on “the extent of the project’s regional or national benefits.”⁵² Extent is not defined in the Act. Based on its plain meaning, the applicant says it refers to their “scope and degree”, not their existence.⁵³
- 4.27 If it were intended that the panel could find a project had no significant regional or national benefits, s 81(4) would use the same language as s 22. The panel would be directed to determine if the project “would have significant regional or national benefits”.
- 4.28 The projects listed in Schedule 2 to the FTAA are in essence the first projects referred to is the fast-track process. In doing so, a decision has been made by Parliament that those projects, including Delmore, would have regionally or nationally significant benefits. Otherwise, they would not have been listed.
- 4.29 The existence of these benefits is therefore the starting point for the Panel’s assessment. It must consider their extent (their scope and degree) but it cannot make a finding of no significant regional benefit.
- 4.30 Delmore’s regionally significant benefits are addressed in Section 5 below.

Clause 17(1)(b) – the RMA

- 4.31 Clause 17(1)(b) requires the panel to “take into account”:
- “the provisions of Parts 2, 3, 6, 8 to 10 of the Resource Management Act that direct decision making on an application for resource consent, (but excluding s 104D of that Act)”
- 4.32 Part 2 RMA sets out the RMA’s purpose and principles and comprises ss 5-8. Part 3 RMA sets out duties and restrictions under the RMA. Part 6 RMA relates to resource consents. Part 8 relates to designations and heritage orders. Part 9 relates to water conservation orders. Part 10 relates to subdivision and reclamation.
- 4.33 This direction requires the panel not just to take into account the text of an applicable provision, but to undertake and then take into account any assessment required by an applicable provision. The assessment required is that which would apply to a resource consent application under the RMA, with s 104 being the starting point. This is evident from the text of clause 17(1)(b) which directs the panel to take into provisions “that direct decision making on an application for resource consent”. It is also consistent with the findings of the Court of Appeal in *Glenpanel*.⁵⁴ The outcome

⁵¹ FTAA, ss 21(1), 21(3)(a), 22(1)

⁵² FTAA, s 81(4)

⁵³ Pocket Oxford Dictionary, 4th Ed, pg 281

⁵⁴ *Glenpanel* paras 31-47

of that assessment is then weighed against the other considerations in clause 17, with the greatest weight given to the FTAA's purpose.

4.34 The leading judgement on the assessment required by s 104 RMA is that of the Supreme Court in *East West Link*.⁵⁵ The Supreme Court's findings were not limited to s 104D RMA.

4.35 According to the Supreme Court majority when having regard to relevant provisions of national, regional, and district planning instruments under s 104 RMA:⁵⁶

"a fair appraisal of the objectives and policies read as a whole' is required. In other words, isolating and de-contextualising individual provisions in a manner that does not fairly reflect the broad intention of the drafters must be avoided

...attention must be paid to relevant objectives and policies both on their own terms and as they relate to one another in the overall policy statement or plan...

...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...Fact and context will be important to determining how tensions between policies will be resolved"

4.36 One pathway to grant of consent under the RMA therefore lies through correct interpretation and reconciliation of the applicable policy statements and plans "read as a whole".

4.37 However, even if a project is in tension with the provisions of applicable policy statements or plans, there is a second pathway for grant of consent for "a genuine on-the-merits exception".⁵⁷

4.38 In terms of considering genuine exceptions the Supreme Court said:⁵⁸

"[109]...a genuine, on-the-merits exception, by its nature, will not subvert a general policy, even a directive one. On the contrary, true exceptions can protect the integrity of the subject policy from the corrosive effect of anomalous or unintended outcomes. There is a fundamental difference between allowing consent authorities to routinely undermine important policy choices in the NZCPS (as rejected in *RJ Davidson*), and permitting true exceptions that will not subvert them. Of course, the more precise and sharp-edged the policy, the less room there will be for outcomes that can fairly be considered so anomalous or unintended that an exception is justified. Policies 19, 21—23 and 29 may be seen to fall into that kind of category. But Policy 11 does not.

[110] That is why the broad subject matter of Policy 11 admits of exceptions. A certain level of flexibility will assist in achieving its purpose and avoiding unintended outcomes at the margin that are inconsistent with Part 2 and the terms of Policy 11 itself. To put it another way, Policy 11 has a powerful shaping effect on all lower order decision-

⁵⁵ As identified by the Court of Appeal in *Glenpanel*

⁵⁶ *East West Link* at paras 79-80

⁵⁷ *East West Link* at [109]

⁵⁸ *East West Link* at [109]-[110]. Referred to by the Court of Appeal in *Glenpanel* at [36]

making, but ‘avoid’ does not exclude a margin for necessary exceptions where, in the factual context, relevant policies are not subverted and sustainable management clearly demands it.”

4.39 Whether a particular project is such an exception:

“[111]...requires an assessment of the whole proposal, including its benefits and adverse effects and its remedial or mitigatory aspects, bearing in mind that, as with any exception to the application of a strong policy, the case to be made out is a difficult one.”

- 4.40 The Council has not undertaken either assessment. It did not refer to or rely on either the *East West Link* Supreme Court or the *Glenpanel* Court of Appeal judgements in its substantive policy analysis. It did not undertake a fair appraisal of the applicable national, regional, and district plan provisions as a whole. Rather, its analysis of objectives and policies is narrowly focused on those relating to urban development in the FUZ and on the FDS.⁵⁹ This approach is the same as that adopted by the panel in *Glenpanel* which the Court of Appeal found was in error. Further, the FDS is only a document that would be had regard to under s 104(1)(c) RMA. The weight it is being given by the Council does not match the weight it is afforded by clause 17 FTAA.
- 4.41 This failing of the Council’s analysis is not fixed by the statement in the Council 2 July memo that the discussion in *Glenpanel* does not alter the Council’s analysis or findings because they are based on a number of identified adverse impacts “which remain regardless of how planning documents are interpreted.”⁶⁰
- 4.42 Adverse impacts are not determined in isolation. They are any matter considered by the panel “in complying with section 81(2) that weighs against granting an approval.”⁶¹ The purpose of the FTAA is not concerned with impacts, it is only concerned with benefits. So, of the matters the panel must comply with in s 81(2), it is analysis against the applicable planning instruments in accordance with s 104 RMA⁶², and of Treaty settlements (and related documents),⁶³ that determine if an impact identified in the information before the panel⁶⁴ is adverse. Those instruments set the frame for the environmental outcomes that are expected, the types of impacts that need to be managed, and how they are to be managed. It is therefore not possible to reach a reasonable conclusion on the adverse impacts of a project without undertaking those analyses.
- 4.43 In contrast to the Council’s assessment, the AEE lodged with the substantive application included a detailed assessment of all applicable objectives and policies, looking at them individually and then as a collective whole. It also considered Delmore against the text of the whole FDS, not just the 2050 date. On the basis of that assessment it concluded that “the resource consent and change to condition

⁵⁹ Council comments, Strategic and planning memo; Annexure 4; Annexure 5

⁶⁰ Para 3.2(ii)

⁶¹ FTAA, s 85(5)

⁶² Captured by s 85(2)(b)

⁶³ Captured by s 85(2)(c)

⁶⁴ Captured by s 85(2)(a)

approvals sought are consistent with all of the planning instruments to which regard must be had” with the exception of policy direction that urban development in FUZ land should not occur until a plan change has occurred.⁶⁵

- 4.44 With that policy direction in mind the AEE as lodged carefully considered the application against ss 5-7 RMA, concluding that granting the approvals for Delmore is consistent with sustainable management.⁶⁶
- 4.45 In light of the direction provided in *Glenpanel* about how the Supreme Court’s findings are to be applied in fast-track processes, the revised AEE has been amended to address the two pathways for approval set out in *East West Link*. However, the essence of its analysis, and its conclusion, remain the same. Correct assessment of the application against s 104 and Part 2 RMA confirms that granting approvals for Delmore is consistent with sustainable management.

Clause 17(1)(c)

- 4.46 Subpara (c) captures legislation that addresses the interface with the RMA. An example is s 6 of the Fisheries Act 1996. It also captures secondary legislation.⁶⁷
- 4.47 For completeness, the applicant has not identified any other primary legislation relevant to the RMA approvals being sought in this application under the RMA. Relevant secondary legislation has been addressed in the revised AEE in context of clause 17(1)(b).

Power to decline an approval

- 4.48 As set out in the Council’s legal memo, s 85 FTAA prescribes the circumstances where the panel “must” and “may” decline an approval.
- 4.49 Section 81(1) and (2) sets out when approvals must be declined. There is no dispute that none of the circumstances where decline is mandatory apply to any of the approvals sought for Delmore.⁶⁸
- 4.50 According to s 81(3), an approval may be declined if, in complying with s 81(2) (so in applying the decision-making framework described above), the panel forms the view that:

“(a) there are 1 or more adverse impacts in relation to the approval sought; and

(b) those adverse impacts are sufficiently significant to be out of proportion to the project’s regional or national benefits that the panel has considered under section 81(4) even after taking into account—

(i) any conditions that the panel may set in relation to those adverse impacts;
and

⁶⁵ AEE as lodged para 14.4.1.3

⁶⁶ AEE as lodged para 14.4.1.1

⁶⁷ Legislation Act 2019, s 5(1)

⁶⁸ Council legal memo para 3.56

(ii) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.”

- 4.51 An adverse impact means “any matter considered by the panel in complying with s 81(2) that weighs against granting the proposal”.⁶⁹
- 4.52 The panel may not form the view an adverse impact is sufficiently significant to be out of proportion to the project’s regional or national benefits “solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider”.⁷⁰
- 4.53 For RMA approvals sought under the FTAA, s 85 informs the weighting process required by clause 17.
- 4.54 In essence, the panel is sitting with a set of scales before it. Delmore’s regionally significant benefits sit on one side of the scale. The panel must then determine if RMA considerations and other relevant legislation sit alongside those regionally significant benefits, or whether they sit, in whole or in part, on the other side of the scale, as adverse impacts.
- 4.55 As it does this, the panel must ensure that the greatest weight is given to Delmore’s regionally significant benefits; they weigh more than other considerations.
- 4.56 The panel must then consider whether the adverse impacts side of the scale is so out of proportion that it outweighs the significant benefits side of the scale. In considering this the panel must remember that the scales cannot be tipped in favour of decline solely because of an inconsistency with a provision in the RMA or a planning instrument.
- 4.57 The AEE has undertaken this weighing exercise, and it is further addressed in Section 5 below. In summary, the applicant says the scales weigh heavily in favour of granting the RMA approvals sought, with both the project’s regionally significant benefits, and assessment under the RMA, sitting on the same side. The weighting that can occur under s 85(3) does not even arise.

5. REGIONALLY SIGNIFICANT BENEFITS AND ADVERSE IMPACTS

Regionally significant benefits

- 5.1 The starting point is that Delmore will have regionally significant benefits.
- 5.2 The suite of information provided by the applicant demonstrates that the benefits fall into seven groups (which align with the criteria in s 22 FTAA) and respond directly to identified needs or important long-term outcomes for the region. The groups represent the scope of the benefits Demore provides, and their impact represents the degree of the benefits it provides.

⁶⁹ FTAA, s 85(5)

⁷⁰ FTAA, s 85(4)

- 5.3 Delmore’s regionally significant benefits are set out in detail (with reference to the relevant technical information) in the revised AEE. In summary, Delmore will provide regionally significant benefits through:
- a. paying for and constructing the most difficult part of the NOR6 road, which forms part of AT’s and NZTA’s Northern Project road network, and is therefore a regionally significant piece of infrastructure.⁷¹ The roads captured by the Northern Project are needed to support growth within north Auckland, an area that “will make a significant contribution to the future growth of Auckland’s population”.⁷² The Northern Project will “collectively provide an efficient, resilient, and reliable multi-modal transport network”.⁷³ The Northern Project cannot achieve its purpose without all its parts, and the NOR 6 road is a critical part of connecting all development on the eastern side of SH1.⁷⁴
 - b. increasing the supply of housing in Auckland, and in a part of Auckland where demand is notably elevated from the rest of the region.^{75, 76}
 - c. addressing housing needs in Auckland by providing homes, at an affordable price point compared with the average sale price in the Hibiscus Coast.^{77, 78}
 - d. helping to address the significant environmental issue of population decline within the region through providing housing at an affordable price point in an area where demand is high, and close to employment centres like Albany.^{79, 80}
 - e. ensuring that in completing the circle of development within Upper Orewa Delmore contributes to a well-functioning urban environment in a way that aligns with its physical and geographical context as the outer most point of Auckland’s urban environment.^{81, 82}
 - f. providing a significant economic benefit through generating a notable number of full time equivalent jobs and contributing a significant figure to the construction sectors GDP,⁸³ which ultimately also supports primary industry GDP.^{84, 85}

⁷¹ FTAA, s 22(2)(a)(ii)

⁷² Refer to Appendix 51.2 and 51.4 to the revised AEE

⁷³ NOR 6 Application form section 5

⁷⁴ NOR 6 Application form section 3, 5, 7

⁷⁵ FTAA, s 22(2)(a)(iii)

⁷⁶ Refer to Appendix 53.1 and 53.2 to the revised AEE

⁷⁷ FTAA, s 22(2)(a)(iii)

⁷⁸ Refer to Appendix 53.1 and 53.2 to the revised AEE

⁷⁹ FTAA, s 22(2)(a)(ix)

⁸⁰ Refer to Appendix 53.1 and 53.2 to the revised AEE

⁸¹ FTAA, s 22(2)(a)(iii).

⁸² Refer to Appendix 47.1 and 47.2 to the revised AEE

⁸³ FTAA, s 22(2)(a)(iv)

⁸⁴ FTAA, s 22(2)(a)(v)

⁸⁵ Refer to Appendix 53.1 and 53.2 to the revised AEE

- g. also providing a significant economic benefit through more efficient cost recovery of planned infrastructure upgrades. This is estimated at \$123m.⁸⁶
 - h. treating the native vegetation and waterways within the Site as assets not constraints and focusing development around protecting and enhancing these spaces. This mindset has meant Delmore has been designed to include a total of approximately 55 hectares of native vegetation across the site (existing plus newly planted), which is intended to return vegetated areas back to the original WS11 ecosystem and provide connectivity with surrounding identified SEA-T's and the Nukumea Reserve. It has also been designed to result in a net gain in wetland extent. Within the Auckland region, both the WS11 ecosystem and wetlands are generally degraded and reduced from their original extent. The combination of these factors turns urban development of the Site into a significant win for the natural environment and makes an important contribution to addressing the significant environmental issue of indigenous biodiversity loss.^{87, 88}
- 5.4 The response to the comments provided by the applicant also demonstrates that these benefits are not diminished for the reasons contended by the Council, let alone reduced to zero.⁸⁹
- 5.5 For reference the applicant's response to the Council's comments about:
- a. the scale of housing, cost-benefit analysis, greenfield development, and GDP are provided in Appendix 53.1 and 53.2 to the revised AEE.
 - b. the NOR 6 road is provided in Appendix 51.2 and 51.4 to the revised AEE.
 - c. ecological benefits and Delmore's contribution to addressing the regionally significant issue of indigenous biodiversity loss are provided in Appendix 42.2 to the revised AEE.
 - d. a well-functioning urban environment are provided in Appendix 47 to the revised AEE.
- 5.6 The upshot is that the extent of Delmore's regionally significant benefits is great. These benefits must be given the most weight in deciding whether to grant the approvals for Delmore, and they weigh heavily.
- 5.7 One of the primary drivers behind the FTAA was to address the concern that insufficient value was being placed on the benefits of a project by local authority decision-makers.⁹⁰ The Council's approach to this project is a case in point.

⁸⁶ Refer to Appendix 53.1 and 53.2 to the revised AEE

⁸⁷ FTAA, s 22(2)(a)(ix)

⁸⁸ Refer to Appendix 53.2 to the revised AEE

⁸⁹ Council strategic and planning memorandum at para 247

⁹⁰ Select Committee, final report, 18 October 2024 31-2 pg 1; Supplementary analysis report, 29 February 2024 pg 3, 10-11

Adverse impacts

- 5.8 The Council has identified 11 adverse impacts it says are both individually, and collectively, sufficiently significant to outweigh Delmore's regionally significant benefits and support decline of the RMA approvals sought.⁹¹
- 5.9 The information before the panel demonstrates that these adverse impacts do not arise:

1. *Purported adverse impact – no/inadequate proposal for water supply servicing.*

The capacity analysis prepared by McKenzie & Co and provided in Appendix 45 to the revised AEE demonstrates that there is capacity within the existing water supply network to service Delmore along with existing connections, consented but not yet connected residential development, and the neighbouring Milldale fast-track project.

The Council family's assertion to the contrary is driven by its view that Delmore is "out of sequence" and so should not be approved. It is not based on the actual capacity within the water supply network.⁹² This is really just another version of the Council's FUZ argument, not a separate adverse impact.

2. *Purported adverse impact – no viable wastewater solution.*

The capacity analysis prepared by McKenzie & Co also demonstrates that there is residual capacity at Army Bay now for approximately 3000 connections. As set out in Section 2, the FTAA removes the distinction between FUZ and live-zoned land in respect of the Site. As a result, its homes should be able to access this capacity if it remains when a connection is sought. Second, McKenzie & Co's analysis demonstrates that there is capacity at Army Bay with the stage 1 upgrade to service Delmore along with existing connections, consented but not yet connected residential development, and the neighbouring Milldale fast-track project. Again, its homes should be able to access this capacity. Watercare's inference that it will not provide connections to Delmore because it is "out of sequence" and on FUZ land, even when capacity is practically available, is entirely unreasonable and directly contrary to Parliament's intent that Delmore's homes should be delivered now.

If there is a period before the Army Bay stage 1 upgrade where there is genuinely no capacity at Army Bay, then wastewater will be managed on-Site in accordance with a detailed and carefully planned wastewater strategy. This is described in the revised AEE and based on the technical assessments in Appendix 46 to the revised AEE.

3. *Purported adverse effect – design and metrics of the neighbourhood parks*

⁹¹ Council family legal memo para 4.3; Council family strategic and policy memo para 249

⁹² Noting that no such assessment has been provided by Watercare or the wider Council family

As explained in Appendices 48.3 and 44.1 to the revised AEE a neighbourhood park is proposed for both Stage 1 and Stage 2. Both meet the key neighbourhood park size metric of 3,000m². The Stage 1 park meets all other design metrics. Because of the sloped topography of the entire Stage 2 area the Stage 2 park has some 1:3 slopes, but approximately 1700m² provides flat open space and the sloped areas are planted to increase amenity. These parks also need to be viewed in context of the entire development, which includes extensive green space with walking connections proposed.

Against that background, there is no basis for concluded that Delmore's parks will "have adverse effects on the wider and regional open space provision and future communities open space needs". That statement is hyperbolic and not supported by the information before the panel.

4. *Purported adverse impact – delivery and alignment of the NOR6 Road*

The analysis in Appendix 51.4 to the revised AEE, demonstrates that the applicant's realignment reduces the extent to which the road encroaches on the native vegetation to south of the Site and reduces the overall cost of this portion of the NOR6 road. There is therefore no basis for concluding ecological and delivery cost impacts are adverse.

Implementing Delmore would see the most challenging part of the NOR6 road delivered and paid for, and with an alignment that reduces its environmental footprint. The alignment has been prepared so that it marries up precisely with the connection points to the east and south. The connection point to the east is already required to be delivered by a different developer, and to the south aligns with the existing road network.

Given the above, it is unclear how the Council family has reached the view that delivering the part of the NOR6 road within the Site has no regional benefit and is in fact an adverse impact.

5. *Purported adverse impact – inadequate provision of collector roads, road hierarchy, and upgrades to road network*

The applicant is delivering the road network upgrades Commute Ltd has identified as being required to accommodate the Delmore development. The Council's adverse impact table ignores this point.

There are no adverse impacts arising from exclusion of collector roads. The memorandum in response to comments prepared jointly by Commute Ltd, Terra Studios, Barker & Associates' Urban Design expert, and McKenzie & Co sets out the multiple engineering and design reasons why collector roads are not required (Appendix 47.2 to the revised AEE). The internal road network will practically function as a tiered system, and provide safe connections around the Site, while avoiding the adverse impacts the collector road infrastructure would have on the development, its housing numbers, and its amenity.

6. *Purported adverse impact – high car dependency and fragmented urban form*

As explained in the response to comments provided by Barker & Associates' Urban Design expert (Appendix 47.1 and 47.2), a level of car dependency is expected when dealing with the outer edge of the urban environment, at least in the short term. Connectivity, urban form, and a well-functioning urban environment must be considered in that context. When correctly viewed in that way, some level of car dependency is a reality of Delmore's context within Auckland's wider urban environment, not an adverse impact. The connectivity analysis in (Appendix 47.2) shows the development is close enough to services and amenities to encourage residents to cycle or walk, and there are notable employment hubs close. The response to comments provided by Commute Ltd (Appendix 51.2) sets out the other current and future transport options available to residents, from walking, to cycling, to bus.

In terms of the assertion that the development results in "fragmented urban form", at its heart, the urban form of the development is driven by the terrestrial and freshwater ecological values of the Site. It has been designed to avoid natural areas as far as practicable, and then provides for enhancement of these values. The consequence of this is that Delmore has pockets of development with native green space in between and connecting them. With respect, the Council's view that this represents "fragmented urban form" is essentially classifying these natural areas as a burden and fails to recognise the urban design benefits of an urban environment that is integrated with nature.

7. *Purported adverse impact – ecological impacts*

As just stated, the urban form of the development is driven by the terrestrial and freshwater ecological values of the Site. On completion the development will include approximately 55ha of native vegetation, the benefits of which are set out in Appendix 42.2 to the revised AEE. A comprehensive suite of measures is in place to minimise any impacts on native vegetation and fauna during construction, including pre-construction surveys, translocation, and ongoing management. These measures, and an overall assessment of the ecological impacts and benefits of the development are provided in the Ecological Assessment appended to the application as lodged (Appendix 4), and the response to comments from Viridis Consultants in Appendix 42.2. The upshot is that the development results in regionally significant ecological benefits, not adverse ecological impacts so significant that they support decline of the approvals sought.

8. *Purported adverse impact – sedimentation effects*

The Council's strategic and planning memo says that the sedimental effects of the project are sufficiently significant to outweigh any regional benefits unless

an Adaptive Management Plan (“AMP”) is adopted. The Council’s earthworks⁹³ memo does not support that statement. In section 4.8 it concludes:

“An assessment of the technical aspects of the earthworks and sediment control methodology has been undertaken and provided the earthworks are completed in accordance with the application documents, all supporting information, and on any additional recommendations as noted above, I concur with the applicant’s assessment and consider that the potential effects associated with sediment discharge will be appropriately managed.”

An AMP is proposed not because “adverse impacts related to earthworks (sedimentation) are significant without an AMP”.⁹⁴ It is proposed in response to perceived residual risk arising from the extent of the earthworks.⁹⁵ The applicant does not consider a condition requiring an AMP should be imposed. This is addressed in Section 6 below.

9. *Purported adverse impact – adequacy of a structure plan*

The Council’s assertion that Delmore has not been designed in an integrated way with other surrounding development and FUZ land is wrong. The Architectural Drawings context pack (Appendix 15 to the application as lodged) shows the starting point for design. Its plans identify all surrounding development. They show key roads, connection routes, and services. The strategic context of the Site was assessed by Barker & Associates Urban Design expert (Appendix 27 to the application as lodged), and recommendations to achieve an integrated urban form were adopted. Prior to lodging the substantive application, the applicant had undertaken the same analysis that would be undertaken in an ordinary plan change context, alongside the detail a resource consent application requires.

In response to the comments to the panel the applicant has amended the master-plan to provide further connections to neighbouring sites as sought by the Council, to add a second neighbourhood park, and to add a small commercial area. It has also prepared a structure plan (with supporting written analysis) to ensure that its design ethos (as described above) is clear. This is provided in Appendix 47.1 to the revised AEE.

10. *Purported adverse impact – impact on planned investment and infrastructure provisions*

The information provided by the applicant demonstrates that Delmore can be serviced by existing and already planned infrastructure upgrades along with existing connections, exiting residential consents, and Milldale’s fast-track development (refer to Appendix 45 to the revised AEE). Any upgrades to the road network required to service the development are either being provided as part of the application or are already required to be provided by other

⁹³ Annexure 12 to the Council family’s comments

⁹⁴ Council strategic and planning memo par 249 table point 8

⁹⁵ Annexure 12 at section 4.3 last para

developers (refer to Appendix 28 and Appendix 51.2). As a result, the Council family is not facing additional investment requirements now and the jurisprudence referred to by the Council regarding lack of necessary infrastructure and infrastructure investment is not applicable.⁹⁶ Indeed, to the contrary, “the proposal would result in more efficient cost recovery from existing infrastructure, and would reduce the timeframe for cost-recovery, through additional DC payments and lower interest payments.”⁹⁷ The cost-recovery efficiencies are detailed by Mr Thompson in his memorandum in response to the Council’s comments.⁹⁸ His conclusion is that Delmore actually results in a significant economic benefit from more efficient cost recovery.

In addition, as Mr Thompson explains in his response (Appendix 53.2), the Council appears to be taking an approach to assessing infrastructure capacity and constraints that sees the quantity of land available for development exactly match the infrastructure capacity, in terms of dwelling yield and capacity. However:⁹⁹

“in practise only a small proportion of the capacity is realised in any given 10 year period, reflecting the inherent inefficiencies in the property sector, and suggesting that the optimal amount of land zoned should reflect several multiples of the infrastructure capacity, to enable it to be utilised efficiently (i.e. a buffer that accounts for the typical issues that developers face in supplying new dwellings to the market over this time period).”

In a similar vein, Mr Thompson then explains that:

“An apparent principle the FDS relies upon therefore, relating to the spatial distribution of growth, is that it is most efficient for growth to occur where there is infrastructure capacity. This principle is economically efficient as it fully utilises existing capacity which reduces overall cost. An important implication is that any location with unutilised infrastructure capacity should be enabled for growth, subject to their being no adverse effects, whether it is infill or greenfield.”

As noted, the analyses prepared by McKenzie & Co show there is infrastructure capacity to service Delmore.¹⁰⁰

Consequently, the applicant’s position is that it is more efficient and effective for infrastructure funding and investment to facilitate the Delmore development.

11. *Purported adverse impact – uncertainty of infrastructure*

This final purported adverse impact is essentially a conglomeration of those that proceed it. It is therefore rejected by the applicant as an adverse impact for the reasons above.

⁹⁶ Council legal memo at para 3.76-3.83

⁹⁷ Appendix 53.2 to the revised AEE pg 7

⁹⁸ Appendix 53.2 to the revised AEE pg 7-8

⁹⁹ Appendix 53.2 to the revised AEE pg 3

¹⁰⁰ Appendix 45 revised AEE

Outcome

- 5.10 The applicant's position is that there are no adverse impacts that come close to being "sufficiently significant to be out of proportion to the project's...regional benefits" that they merit decline of the RMA approvals.

6. OTHER LEGAL ISSUES ARISING IN COMMENTS

Urban development of the site ahead of a plan change to rezone the site is inconsistent with the findings of the High Court in *Matvin Group Ltd v Auckland Council*¹⁰¹

- 6.1 *Matvin* was decided prior to issue of *East West Link*. Consequently, it adopted the *King Salmon*¹⁰² approach to interpreting plan provisions, and not the more nuanced *East West Link* approach. This also meant it did not turn its mind to the potential for there to be a genuine exception to directive provisions even if there is no pathway provided through other provisions in the plan, to promote and not subvert sustainable management. *Matvin* is therefore of limited, if any, assistance when assessing Delmore.

Assessing costs and benefits under the FTAA

- 6.2 The Council's economist says that an exceedingly detailed economic cost benefit analysis of the project is required, "to systematically evaluate the trade-offs inherent to the proposal...to determine whether the Proposed Development results in a net welfare gain or loss to society".¹⁰³ The surrounding commentary indicates that what the Council expects is in essence a s 32 RMA analysis and it suggests this assessment should test the use of the Site for urban development generally, and for the project specifically.¹⁰⁴
- 6.3 This is not what the FTAA requires.
- 6.4 First, as Mr Thompson explains, the costs and benefits of urbanisation of the Site have already been weighed as part of the Auckland Unitary Plan process. The conclusion was that the benefits outweighed the costs which is reflected in the FUZ that applies. The FTAA process does not provide an opportunity to revisit that determination.
- 6.5 Second, the FTAA does not include an express requirement to undertake a cost benefit analysis. There is no equivalent provision to s 32 RMA. And s 32 RMA is not one of the RMA provisions that the panel must assess when deciding the application in accordance with clause 17 Schedule 5.¹⁰⁵ The FTAA therefore does not impose a requirement to undertake a s 32 or s 32-equivalent analysis of a project's costs and benefits.

¹⁰¹ *Matvin Group Ltd v Auckland Council* [2023] NZHC 2481

¹⁰² *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2024] NZSC 38

¹⁰³ Annexure 2 to the Council's comments

¹⁰⁴ Refer to Appendix 53.2 and 53.4 for relevant comments and Mr Thompson's explanation of what is being requested

¹⁰⁵ Clause 17(1)(b) does not refer to Part 4 RMA where s 32 RMA is located

- 6.6 The FTAA requires a more straightforward process of identifying and then weighing up a project's regionally significant benefits and its adverse impacts.¹⁰⁶ This is consistent with the purpose of the FTAA to facilitate – or speed up – development.¹⁰⁷
- 6.7 Regionally significant benefits can include economic benefits. In fact, this is expressly contemplated by the criteria the Minister must consider when deciding if a project should be referred to the fast-track process.¹⁰⁸ The focus is on the extent benefits.¹⁰⁹ This must relate to the extent (meaning scope and degree)¹¹⁰ of the benefits themselves, not the benefits that remain after alleged 'costs' are subtracted. The alternative interpretation would enable costs to be counted twice; once in determining the benefits and once in identifying the adverse impacts. This is inconsistent with the scheme of the Act which attributes, and expressly requires decision-makers to attribute, greater weight to the benefits of a project
- 6.8 Identified adverse impacts could also include economic costs. The costs, along with any other adverse impacts, fall to be weighed on the scale against the identified benefits.
- 6.9 In summary, it is evident from the text, context, and purpose of the FTAA that it requires a much simpler, more straightforward analysis of benefits and impacts/costs, than the Council contends. This applies to assessment of economic benefits and impacts/cost, just as it does to benefits and impacts/costs associated with other disciplines.

Alignment of the NOR6 road

- 6.10 The Council family has raised concerns about the alignment of the NOR6 road within the site, and in particular "realignment" from that identified by AT.
- 6.11 A technical response to these has been provided by McKenzie & Co (Appendix 51.4) which is addressed above in Section 5.
- 6.12 However, it is important to understand that the AT alignment referred to by the Council family is that shown in the concept plan provided in Schedule 1 to the designation.¹¹¹ The final design of the NOR6 road is only required to be "in general accordance with" the concept plan.¹¹² It is not required to adhere to it.
- 6.13 Despite this flexibility, Vineway Ltd lodged a submission on NOR6 seeking that the concept plan be amended to reflect the alternative alignment it had identified based on detailed analysis of the Site. That alignment was the same as the alignment put

¹⁰⁶ FTAA, s 85

¹⁰⁷ As Mr Thompson explains, the type of cost benefit analysis the Council says is required is most likely not able to be done by a private entity, let alone be quick

¹⁰⁸ FTAA, s 22

¹⁰⁹ FTAA, s 82(4)

¹¹⁰ As discussed above in section 4

¹¹¹ Condition 1, AT decisions version (the notified version had the same text)

¹¹² Ibid

forward in this application. This was done by Vineway Ltd to avoid the precise situation it now faces.

- 6.14 It presented evidence and legal submissions at the hearing on NOR6 in support of this change.
- 6.15 In its evidence in reply, AT stated that Vineway Ltd's realignment shows "a feasible integrated arrangement" and acknowledged that many of its input parameters were similar to the concept design.¹¹³ It also states that "the concept design is subject to future detailed design...there is flexibility in the conditions to consider alternative concept designs in future and implement the alternative concept design proposed by Vineway."¹¹⁴
- 6.16 Against that background, and the acknowledged flexibility the concept plan provides, the panel did not recommend changes to the concept plan. AT's decision similarly did not change the concept plan.
- 6.17 Vineway Ltd did not appeal that decision based on the evidence presented by AT at hearing indicating that the concept plan was indicative and Vineway Ltd's revised alignment was generally acceptable. If AT had taken the position at the NOR6 hearing that it is now taking, it is reasonable to assume Vineway Ltd may have made a different decision in that regard. AT's apparent change in position has therefore significantly prejudiced Vineway Ltd. AT's position is contrary to its own evidence on NOR6 and the text of condition 1 of the designation. The weight attributed to AT's comments should reflect that context.

Conditions of consent

Certification

- 6.18 The Council says that conditions providing that if the Council has not certified a management plan within a specified period, the plan is deemed to be certified, are unlawful. This view is based on Environment Court, RMA jurisprudence.¹¹⁵
- 6.19 The applicant disagrees with the Council.
- 6.20 Although the RMA provisions relating to conditions apply under the FTAA, they apply "with all necessary modifications" within a framework that requires the panel to put the purpose of the FTAA first, and which expressly requires that conditions are not more onerous than necessary to address the reason for which they are set.
- 6.21 The reason conditions providing for certification are provided is to enable Council oversight of content. Providing the Council with an indeterminate period of time to undertake that exercise is contrary to the purpose of speeding up delivery of the project. It is also not necessary to address the reason for which certification conditions are set.

¹¹³ Rebuttal evidence Barrientos paras 4.10-4.16

¹¹⁴ Rebuttal Bunting paras 5.3-5.5

¹¹⁵ Council legal memo paras 3.91-3.92

- 6.22 In contrast, enabling the applicant to treat the management plans as certified after a specified period ensures delivery of the project is not unreasonably delayed and provides the Council with opportunity for oversight and input.

AMP

- 6.23 The Council says that an earthworks AMP should be required as a condition of consent.
- 6.24 The applicant disagrees.
- 6.25 For the reasons set out in the memorandum prepared by McKenzie and Co in Appendix 49.1 requiring an earthworks AMP is more onerous than necessary to manage sediment discharge during construction.
- 6.26 On the Council's own assessment, the erosion and sediment control measures proposed by the applicant are appropriate and the AMP is just to manage residual risk. Consequently, in seeking this condition the Council is effectively adopted a 'no risk' approach. The RMA is not a 'no risk' statute, and the FTAA is even less so. The proposed AMP condition is more onerous than necessary to achieve the reason for its imposition and is contrary to s 83 FTAA.

Resident's Society

- 6.27 Several Council specialists have highlighted the need for a Resident's Society or equivalent to have responsibility for the areas of native vegetation on the Site. This is considered necessary to facilitate simpler monitoring and enforcement.
- 6.28 The applicant's proposed conditions provide for this, and the specific organisational, ownership, and management structures proposed have been prepared with input from specialist property law firm Alexander Dorrington.

Wainui Road and Upper Orewa Road intersection

- 6.29 AT says a condition should be imposed requiring the applicant to upgrade the Wainui Road and Upper Orewa Road intersection.
- 6.30 The applicant does not agree to this condition.
- 6.31 As explained in the response memorandum prepared by Commute Ltd in Appendix 51.2, this intersection is already falling short of required operational standards and requires an upgrade. As a result, AT's proposed condition is not "directly connected" to the adverse effects of Delmore on the traffic environment (or any of the other matters in s 108AA(1) RMA) and cannot be imposed.¹¹⁶

Watercare's ability to decline to accept vesting of assets / connections

- 6.32 In its comments to the panel, Watercare says that because providing water supply and wastewater connections to Delmore might have the effect of "precluding development of the existing live zoned areas and sequenced growth" it "may refuse

¹¹⁶ Per clause 18 Schedule 5 FTAA and s 108AA(1)

water and wastewater connections for the Delmore project in accordance with its policies and under the Water Supply and Wastewater Bylaw 2015” (“**Bylaw**”) even if its application is granted.¹¹⁷

- 6.33 Watercare has discretion whether to grant connections, but that discretion must be exercised in accordance with the terms of the Bylaw. Its discretion is not unlimited.
- 6.34 Clauses (5) and (6) set out the specific circumstances where Watercare may refuse an application for approval to connection it one of its networks. Those relevant in this case given the matters raised by Watercare are:

“(5) Watercare may refuse an application for approval to connect to a network where:

...(c) in Watercare’s reasonable opinion, there is insufficient capacity in the network to accommodate the connection; or

(d) in Watercare’s reasonable opinion, the connection could compromise its ability to maintain levels of service in relation to the water supply or wastewater network; or

...

(6) Without limiting (5), Watercare may refuse approval to connect to a network work where:

(a) in the case of the water supply network, connection may detrimentally affect its ability to supply water at the volume and / or pressure required for firefighting;

(b) in the case of the wastewater network, connection would or may give rise to wastewater overflows.”

- 6.35 When these clauses are considered alongside the information before the panel, it is evident that none of the circumstances they describe apply to Delmore.
- 6.36 In relation to clause 5(c), the analyses prepared by McKenzie & Co confirm¹¹⁸ that there is capacity within the water supply, and the wastewater networks post the Army Bay stage 1 upgrade, to support existing connections, currently consented residential lots, the Milldale fast-track project, and Delmore. It is therefore not reasonable to conclude there is insufficient capacity in the network. This is illustrated by the fact refusing connections would leave constructed houses without connections to ensure connections were available for homes to be developed at some indeterminate time in the future.
- 6.37 The FDS 2050 indicative date for urban development does not make a finding that there is insufficient capacity reasonable. The FDS itself contemplates exceptions to its future urbanisation dates. In this case, urbanisation is brought forward on the basis of a decision by Parliament that it should occur now via a streamlined and facilitated process.

¹¹⁷ Annexure 7 to the Council’s comments, pg 9

¹¹⁸ Appendix 45 revised AEE

- 6.38 In relation to clause 5(d), as noted above, McKenzie & Co's analyses¹¹⁹ shows that water supply and wastewater connections can be provided while maintaining the same level of service to Watercare's current customers. A decision to reject a connection on this basis would therefore be unreasonable.
- 6.39 In relation to clause 6(a), McKenzie & Co's capacity memorandum¹²⁰ confirms that connecting Delmore to the water supply network will not impact the volume or pressure required for fire fighting.
- 6.40 In relation to clause 6(b), there is no reason to conclude connecting Delmore to the wastewater network would give rise to overflows over and above what normally occurs because it will be connected when there is sufficient capacity at Army Bay.
- 6.41 Looking up to the Local Government (Auckland Council) Act 2009 ("**LGA-AC**") under which Watercare is established, Watercare "must act consistently" with the relevant aspects of Council plans and strategies to the extent specified in writing by the governing body of the Council.¹²¹ To the extent that requires Watercare to act consistently with the FDS, it is important to keep in mind that the FDS does not prevent development of FUZ areas ahead of its future dates. To the contrary, it acknowledges that this may occur.¹²² Watercare has failed to grasp this point and has not considered the FDS's wider principles in its comments. As set out in the revised AEE, Delmore aligns with all of them.
- 6.42 In any event, the direction that Watercare act consistently with Council documents is subject to its overarching statutory obligation to:¹²³
- "manage its operations efficiently with a view to keeping the overall costs of water supply and waste-water services to its customers (collectively) at the minimum levels consistent with the effective conduct of its undertakings and the maintenance of the long-term integrity of its assets."
- 6.43 On its face it is not efficient to withhold a connection when there is capacity available within the network. The more detailed economic inefficiencies of this approach are explained by Mr Thompson in Appendix 53.2. Mr Thompson also explains why providing connections to Delmore will help to access development contributions now, enabling cost efficiencies going forward.
- 6.44 Although Watercare's decision on connections is separate to the panel's decision, it is addressed in this memorandum to highlight to the panel that Watercare's position is based on a failure to understand the limits of its decision-making discretion and its statutory obligations.

¹¹⁹ Appendix 45

¹²⁰ Ibid

¹²¹ LGA-AC, s 58(2)

¹²² Refer to AEE assessment of the FDS

¹²³ LGA-AC, s 57(1)(a) and s 58(3)

7. INFORMATION PROVIDED BY THE APPLICANT

Information provided in response to the Ministry for the Environment's s 18 report¹²⁴

- 7.1 The Treaty settlements that the Ministry for the Environment considers relevant to the Site are at paragraph 30 of the s 18 report. All of these were referred to in the application materials.¹²⁵
- 7.2 However, although the Te Kawerau ā Maki Claims Settlement Act 2015 was referred to, the substantive analysis was focused on the Kawerau ā Maki Resource Management Statement (1995). Both documents have informed the application because of Te Kawerau ā Maki's involvement. An analysis of the Act has been included in the revised AEE for completeness.

Information provided in response to comments

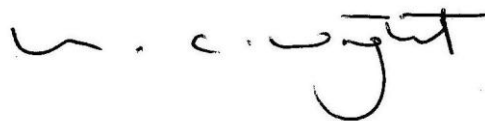
- 7.3 The material provided by the applicant in response to comments received by the panel is listed in the appendix table at the front of the revised AEE. An outline of the key changes to the master-plan is provided in Appendix 48.2 to the revised AEE. The revised master-plan itself is provided in Appendix 48.1.
- 7.4 Of this material, that listed in **Attachment A** to this memorandum relates to the "key information gaps" set out at para 250 of the Council's strategic and planning memo.
- 7.5 The Panel may wish to request further information from the Council on the material in **Attachment A**. If this occurs, the applicant suggests that a five working day period is appropriate because it accords with expectation in s 55 FTAA that responses are provided within that timeframe.
- 7.6 Further, the applicant respectfully requests that if the Panel requests further information from the Council, it also requests further information from the applicant in response to the Council's further comments.
- 7.7 Providing a final right of reply to the applicant would be consistent with ss 53-55 and s 70 FTAA which give applicants the final remark on interested party comments on the substantive application and on draft conditions.
- 7.8 The applicant has also prepared a response to the questions set out in Appendix 4 to Minute 3 issued by the panel. This is provided in **Attachment B** to this memorandum.

¹²⁴ Dated 10 April 2025

¹²⁵ See revised AEE, Appendix 39

8. Conclusion

- 8.1 The applicant considers that all approvals sought for Delmore should be granted for the reasons set out in this memorandum and in the revised AEE.
- 8.2 The applicant would also like to thank the panel for granting the request for a short suspension in processing the application.



Madeleine C Wright

Counsel for Vineway Ltd

Attachment A

Council key information gaps

Delmore Key Information Gaps Response

Information gap	Nature of deficiency	Decision-making impact	Risk / uncertainty created	Applicant Response
1. Geomorphic Risk Assessment	<p>A Geomorphic Risk Assessment is required to confirm acceptability (or otherwise) of the proposed riparian setbacks.</p> <p>Geomorphic Risk Assessment is prepared to assist in establishing effective riparian set-backs and assess the potential risks associated with the use of multiple T-bar outlets.</p> <p>Riparian setbacks should be variable and based on a Geomorphic Risk Assessment, not a uniform buffer. A Geomorphic Risk Assessment is required to support existing ecological and geotechnical assessments.</p>	<p>Cannot accurately assess the necessary riparian setbacks for dwellings/ buildings.</p> <p>The site has areas with moderate to high geotechnical constraints, including soil creep, existing slip scarps, and complex subsurface geology (e.g., Northland Allochthon). Given the site's steep topography, unstable soils, and dynamic watercourses a 20m riparian margin may be insufficient. Appendix 12-1, drawing No 3725-1-4000, indicates that the 20m riparian margin will occupy a significant portion of many of the proposed lots, potentially leaving insufficient space for the intended building platforms.</p>	<p>The riparian setbacks may result in insufficient space for the intended building platforms on residential lots.</p>	<p>McKenzie consider geomorphic risk assessment is not required, as outlined in their comprehensive 'Erosion and Geomorphology Response Memo' (Appendix 52.4)</p>
2. Parks: Detailed neighbourhood park metrics have not been supplied or met.	<p>Detailed neighbourhood park plans and cross sections for both neighbourhood parks are to be provided by 19/06/25, showing interfaces, gradients, planting, and infrastructure. Acquisition is dependent on the Applicant to meet site specific criteria, these include:</p> <ul style="list-style-type: none"> • The ability to facilitate an unobstructed 30x30 kick ball space at a gradient no greater than 3%. • The rest of the land outside of the kick ball space should be of a gradient no greater than 5%. • The land should be free from infrastructure and any proposed easements. • The land should not include any utility devices within the land or within 30m of its road frontages. • The land should not be subject to any flood risks, flood plains and overland flow paths (1 in 100 years scenario). 	<p>Cannot accurately assess the associated metrics.</p>	<p>Potential for inadequate provision of open space and acquisitions at a capital cost will not be conducted by Council's Property Provision Team.</p>	<p>For response refer to 'Terra Studio Response to AC Parks' provided as Appendix 48.3 which provides park metric detail.</p>
3. Parks: A detailed and updated scheme plan	<p>It is currently unclear which lot numbers and associated references apply to the future lots proposed for vesting.</p>	<p>Assessment of all proposed lots for vesting with accurate referencing is currently not possible. Notably, the neighbourhood park in Stage 1 lacks an identified lot reference. Intentions of Park 1 lot is unclear given underlying lot layout provided.</p>	<p>Potential for inaccurate vesting references. Will create confusion when drafting conditions and outcome to be achieved.</p>	<p>Refer to 'Updated Scheme Plans' provided by McKenzie & Co (Appendix 50)</p>
4. Parks: Retaining wall plans	<p>Relevant plans are to be submitted on 19/06/2025, including confirmation that no</p>	<p>Existing plans indicate retaining wall heights exceeding 1m adjacent to open space lots.</p>	<p>Potential for interfaces with poor quality CPTED and passive surveillance outcomes.</p>	<p>Refer to 'Retaining Wall Memo and Sections' (Appendix 44.5)</p>

	walls exceed 1 metre in height adjacent to any open space lots to vest.			
5. Parks: Interface details	Additional neighbourhood park in Stage 1 maintains no clear interface details.	The absence of these details may compromise passive surveillance, CPTED outcomes, and the potential acquisition of the Stage 1 park. In addition, the lack of clear information on shading and unresolved interface treatments remains a concern that must be addressed.	Potential for interfaces with poor quality CPTED and passive surveillance outcomes.	For response refer to 'Terra Studio Response to AC Parks' provided as Appendix 48.3 and 'AC Parks Response Memo' provided as Appendix 44.1 .
6. Parks: Canopy closure confirmation	The road corridor must align with the Urban Ngahere Strategy with a minimum canopy coverage target of 15%, with a broader mix target of 30%. In addition, Auckland Transport's Sustainability Strategy now sets a minimum 12% canopy coverage requirement for new road corridors.	Non-compliance may compromise alignment with Council's canopy coverage targets, including those set out in the Urban Ngahere Strategy (2019). Inadequate cover will affect biodiversity, amenity and climate change outcomes.	Potential for limited tree provision and canopy coverage.	Refer to Greenwoods' 'Updated Landscape Plans' as Appendix 44.4 .
7. Parks: Service line depths	Service line depths must be confirmed or relocated away from front berms to enable a tree-lined streetscape, consistent with the Urban Ngahere Strategy (2019) and relevant provisions under E17.2, E17.3, E38.2(8), and E38.3(17), as well as Auckland Transport's sustainability requirements.	Failure to address this may restrict street tree provision.	Potential for encumbered street trees growth and associated future maintenance costs to underlying infrastructure.	Refer to notes within Greenwoods' 'Updated Landscape Plans' as Appendix 44.4 .
8. Parks: Public access easements	Easements must be provided for all paths and maintenance access.	Without easements, long-term public access and maintenance cannot be guaranteed.	Potential for a disconnected network with no public access connections.	Addressed within 'Proposed Draft Conditions of Consent' prepared by B&A (Appendix 57).
9. Parks: There is insufficient detail on drainage reserve elements.	Lack of details provides uncertainty in future maintenance and operation of maintenance paths, bollards, fencing, retaining and encumbrance locations.	Due to the lack of information, a full assessment of functionality, accessibility, and compliance cannot be undertaken at this stage.	Failure to include these details may restrict maintenance access and future informal connections.	McKenzie & Co have provided vehicle tracking to demonstrate maintenance vehicles can access reserves (refer Appendix 58.4). Paths, bollards and fencing will be dealt with at detailed design stage. Further detail has been provided on retaining walls throughout the development in the 'Retaining Wall Memo and Sections' (Appendix 44.5).
10. Parks: Updated landscape plans	Must include detailed planting proposals for both neighbourhood parks and changes to non-supported tree species. These include the replacement of Corynocarpus laevigatus, Cordyline australis and Rhopalostylis sapida. In addition, appropriate species must be selected for both the upper and lower riparian zones within drainage reserves to ensure the functional requirements of each zone is met.	Currently, Council cannot confirm compliance with key documentation being the Urban Ngahere Strategy (2019) and The Auckland Code of Practice for Land Development and Subdivision Chapter 7: Landscape.	Can be altered at future engineering plan approval and subject to available tree stock.	Refer to Greenwoods' 'Updated Landscape Plans' as Appendix 44.4 .
11. Hydrological assessment in respect to wetlands	The Hydrological Assessment has not assessed the loss of wetlands	The existing wetlands on the site may have a hydrological function and the proposal may adversely affect their hydrological function. Additional hydrological assessment and analysis is required to understand any associated	Potential for adverse downstream stormwater effects	Refer to the 'WW&LA Culvert Memo' (Appendix 42.4).

		downstream adverse stormwater effects that may occur from the proposal.		
12. Dewatering and groundwater diversion effects on Wetlands	The proposed dewatering and groundwater diversion have been identified as being potentially adverse on the identified wetlands. The Applicants assessment have not assessed wetland losses due groundwater diversion and dewatering.	This information gap results in the freshwater ecology effects being unable to be fully assessed, and whether the proposed mitigation measures including whether the wetland off-set are proportionate to the adverse effects. Consent triggers and management of effects cannot be fully assessed by Council.	Potential for additional adverse effects on identified wetlands.	Refer to Riley's 'Response to AC Groundwater' (Appendix 43.1).
13. Ecology - stream morphology assessment	The Applicant has not adequately assessed how stream morphology will be protected from increased erosion pressure and that inadequate controls are likely to lead to local and downstream loss of stream value.	These information gaps result in a freshwater ecology effects being unable to be fully assessed, and whether the proposed mitigation measures including wetland off-set being proportionate to the adverse effects.	Potential local and downstream loss of stream value.	Refer to the 'Erosion and Geomorphology Response Memo' (Appendix 52.4) and the 'Viridis Response to AC Freshwater Ecology' (Appendix 42.3).
14. Wetland off-set calculations	The Applicant has proposed 3:1 offset ratio as opposed to the more rigorous BOAM offset calculation which is based on site specific calculations.	This information is required to ensure the loss/ modification of wetlands are appropriately mitigated.	Potential for loss/ modification of wetland areas to not be adequately mitigated through wetland off-setting.	Refer to the 'Viridis Response to AC Freshwater Ecology' (Appendix 42.3) and 'WW&LA Hydrology Memo' (Appendix 42.5).
15. Retaining Walls (Geotechnical)	There are some information gaps as they relate to retaining wall design	These are required to ensure the slope stability and geotechnical risks are adequately managed and controlled so these do create adverse safety or operational issues	Potential for geotechnical/ land stability effects for future owners.	Refer to Riley's 'Response to AC Geotechnical' (Appendix 43.2).
16. Retaining walls (generally)	There are some information gaps as they relate to retaining wall design.	These are required to understand the adverse effects of the retaining walls as the site interfaces including within the streetscapes and park/ reserve areas.	Potential for poor design outcomes including visual amenity/ dominance effects; and passive surveillance outcomes.	Refer to Terra Studio's 'Retaining Wall Memo and Sections' and updated retaining wall package within the 'Updated Landscape Plans' (Appendix 44.4).
17. WWTP Reverse Osmosis (RO) Waste Stream	There is outstanding information in respect to the Reverse Osmosis (RO) Waste Stream and where this would ultimately be discharged. noting that Watercare would not accept this being transported to the existing Army Bay plant.	Details are of RO Waste Stream are required to ensure discharge consents have been applied for and have been assessed including appropriateness of consent conditions	Potential for discharge effects including water quality.	Refer to the on-site wastewater response memorandums (Appendix 46).
18. Details of wastewater irrigation field within the covenant bush area.	Insufficient assessment has been provided to demonstrate that adverse ecological effects including potential damage/ removal of bush associated with the covenanted areas.	The details of the irrigation fields including however these are installed are insufficient to assess the likely adverse ecological effects including potential damage/ removal of bush associated with the covenanted areas.	Unable to assess the likely adverse ecological effects including potential damage/ removal of bush associated with the covenanted areas.	Refer to the 'Viridis Response to AC Terrestrial Ecology' (Appendix 42.2).
19. Adequacy of Structure Plan	The "Structure Plan" that has been included with the application has not been undertaken in accordance with Structure Plan Guidelines in Appendix 1 of the AUP and does not include supporting technical documents, supporting analysis or discussion.	The Structure Plan is a high level document that assists in informing the overall design approach (and outcomes) including how the proposal will sit within the wider site context. The Structure Plan has not been prepared in accordance with the relevant guidelines, and this does not provide a detailed and integrated approach with other FUZ land including roading and infrastructure.	A Structure Plan that has not been prepared in accordance with the relevant guidelines and does not provide a detailed and integrated approach with other FUZ land.	A Structure Plan has been produced by B&A and appended as part of the application material (Appendix 47.1)
20. Ecology Site Specific Fauna and Flora Surveys	No Site-Specific Fauna and Flora Surveys and Reporting/ assessment.	Without adequate survey and appropriate urban design, that responds to those values, there is the likelihood that the development may have significant adverse effects on fauna	Site Specific Fauna and Flora Surveys and Reporting/ assessment are required to ensure	Refer to the 'Viridis Response to AC Terrestrial Ecology' (Appendix 42.2).

		and flora, including Regionally and Nationally threatened species.	adverse ecology (terrestrial) effects can be assessed,	
21. Ecology: Assessment of Significant Ecological Areas	Ecology Assessment of Significant Ecological Areas and whether existing terrestrial and freshwater habits should be included as SEA's. The lack of identification of significant ecological areas (SEAs) pursuant of AUP(OP) Policy B7.2 and National Policy Statement for Indigenous Biodiversity.	The identification of existing terrestrial and freshwater habitats (including the covenants) may meet SEA Criteria / Factors for their connectiveness to protected areas (covenants / reserves), the presence of indigenous wetland, and/or presence of regionally / nationally threatened species. The identification and protection would afford a greater level of protection.	The identification of Significant Ecological Areas would assist in whether these are protected as SEAs and would afford a greater level of protection.	Refer to 'B&A Response to Ecology' (Appendix 42.7) and 'Viridis Response to AC Terrestrial Ecology' (Appendix 42.2).
22. Ecology: Ecological Effects associated with the NoR alignment including ecological effects associated with existing covenant areas (including adjacent sites)	The assessment provided has not included an assessed the ecological effects of the realignment on other existing covenants on adjacent sites.	The realignment of NoR6 will result in a greater ecological impact than what has been assessed. This has implications in respect to preparing consent conditions to ensure ecological effects are appropriately avoided and mitigated.	The realignment of NoR6 will result in a greater ecological impact than what has been assessed.	Refer to the 'McKenzie AT Response Memo' (Appendix 51.4).
23. Ecology: Covenant / habitat management	An assessment has not been provided on the inclusion of the covenanted areas into the Incorporated Society.	There are significant issues with individual private ownership and the maintenance of covenants where there is residential development	There are significant issues with individual private ownership and the maintenance of covenants where there is residential development. Private Lot owners are then liable for any degradation, damage or losses to those habitats through adjacent activities, including dumping of greenwaste, construction materials or household items, which are common issues in Council Reserves. Easements created through covenants will not restrict public access to only those areas.	Refer to Proposed Draft Conditions prepared by B&A (Appendix 57).
24. Ecology: Restrictions on Domestic Pets	The ownership and unrestricted access to indigenous habitats (including covenants) has not been assessed by the ecologist.	Assessment and details are required to inform consent conditions.	Consent conditions/ covenants are required to ban on cats for all future owners and this to be managed by the residents association/ incorporated society.	A condition to this effect is not considered necessary.
25. Cost Benefit analysis as part of the Economic Assessment	The economic assessment should be structured to explicitly acknowledge the trade-offs (the costs and benefits) arising from of the proposed development. The economic assessment should contain: 1) a framework of how the costs and benefits of the proposed development will be assessed, with acknowledgement of: a. an appropriate counterfactual / 'business as usual' scenario b. an appropriate scenario outlining the differences the proposed development represents c. identified costs and benefits arising from the difference d. the spatial and temporal extents the costs and benefits are being measured over e. which segments of society are likely to bear these costs or enjoy these benefits	The Economic Assessment needs to be detailed and set out in manner whereby the benefits of the proposal are appropriately quantified and whether these benefits are regionally significant.	The Economic Assessment to assess and understand the benefits of the proposal and whether these are regionally significant.	Refer to UE's 'Updated Economic Memorandum' (Appendix 53.1)

	<p>2) quantification of costs and benefits where practicable</p> <p>3) a qualitative assessment of costs and benefits that are not able to be quantified and justification of the potential scale of these unquantified costs and benefits</p> <p>4) a calculus of the net cost or net benefit of the proposed development to societal welfare and accompanying statement of the 'net' effect</p> <p>5) appropriate sensitivity testing of underlying assumptions; particularly under what assumptions the headline results invert (where net benefits become net costs, or vice versa)</p>			
26. Auckland Transport: Overland Flowpath Assessment relating to roading	A complete Over Land Flow Path (OLFP) assessment has not been undertaken and has not demonstrated that flood hazards associated with the OLFP within the road corridor are safely managed.	This is required to ensure flood hazard risks are appropriately avoided within the road network	Potential flood risk on roads that may create road safety issues.	Refer to Overland Flow Path Memo provided by McKenzie & Co (Appendix 52.1).
27. Auckland Transport: Culvert Assessment	An assessment for the proposed culverts has not been provided and has not demonstrated that the culverts are appropriately sized or enable non-hazardous conveyance of stormwater.	If the culverts are identified to be insufficiently sized and require upsizing, this could affect lot boundaries near the culvert and channels	Culvert are required to be designed ensure stormwater/ flood effects are avoided.	Refer to 'Culvert and Hydrological Suitability Memo' provided by McKenzie & Co (Appendix 49.6).
28. Auckland Transport: Flood Modelling	The Applicant's Flood Assessment Report does not provide a suitable assessment of flooding within the development. The hydraulic modelling has not been demonstrated as appropriate for use and validation method has only been compared to the Healthy Waters Rapid Flood Hazard Assessment (RFHA) in a single location.	The flood modelling is required to ensure roads are safe for vehicles and pedestrians.	The flood modelling is required to ensure roads are safe for vehicles and pedestrians	Refer to 'McKenzie AT Response Memo' (Appendix 51.4).
29. Design/ upgrade of Upper Orewa Road	No design details provided for the upgrade of Upper Orewa Road to urban standard.	Upper Ōrewa Road which would need to accommodate traffic volumes expected on an urban road after Stage 2 of the development. This creates significant safety issues that are likely to result with the likely additional traffic volumes and would need to be upgraded by the Applicant. art of the application	Design details are required for the upgrade of Upper Orewa Road to ensure this is designed to urban standards.	Refer to the 'Commute Response Memo' (Appendix 51.2).
30. Lighting plans for shared driveways	No Lighting plans have been provided for the shared driveways	Lighting Plans for the shared driveways are required to ensure pedestrian and traffic safety.	These can be included as consent conditions, however Council preference is to review lighting plans as part of the application process to ensure these are fit for purpose.	Refer to 'Updated Proposed Draft Conditions' prepared by B&A (Appendix 57).
31. Design plans of the Shared Driveways.	Updated design plans of shared driveways are required.	Design plans of shared driveways/ JOALs are required to understand traffic safety, and ensure pedestrian safety and amenity is provided.	Potential for traffic and pedestrian amenity effect.	Updated JOALs are reflected across the plan sets, refer to the 'Updated Cross-Sections' (Appendix 51.1), 'Commute Response Memo' (Appendix 51.2) and 'PC79 Memorandum' (Appendix 51.3).
32. Vehicle Tracking Plans	Vehicle tracking plans are required to demonstrate tracking for all vehicles including heavy vehicles	Vehicle tracking (heavy vehicles) overlaps with kerb built out at some intersections and this	Potential traffic safety and maintenance issues.	Refer to the 'Commute Response Memo' (Appendix 51.2).

		creates potential traffic safety and maintenance issues.		
33. Details of mobility parking and loading	Assessment has not been provided by the Applicant including Plan Change 79.	These are important to ensure a safe and functional development.	These are matters that could be conditioned and addressed at Engineering Approval Stage.	PC 79 Assessment has been provided, refer to the 'PC79 Memorandum' provided by Commute (Appendix 51.3).
34. Road 17/ Upper Orewa Road Sight Distance	No vehicle tracking or visibility study has been provided for this intersection.	These details need to be provided to ensure appropriate traffic safety at this intersection.	The vehicle tracking and visibility study is required to ensure traffic safety at this intersection. The final design can be addressed at Engineering Approval Stage.	Refer to the 'Commute Response Memo' (Appendix 51.2).
35. Draft Management Plans	The application had included consent conditions that had sought for a range of Management Plans to be prepared. This had not included any specific details of the contents of the Management Plans including the key objectives and parameters of each management plan. Details have been provided for some management plans but others remain outstanding.	Details of Draft Management Plans are required to inform consent conditions.	Details of Draft Management Plans are required to inform consent conditions.	Draft Management Plans have been provided. Refer to Draft Management Plans and Draft Management Plan Tracker, provided by B&A (Appendix 55).

Attachment C

Response to panel questions Schedule 4 Minute 3

Response to EPA Panel Comments

Ecology (Appendix 4 of the application)		
Panel Comment	Council Response	Applicant Response
1 Is the approach taken of predominantly desktop research with on-site observation (as opposed to targeted, detail on-site surveys) appropriate and sufficient for a development of this scale? Particularly given the conclusion that the “proposal is expected to have an overall low level of effect on the ecological values of the area”. And, if no, what is best practice?	<p>Council does not consider that the predominantly desktop research is appropriate or sufficient for the nature and location of the site, and a development of this scale, and that site specific surveys should be undertaken including fauna (bats, birds and lizards), and flora (more specifically within existing covenant areas). This has been flagged in Council’s initial high-level comments that were provided to the applicant.</p> <p>The applicant has also relied on bat surveys prepared as part of the NoR6 consent (which are dated from 2003 and do not cover all the land subject to this consent) and, bird / lizard surveys were not undertaken due to ‘seasonal reasons’ (again, we deem this surprising), noting that ‘<i>seasonal justifications</i>’ do not align with the dates of the ecological site visits, which began in December 2023 with further visits during appropriate months, through 2024 and 2025. This is a period extending more than 2 years. None of the visits were carried out during late autumn or winter.</p> <p>In addition, there was a lack of basic details and assessment within the lodgement material, and the failure to provide draft Management Plans (MP) – notably: Fauna MP, Lizard MP, Stream and Wetland Planting MP – has made any assessment of the proposed works difficult to fully review or determine. There were also significant inconsistencies between the recommended conditions within the lodged Ecology Assessment and the draft conditions which has made any assessment difficult.</p>	<p>The applicant disagrees with the Council’s response based on advice from Viridis Consultants. Please refer to Page 4 and 5 of Appendix 42.2 to the revised AEE. Draft management plans are provided in Appendix 55.</p>
2 Is the SEA adequately protected?	<p>The existing SEA to the north of the site will be well setback from the new dwellings (noting further details of this will need to be conditioned), however in accordance with Policy B7.2.1 and the NPS-IB, the Council has sought further assessment / identification of other areas of SEA, additional to ones currently identified in the Council Overlay. This is reviewed further within the Council’s specialist Terrestrial Ecology Memo (Annexure 23).</p>	<p>It is confirmed that no works are proposed within the AUP SEA-T areas. As set out in Appendix 42.2 to the revised AEE, an appropriate setback (minimum 40m planted setback proposed, which ranges to 100-300m) from the SEA-T areas has been provided to ensure the proposal will protect fauna values after construction and effectively mitigate light spill and noise.</p> <p>Further assessment against the NPS-IB and AUP policies is provided in Appendix 42.7 to the revised AEE.</p>
3 Has there been adequate assessment of the effects of residential development, including large scale earthworks and construction, on terrestrial and freshwater ecosystems?	<p>The Council has sought further assessment of the actual and potential adverse effects on these ecosystems as it is our opinion that the applicant has provided insufficient reporting, and the updated details provided to date have been insufficient to fully address their concerns – a more detailed review is included within the Council’s specialist Freshwater Ecology (Annexure 22) and Terrestrial Ecology (Annexure 23) Memos.</p>	<p>Detailed further ecological assessments responding to the issues raised by the Council are provided in Appendix 42 to the revised AEE.</p>
4 Are the measures to alter the consent notices appropriate? Are the proposed off-set areas	<p>In the first instance Council has raised concerns that these measures are insufficient and requested further details of the offsetting methodology and wetlands areas, including additional</p>	<p>Based on analysis by Viridis Consultants, the applicant considers that the measures to alter the</p>

sufficient in size and robust in their proposed conditions to mitigate any proposed vegetation loss?	analysis of the proposed offsetting (noting no justification has been provided for the 3:1 offsetting proposed) and accountancy models. Council has also requested that the applicant review the legal mechanisms for protection of the vegetation areas and whether these would be more appropriately managed by an Incorporated Society rather than individual lot owners.	<p>consent notices are appropriate and the that extent and location of vegetation and wetland offset areas is sufficient to mitigate adverse effects and any immediate loss. This Refer to the memos prepared by Viridis Consultants in Appendix 42, in particular Appendix 42.2-42.5.</p> <ul style="list-style-type: none"> • Viridis Response to AC Terrestrial Ecology • Viridis Response to AC Freshwater Ecology <p>The Council's more specific comments link this point to concerns about how these areas will be managed. Conditions of consent have also been proposed which require the creation of a Residential Society. The Residential Society would own and manage the new lots, with proposed re-vegetation areas. They would also hold overall responsibility for the maintenance of the existing bush covenant areas on private lots. These have been prepared with Alexander Dorrington specialist property law firm to ensure workability.</p>
5 Provide specific comment about earthworks within, and proximate to, wetlands	The Council specialist's response on this matter is included within the Freshwater Ecology Memo (Annexure 22) – in summary, insufficient details have been provided by the applicant team, firstly noting that groundwater drawdown has not been reviewed within the applicant's ecology assessment or geotechnical reporting and could trigger additional reasons for consent.	These matters have been addressed by the applicant in its response to comments. Please refer to Appendix 42.3-42.5 .
Landscape (Appendix 19 of the application)		
6 Has the assessment appropriately considered the effects of the change of use from predominantly rural to predominantly suburban residential? Particularly from various vantage points in the public realm?	The Landscape Assessment prepared by Greenwoods identified a number of viewpoints that show the existing site but did not include details / images of these views post-development. Council considers that a selection of the identified viewpoint is necessary to understand the effects of the change of land use from rural to a suburban residential. As a starting point viewpoints V01-3 and V02-2 have been requested from the applicant and deemed useful to assist with undertaking these effects - and we understand that these will be provided by the applicant team on 2 July.	The applicant considers these matters have been appropriately addressed. Further analysis has been provided in Greenwood & Associates' response to AC landscape and its updated landscape assessment (Appendix 44.2 and 44.3). Renders of retained sections are provided in Appendix 44.5 which assists with understanding views along these parts of the development. A package of landscape renders which show the entire development are provided in Appendix 48.5 .
7 Please provide more detailed comment on the extent of retaining walls, connectivity and the appropriateness of the park (location, size, slope and staging).	Council identified in feedback provided to the applicant that further details and clear plans are required in respect to proposed neighborhood parks including retaining wall details at site interfaces, contours dimensions of the park and connectivity overall, plus interface details – these are awaited.	Responses to the Council's concerns about the neighbourhood parks have been provided by Greenwood & Associates and Terra Studios. These are in Appendices 44.1 and 48.3 .

		<p>Detailed information has been provided on retaining within the site more generally. Please refer to Appendix 44.5.</p> <p>Integration, connectivity and accessibility are discussed with reference to the park and more broadly in Appendices 47.1 and 47.2.</p>
Open Space generally		
<p>8. What level of park provision should be provided for 1250 dwellings?</p>	<p>Council’s Parks Team clearly identified at the pre-application stage that the park provision should include two Neighborhood parks. The lodged proposal provided for only one Neighborhood Park in Stage 2, with the subsequent plans indicating an additional Neighborhood Park is now proposed within Stage 1.</p> <p>It is noted that both Neighborhood Parks will need to comply with the “metrics”, though the Stage 1 Park is undersized and there has been a lack of detail provided to enable a full assessment, as outlined within the Council Park’s specialist memo (Annexure 25).</p>	<p>The applicant has provided 2 parks, one in each stage. The parks meet Council’s key size metric. The park in Stage 2 meets all other design metrics. The park in Stage 2 meets all other design metrics except its entire extent is not flat. This is a feature of the topography. There is an approx 1,700m2 flat area provided with planting on sloped areas surrounding. Responses to the Council’s concerns about the neighbourhood parks have been provided by Greenwood & Associates and Terra Studios. These are in Appendices 44.1 and 48.3.</p> <p>If the Council decides not to acquire these parks despite the work down to make them meet its metrics, then the park in stage 1 will revert to residential lots and the park in stage 2 will revert to a balance lot.</p>
Urban Design (Appendix 27 of the application)		
<p>9. While the land is zoned FUZ, the development needs to be looked at as if it is MHS (as that is what is being proposed to form the basis for the land use consent), therefore comments need to be provided as if MHS is the zoning.</p> <p>The development of 1,250 dwellings could lead to a population of between 4,000-6,000. What sort of social infrastructure (e.g. shops, medical centres, parks, schools etc) would</p> <p>be expected to support this development? And within what radius?</p>	<p>Council would expect that a development of this scale and location would include a Structure Plan that is prepared in accordance with Structure Plan Guidelines contained in Appendix 1 of the AUP. The Structure Plan that has been prepared by the applicant is not in accordance with the relevant guidelines, and this does not provide a detailed and integrated approach with other FUZ land including roading and infrastructure. This creates a potential ad-hoc / piece-meal approach to future development in the wider area, poor quality outcomes and non-integrated approach for the delivery/ coordination of infrastructure and roading.</p> <p>The proposed development has relied upon the existing and future social infrastructure that does not form part of the site / proposal and is either unconsented or has not been built. It is noted that there is no certainty that the future social infrastructure (retail/ commercial area), for example within the adjacent Ara Hills development will be delivered.</p> <p>Council notes that nearby social infrastructure (within Ara Hills and Milldale, for example) is at a distance that would require residents of the Delmore proposal to drive by car, also noting the</p>	<p>In accordance with best practice, the technical assessments informing the development have generally used a 3 person per household figure for their assessments. This results in a population of approximately 3,651 with 1217 homes and 3, 750 with 1250 homes.</p> <p>Responding to the Council’s comments, the development was designed from the outset with integration with the surrounding environment and services in mind. This is evident through the wider location plans provided with the application (Appendix 15) and the urban design assessment lodged with the application (Appendix 27). In response to the comments to the panel the urban design specialist assisting with the project as prepared a comprehensive structure plan, and a</p>

	<p>steep gradients of the future land. This reinforces the car-dominance nature of the proposal and lack of public transport provision, as noted within the Auckland Transport comments.</p> <p>The recent incorporation of a new ‘neighbourhood centre’ within the development is supported, though again there has been a lack of any information provided in terms of the scale, appearance, and type of activities it could accommodate, thereby this makes any assessment difficult to review.</p>	<p>connectivity and accessibility analysis (refer Appendix 47). These confirm the development is well integrated with its surrounds; there is sufficient social infrastructure to support the development and that infrastructure is within appropriate distances.</p>
<p>10. One proposed park is towards the west of the area and within one of the later stages of development and unlikely to be developed before 2032, is this sufficient?</p>	<p>Council does not consider that the Neighbourhood Park in Stage 2 is sufficient. Please refer to previous comments.</p>	<p>Refer to the response at point 8 above.</p>
<p>The layout seems to favour private vehicle use, could the urban designer comment on connectivity for various modes in conjunction with the AT specialists.</p>	<p>Council (Urban Design and Auckland Transport) agrees that the site layout provides a private car centric development, as outlined in the accompanying Memos.</p> <p>The Structure Plan that has been included with the application identifies two collector roads. However, these collector roads are not included in the proposal which provides for the NOR Arterial Route and then a series of local roads. This contributes to a private car-dominated development.</p> <p>It is noted the provision of collector roads could enable public transport (bus) opportunities.</p> <p>More generally, the site layout provides limited pedestrian connectivity.</p>	<p>This comment is addressed in the structure plan documentation, and a connectivity and accessibility analysis (refer Appendix 47).</p> <p>It is noted that additional pedestrian connections have been added by the applicant in response to comments but both its and the Council’s terrestrial ecological experts have concerns about these.</p>
<p>Is a residential development of this scale in this location sufficient to state this is “contributing to a well-functioning urban environment in a way that is of regional significance”? Please comment on this with reference to Policy 1 of the NPS-UD and s22(2)(a)(iii) of the Fast-Track legislation</p>	<p>NPS-UD Policy 1: Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:</p> <ul style="list-style-type: none"> (a) <i>have or enable a variety of homes that:</i> <ul style="list-style-type: none"> o <i>meet the needs, in terms of type, price, and location, of different households; and</i> o <i>enable Māori to express their cultural traditions and norms; and</i> (b) <i>have or enable a variety of sites that are suitable for different business sectors in terms of location and site size; and</i> (c) <i>have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport; and</i> (d) <i>support, and limit as much as possible adverse impacts on, the competitive operation of land and development markets; and</i> (e) <i>support reductions in greenhouse gas emissions; and</i> (f) <i>are resilient to the likely current and future effects of climate change.</i> <p>Council does not consider that the proposal in this location contributes to a well-functioning urban environment:</p> <ul style="list-style-type: none"> • The proposal is for approximately 1250 residential dwellings with limited social infrastructure. • The site does not provide any commercial or community spaces and relies on other potential commercial uses outside the site (although the applicant has sought to address this concern by now proposing a small neighbourhood centre). 	<p>The applicant considers that the answer to this question is yes. The development is regionally significant in completing the puzzle of urban development on the western side of SH1 in the north, and does so in a way that responds to the housing demand, the definition of a well-functioning urban environment; and the natural environmental values and characteristics of the site. Refer to the structure plan and analysis at Appendix 47.1.</p> <p>In response to the Council’s points:</p> <ol style="list-style-type: none"> 1. The connectivity and accessibility analysis confirms the development has appropriate access to social infrastructure (Appendix 47.2). 2. A commercial space has been added to the master-plan (Appendix 47.1). 3. Analysis of the development and the demands of the surrounding area shows

	<ul style="list-style-type: none"> • The road hierarchy provides only limited opportunities for public transport. i.e. no collector roads are proposed. • Only one neighborhood park is proposed in Stage 2. An additional neighborhood park in Stage 1 is now incorporated, but this is deemed to be too small and basic details have not been provided to support our review – refer to the Parks Memorandum (Annexure 25) for further discussion. • The proposal is private car-dominated which is unlikely to support reduction in greenhouse gas emissions. 	<p>that collector roads are not required (Appendix 47.3).</p> <p>4. Two parks are now proposed, one in each stage. Refer to comments at point 8 above.</p> <p>5. Some use of private vehicle is a reality when dealing with the outer edge of the urban environment. The design minimises use through supporting active mode transport and proximity to the pending bus link at Ara Hills. Ultimately buses will be able to move through the development. (Appendix 47.2 and Appendix 51.2)</p>
Economics (Appendix 34 of the application)		
How are the house prices determined /derived? How realistic are there? Will they be fixed at 2025/26 rates or affected by inflation?	<p>The Council’s Economics Memo by James Stewart (Annexure 2) provides a more detailed review of these matters.</p> <p>We assume the Panel request refers to the economic assessment section 11 (Market Positioning Analysis). The analysis methodology has been explained by Mr Thompson as a simple regression of the sale price on size, then a post estimation adjustment of 10% downward. It is not clear why Mr Thompson used this method but ultimately the prices charged are a market positioning decision.</p> <p>The prices charged do not reflect any economic benefit in terms of affordability and there is very little reason to believe they will be the final prices charged by the developer. For added context:</p> <p>(a) the Delmore developer will look to maximise their profit so will charge at a price point that does this. This could mean targeting more affordable dwellings if they believe the market is strong enough; or potentially, targeting a more expensive product.</p> <p>(b) Market conditions change regularly. It is likely that the developer will charge based on current market conditions (including competition) and pricing in expected changes. The prices in Figure 33 and Figure 34 in the economic assessment are likely intended to be demonstrative of the relativity in current prices to other developments and they may charge very different prices in the future if the application is approved.</p> <p>The prices are plausible in current day terms but would likely not be the final amounts charged once considering changes to the housing market overtime, once the Proposed Development goes to market.</p>	<p>Refer to Item 14 of the Response to EPA Panel Memorandum prepared by UE (Appendix 53.4).</p> <p>In addition, as stated in the UE in the Response to Review of Proposed Delmore Residential Development, (Appendix 53.2) page 17: “The proposal is for a consent that includes specific lots sizes and dwelling sizes by type. The market determines the price of the houses, however the developer determines the lot and dwelling size. It is therefore reasonable to expect that the estimated prices are accurate, given the application is for specific lot and dwelling sizes.”</p>

	No affordable housing targets / provision has been proposed to fully enable the delivery of 'affordable' dwellings.	
<i>Should this assessment include population projections for the development? For the wider area?</i>	<p>The author of the Economics Memo has noted that their review included an extract from the Auckland Growth Scenario version 1.1 released on 19 August 2024 showing MSM 31 (which is a geographical extent that contains the Proposed Development), Hibiscus and Bays Local Board and Auckland population and household forecasts, noting that the Proposed Development is outside of the Hibiscus Bays Local Board, but adjacent to the boundary. The Hibiscus Bays Local Board extent does not include areas to the West of SH 1.</p> <p>The Specialist has not provided projections for the proposed Delmore development but for MSM 31 which is a geographic boundary used in the Macro Strategic Model (MSM). This boundary level is the smallest area in the AGSv1.1 and contains all of the Proposed Development area. They have provided Figure 2 as context of the spatial extent MSM 31 in relation to the Proposed Development. AGS v1.1 projections do not consider the Proposed Development and rely on the timing of the FDS.</p> <p>They note that Mr Thompson has supplied population projections for 'Hibiscus Coast' which are significantly larger than the Auckland Growth Scenario v1.1.. It also appears Mr Thompson has used a figure from an article on the Watercare website^[1] indicating Watercare had, "connected about 800 new homes each year". Our economics specialist has significant reservations about extrapolating a historical growth figure forward in this way and the projections from Mr Thompson support their hesitancy.</p> <p>Mr Thompson's population projections suggest growth of 66,000 additional people over 30 years (2025-2055), while the AGS v1.1 suggests total growth of 10,700 additional people over 27 years (2025-2052). On an annualised average basis, this is a difference of over 5.5 times the growth under Mr Thompson's projections – albeit for a slightly different geographical extent. But, even after combining the projected population growth of Hibiscus Bays Local Board and Rodney Local Board, the AGS v1.1 suggests total growth in the order of 33,500 people over 27 years, around 56% of what Mr Thompson projects on an annualised average basis.</p>	<p>Refer to Item 15 of the Response to EPA Panel Memorandum prepared by UE (Appendix 53.4).</p> <p>In addition, as stated in the UE in the Response to Review of Proposed Delmore Residential Development, (Appendix 53.2), page 17: "These projections have been historically inaccurate, e.g. they did not project the significant decline in population in the inner and central suburbs over the 2018-2023 period. Generally, there is strong demand for affordable homes in Auckland, and the Delmore project offers compact 'family scale' homes at a price that the average household is able to afford. This is a key driver of demand, particularly for households that cannot raise a large mortgage for a central or inner suburb location."</p>

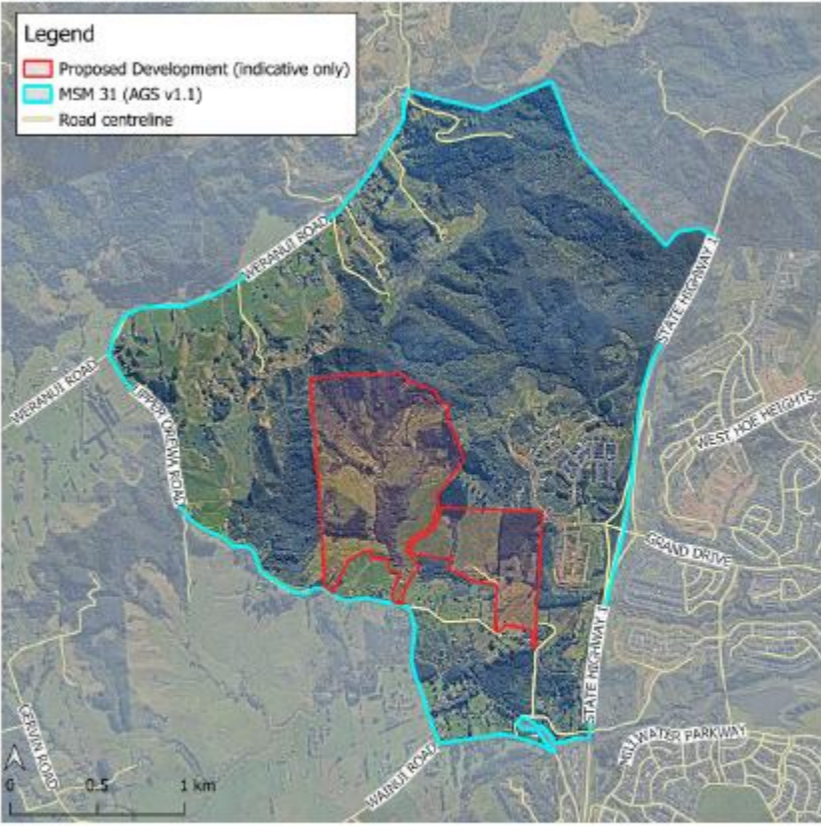
Figure 1: Auckland Growth Strategy v1.1 population and dwelling forecasts

Population	2025	2027	2032	2037	2042	2047	2052
Delmore + surrounding area (MSM 31)	500	600	1,100	1,500	2,000	2,000	2,100
Hibiscus and Bays Local Board	114,400	115,100	116,700	117,700	118,700	120,800	125,100
Auckland	1,749,400	1,798,800	1,906,600	2,012,400	2,112,700	2,206,600	2,293,500
Annualised growth							
Delmore + surrounding area (MSM 31)		50	100	80	100	0	20
Hibiscus and Bays Local Board		350	320	200	200	420	860
Auckland		24,700	21,560	21,160	20,060	18,780	17,380
Households							
Delmore + surrounding area (MSM 31)	100	200	400	500	700	700	800

Hibiscus and Bays Local Board	42,000	42,500	43,700	44,900	46,200	47,800	49,500
Auckland	594,000	613,100	654,300	698,200	740,400	781,900	814,600
Annualised growth							
Delmore + surrounding area (MSM 31)		50	40	20	40	0	20
Hibiscus and Bays Local Board		250	240	240	260	320	340
Auckland		9,550	8,240	8,780	8,440	8,300	6,540

Source: Auckland Council (AGSv1.1 (19/08/2024))

Note: 'Auckland' is the sum of the MSM zones and may not equal regional forecast due to rounding.

	<p>Figure 2: MSM 31 area and Proposed Development</p>  <p>https://www.watercare.co.nz/home/about-us/latest-news-and-media/plans-to-invest-500m-for-growing-hibiscus-coast-community</p> <p>Claire Grey and Rosie Stoney comment further as follows: <i>We support the response from James Stewart set out in an Addendum to the review of economic assessment, date 25 June. The response looks at the population and dwelling forecasts from AGS23v1.1, and as explained above, this is consistently used by the council and its CCOs.</i></p>	
<p>Has the extent of greenfields development required been correctly identified? The report seems to use FUZ and greenfield land interchangeably. The definition in the AUP is Greenfield Land is identified for future urban development that has not been previously developed. Presumably that is not intended to only apply to FUZ and includes land that is live zoned but that has not been previously developed? e.g. Milldale is not fully consented yet so, while live zoned, would this not also contribute to greenfield development? Furthermore, most of that which has been consented and developed within Milldale</p>	<p>The Council's Economic Specialist James Stewart comments as follows:</p> <p>I have addressed this in my memorandum, I consider the terminology in the economic assessment to be unorthodox.</p> <p>More broadly, I disagree with the use of capacity a proxy for demand employed by Mr Thompson. This methodology does not consider price or preferences of households, nor does it consider future changes to underlying market conditions. It instead assumes demand will be distributed pro rata across the region based on the level of modelled capacity at a point in time.</p> <p>Claire Grey and Rosie Stoney comment further as follows:</p> <p>We agree this should be clarified and updated. As the question notes, Chapter J1 of the AUP defines "Greenfield" as "Land identified for future urban development that has not been</p>	<p>Refer to Item 16 of the Response to EPA Panel Memorandum prepared by Urban Economics (Appendix 53.4).</p> <p>In addition, as stated in the UE in the Response to Review of Proposed Delmore Residential Development, (Appendix 53.2), page 17: "I consider the Auckland Plan, AUP Operative in part (November 2016) and now the FDS all include a strategic growth direction that includes, as a fundamental element, a distribution between infill and greenfield land, which accounts for the benefits infill offers and the benefits greenfield offers. I attribute demand to infill and greenfield</p>

<p>has occurred since 2016. Should this information therefore contribute to the capacity modelling?</p>	<p>previously developed”. Greenfield land includes land that has not been previously developed in both future urban areas and live zoned areas.</p>	<p>based on this strategic direction or split, however I would note that more than 32% of demand is typically for greenfield, as established in the Auckland Plan, and subsequently reduced in the FDS, and this will result in ongoing house price increases and affordability challenges, as concluded in the HBA, which is a significant cost.” More generally, historical growth patterns show strong demand in the Hibiscus Coast, and this is reflected in Watercare’s significant infrastructure investment.</p>
<p>Figure 12 is odd as most FUZ is zoned prior to land use consents being lodged and dwellings constructed. Please provide comment on the Greenfield figures in particular – was this live zoned land or FUZ or a combination of both?</p>	<p>James Stewart comments as follows:</p> <p>I agree that figure 12 should be clarified. Mr Thompson attributes to me the view that, “...greenfield dwellings are cheaper than infill dwellings, and less greenfield dwellings are being built than required, consequently people are leaving Auckland, reducing the rate of population growth.”[1] I have not made these claims.</p> <p>[1] At page 3 of Mr Thompson’s 17 June memo.</p> <p>Claire Grey and Rosie Stoney comment further as follows:</p> <p>We agree that this should be clarified and updated. The figures shown in Figure 12 do not align with the council’s Future Development Strategy annual monitoring. This monitoring report shows the percentage of dwellings consented in the Urban, Future Urban and Rural areas over the past five years. It also shows the total dwellings consented over the past five years.</p>	<p>Refer to Item 17 of the Response to EPA Panel Memorandum prepared by UE (Appendix 53.4).</p> <p>In addition, as stated in the UE note that Mr Stewart does agree that like-for-like greenfield dwellings are cheaper than infill dwellings, and he states: ““We acknowledge it is plausible that the same house and land package in a greenfield location would be brought to market [at] a lower price, but this is a function of the location characteristics” which is not the same as more affordable. I use the word ‘same’ as ceteris parabis assumptions i.e., assuming all the qualities of the house and land are otherwise identical saving for the locations. For example, it is unlikely that a newly constructed 3-bedroom stand alone house on an 500m² section would demand the same price in Milldale as it would in the City Centre. This does not mean the Milldale house is more affordable but that a trade-off has occurred. The City Centre household may pay more for their home but save on travel costs (including time) to get to work or amenities they value”. Mr Stewart’s view is therefore that a greenfield house is cheaper, however the owner may incur higher transport costs. Dr Meade also confirms this position, agreeing that greenfield dwellings are cheaper (in his review, page 10, para 30). I further respond to Mr Stewart’s claim, in my Response to Review of Proposed Delmore Residential Development, dated 2 July 2025, page 15: “Mr Stewart [page 2] puts forward his view,</p>

		<p>based on bid-rent curve theory, that the same house in Milldale and the City Centre would have the same overall cost to an owner when both dwelling price and transportation costs are considered. The implication is that the price differential between these locations, of circa \$2 million, implies a transportation saving of \$2 million for the owner not requiring to travel from Milldale to the City Centre, which equate to circa \$200,000 p.a., which is implausible. The differential in my opinion reflects historical windfall gains to those households living in the inner city, that could not otherwise be purchased with their incomes, and these windfall gains are a result of historical supply constraints”.</p>
<p>Presume the staging of live zoning FUZ that Auckland Council anticipates been taken into account in Auckland Council’s Auckland Plan 2050 and the recently released FDS, has it also informed this assessment?</p>	<p>James Stewart comments as follows:</p> <p>I agree that this should be clarified. Mr Thompson acknowledges the high cost of infrastructure, “My assessment adopts a similar approach [to the FDS], and accounts for the economic benefits of using infrastructure efficiently (one of the most significant economic benefits overall in most instances given the high cost of infrastructure).”[1] But, it is not clear what he means by economic benefits as it relates to the Proposed Development. That is, other developments can use infrastructure capacity if the Proposed Development does not so there is an opportunity cost.</p> <p>[1] At page 4 of Mr Thompson’s 17 June memo.</p> <p>Claire Grey and Rosie Stoney comment further as follows:</p> <p>We agree that this should be clarified and updated. References throughout Appendix 34 Economic Assessment refer to out-of-date documents such as the Auckland Plan Development Strategy, the Future Urban Land Supply Strategy and the Development Strategy Monitoring Report from 2021.</p>	<p>Refer to Item 18 of the Response to EPA Panel Memorandum prepared by UE (Appendix 53.4).</p> <p>In addition, as stated in the UE in the Response to Review of Proposed Delmore Residential Development, dated 2 July 2025, page 16: “ Mr Stewart [page 4] states that there is the “...potential for externalities to arise from the proposed Delmore area being live-zoned. This includes potentially not being able to provide infrastructure to other locations at all, or infrastructure being delayed or being provided at a greater cost overall”. Further, Mr Stewart [page 6] states “If the full extent of the cumulative infrastructure required to support development in the Delmore area were to be brought forward by Council, Auckland Transport and Watercare to match the application timing, this would displace the existing pipeline (delaying delivery to other areas) and / or increase the financial burden on ratepayers to support delivery”. Mr Stewart’s view is therefore that if Delmore is consented, then Watercare will be legally obligated to provide additional infrastructure, to service this zoned land. This assumption is fundamental to Mr Stewart’s position, however it is directly contradicted by</p>

		<p>Watercare’s own comments to the panel. Ms Shaw and Ms Taylor also note that Watercare is not obligated to provide infrastructure capacity based on zoning per se, and can decline additional connections if capacity, and funding for additional capacity, is not available¹. Watercare can therefore allocate its funding as it determines best achieves this, which does not create a requirement for additional infrastructure capacity to service of all live zoned land. A relevant consideration is that Auckland has housing capacity for around 900,000 infill houses, under the HBA, however does not have sufficient infrastructure capacity to service all of these potential dwellings. As such, there may be specific locations where new connections are declined, until funding for upgrades are available (as has recently occurred). The same principle applies to greenfield, specifically a new live zoning or consent does not create an obligation for infrastructure capacity to be provided immediately. I consider this to be an optimal economic approach, as it creates competition for infrastructure capacity, e.g. developers are incentivised to increase construction rates rather than land bank, and it ensures that there are many developments that are ‘ready to go’ when any infrastructure capacity upgrade is completed, and this in turn means more development contributions are available for efficient cost recovery. I note that the significant investment in the Hibiscus Coast upgrade will require a large number of medium-large scale developments, not just 2 or 3, to ensure enough development contributions are available to recover costs efficiently, particularly given interest costs alone will be significant (circa \$70 million p.a. - 5% of \$1.4 billion based on the comments from Ms Shaw and Ms Taylor).” In this regard, there are no opportunity costs from live-zoning additional land, rather the opposite, that live-zoning additional land ensures infrastructure capacity</p>
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¹ [page 4] “The grounds available to Watercare to refuse an application to connect to its networks under the Water Supply and Wastewater Bylaw 2015 include that there is insufficient capacity in the network ...”.

		<p>can be utilised efficiently, as many developers means more DCs are paid each year.</p> <p>Historical documents are referred to as these are the regulatory framework in which to understand whether historical growth patterns have consistent with those sought (e.g. whether the percentage distribution in greenfield and infill have been achieved). I note the FDS does not present a growth distribution strategy in this respect, rather uses new infrastructure capacity as the criteria of greenfield live-zoning.</p>
<p>Report states that “middle-lower income NZ-born Aucklanders are relocating to regions due to a shortage of affordable homes”, where is the specific data to back up that assumption? Furthermore, if that is the target market, why are there no two-bedroom dwellings within the development? Do middle-lower income NZ born Aucklanders want to live at the far edge of a region?</p>	<p>James Stewart comments as follows:</p> <p>The Census data does show that larger numbers of New Zealand-born Auckland residents are leaving Auckland to move to the regions or overseas. In the intercensal period over 135,000 people who lived in Auckland in 2018 moved to another part of New Zealand by 2023[1]. The reasons are more speculative but, in my view, it is not unreasonable to assume that housing affordability (the relationship between house prices and incomes) is a factor for these shifts.</p> <p>I stated in my earlier memorandum that the Proposed Development could contribute to housing affordability. This does not mean that the housing offered in the Proposed Development must be lower priced. By having more housing overall, it provides a greater level of competition that means landowners must compete the price of housing down to the margin.</p> <p>What the developer wishes to offer to the market is up to them as they bear the risks of failure and fruits of success.</p> <p>[1] https://www.stats.govt.nz/news/new-zealanders-on-the-move/</p>	<p>Refer to Item 19 of the Response to EPA Panel Memorandum prepared by UE (Appendix 53.4).</p> <p>In addition, as stated in the UE in the Response to Review of Proposed Delmore Residential Development, dated 2 July 2025, page 17: “ The proposal is for a consent that includes specific lots sizes and dwelling sizes by type. The market determines the price of the houses, however the developer determines the lot and dwelling size. It is therefore reasonable to expect that the estimated prices are accurate, given the application is for specific lot and dwelling sizes.”</p>
<p>The statement “the main driver of house price growth has been the imbalance between infill and greenfield housing” is overly simplistic and somewhat inaccurate. Does this need further qualification/interrogation?</p>	<p>James Stewart comments as follows:</p> <p>I agree with the Panel members that this statement is overly simplistic and somewhat inaccurate.</p> <p>Increasing the supply of land for housing can be achieved by having more spatially extensive urban land zoning and / or it can be achieved by more intensive zoning of brownfield land. Auckland currently limits growth outward (extensive) using the rural-urban boundary and releases Future Urban Zone land periodically. Auckland also limits growth upward (intensive) using zoning rules and overlays. Both are likely contributing to higher dwelling prices than otherwise.</p> <p>There are other constraints beyond the greenfield / infill divide, such as the capacity of infrastructure, that can affect the value of housing.</p>	<p>Refer to Item 20 of the Response to EPA Panel Memorandum prepared by UE (Appendix 53.4).</p> <p>In addition, as stated in the UE in the Response to Review of Proposed Delmore Residential Development, dated 2 July 2025, there is agreement between Mr Stewart, Dr Meade and I, that a like-for-like greenfield dwelling is “cheaper” than an infill dwelling, when only the dwelling price itself is considered. The obviously corollary that flows from this point of agreement, is that a shortage of greenfield dwellings, in general or below the strategic intent, results in higher prices overall.</p>

Wastewater discharge consent conditions (Appendix 22 of the application)		
Proposed condition 96: Would the WWTP Discharge Plan need to be certified or approved by Auckland Council?	<p>Council considers that the WWTP (and all other plans/ management plans, including those missing from the conditions list) are required to be certified by Council. The request for a 20 Working Day certification process will not be acceptable to Auckland Council, and – as addressed in the Council’s legal memorandum – such conditions are unlawful.</p> <p>Council considers that a draft WWTP (and other management plans) are required to be included with the application that provide details of the purpose, broad objectives/ parameters of each management plan.</p> <p>When a finalised plan is prepared by the consent holder this can then be certified by Council provided this is in accordance with the draft plan (provided with the application).</p>	A condition of consent is proposed that would require the WWTP Discharge Plan to be certified by Council. Refer Appendix 57 .
Is Council happy with the proposed wastewater discharge quality criteria of condition 102? Please comment on the apparent disconnect between the number and frequency of wastewater samples required to demonstrate compliance between condition 102 and 116.	This is reviewed within the Council Specialist’s Wastewater Memo (Annexure 9) – in summary, additional sampling is requested and updated conditions have been agreed with the applicant team, with further changes proposed within the Memo.	Additional conditions have been proposed, as requested by Council. Refer Appendix 57 .
Condition 119: Receiving environment monitoring: this appears vague and potentially not particularly useful. Should there be a requirement for some contingency response process by way of reviewing stream quality and health in the event of non-compliance with wastewater quality condition?	This is reviewed within the Council Specialist’s Wastewater Memo (Annexure 9) – in summary, additional sampling is requested and updated conditions have been agreed with the applicant team, with further changes proposed within the Memo.	Additional conditions have been proposed, as requested by Council. Refer Appendix 57 .
Stormwater including discharge conditions		
The proposed stormwater management relies on individual privately-owned on-site roof water reuse tank to achieve SMAF1 compliance for roof runoff. These tanks will require ongoing maintenance to ensure they provide ongoing compliance with SMAF1 requirements. Can the Council’s regulatory department provide comment on their ability to provide the necessary ongoing monitoring and enforcement as necessary to achieve this, noting there is a large number of existing and likely future tanks throughout the Auckland region that this is applicable to. Possible enforcement could require time consuming and onerous measures if privately owned tanks are removed or tampered with.	As accepted by other developments of this scale, the onus of maintenance of stormwater tanks is on the future lot/ dwelling owners and this is captured in consent notices.	Conditions of consent are proposed to ensure that all private stormwater infrastructure is maintained in accordance with an Operation and Maintenance Plan. This is captured within a consent notice on the relevant records of title. Refer Appendix 57 .

<p>Do the proposed consent conditions adequately address the requirement to prepare operation and maintenance plans for private on-site roof water reuse tanks, including addressing the need to adequately minimize health risks of using roof water for toilet flushing e.g. due to air borne pathogens?</p>	<p>Please refer to consent conditions following - note that further amendments / comments will be likely upon receipt of all remaining requested details / documents / plans from the applicant team.</p>	
<p>Can Council suggest consent conditions for consent notices to be placed on individual residential lot titles to require protection of and ongoing ensure ongoing operation and maintenance of rain tanks?</p>	<p>Land use conditions</p> <ol style="list-style-type: none"> (1) Prior to the occupation of the dwellings, the consent holder must design, install and maintain a private on-site stormwater management devices (stormwater retention/ detention tanks) for Dwellings XX-XXX and the shared driveway areas in accordance with Auckland Council's standards. These must ensure that the stormwater runoff from the site is managed and to provide detention (temporary storage) for the difference between the predevelopment and post-development runoff volumes from the 10% AEP rainfall events; and to meet SMAF1 requirements. This must be undertaken in accordance with the XXXX prepared by XXX dated XXX. (2) The stormwater management device or system must be installed or built generally in accordance with the design specifications provided in the documents referred to in Condition 1 by a suitably qualified service provider. (3) Within three months of the practical completion of the works, the consent holder must provide the following to the council: <ol style="list-style-type: none"> (a) Written evidence in the form of a validation report that the stormwater management device or system was installed or built generally in accordance with the design specifications provided in the documents referred to in Condition 1, and by a suitably qualified service provider; and (b) As-built plans of the stormwater management device or system, certified (signed) by a suitably qualified service provider as a true record of the stormwater management system. (4) The stormwater management device or system must be operated and maintained in accordance with best practice for the device or system. (5) Details of all inspections and maintenance for the stormwater management system, for the preceding three years, must be retained by the consent holder. These records must be provided to the council on request. <p>Subdivision Condition for tanks with shared driveway</p> <p>Common ownership of asset(s)</p> <p>Lots XXX share common assets [stormwater management device, pedestrian pathway, and letterboxes within COAL], which are located within Lot XXX. To ensure that Lots XXX maintain these common assets, the consent holder must register an instrument on the record of title to ensure that future owners of Lot(s) XX are jointly responsible and liable for the ongoing</p>	<p>Land use and subdivision consent conditions have been proposed relating to private stormwater infrastructure. Refer Appendix 57.</p>

	<p>operation, maintenance and repair of the stormwater management device shared pedestrian pathway, and letterboxes and common property/assets.</p> <p>A copy of the document(s) describing the functions, powers, duties and liabilities of the instrument must be provided to the Council for certification. The document(s) must evidence that the ongoing operation, maintenance and repair obligations of this condition will be adequately provided for.</p> <p>Further, to ensure that future owner(s) remain jointly responsible and liable for the ongoing operation, maintenance and repair of the shared stormwater mitigation device and common assets, the following must be registered as a consent notice on the record(s) of title to be issued for Lots 1-6:</p> <p>“Lots XXX share common assets [stormwater management device pedestrian pathway, and letterboxes within COAL], which are located within Lot XXX For so long as they are a registered proprietor of that Lot, the owners of Lots XXX are jointly responsible and liable for the ongoing operation, maintenance and repair of the shared common assets within Lot XXX.”</p> <p><u>Subdivision Consent notice conditions</u></p> <p>The Lots xx-xx are subject to individual retention/ detention tanks. The consent holder must have registered against the Record of Titles for Lots xx-xx a Consent Notice pursuant to section 221 of the Resource Management Act 1991, recording the following condition, which must be complied with on a continuing basis:</p> <p>“This lot is serviced by individual retention/ detention tank. The maintenance/ repair etc is the responsibility of the lot owner. The stormwater management device or system must be operated and maintained in accordance with best practice for the device or system. Details of all inspections and maintenance for the stormwater management system, for the preceding three years, must be retained by the consent holder.</p>	
Is Council (Healthy Waters) satisfied the Stormwater Management Plan (SMP) prepared by the applicant is in accordance with the requirements of the stormwater Network Discharge Consent. Can they advise the mechanism for Council adopting an approved SMP given the subject land is not zoned for urban development?	<p>Healthy Waters have responded as follows:</p> <p>Condition 13 of the RWNDC sets out the process for stormwater management plans to be adopted into the RWNDC to authorise the diversion and discharge of stormwater. In particular for new greenfield development which is not currently urban zoned, an SMP can only be adopted following a notified plan change, where the plan change is consistent with the SMP.</p> <p>The diversion and discharge of stormwater from this Fast Track application therefore cannot be authorised by the RWNDC and a private consent for diversion and discharge of stormwater will be needed to be obtained. This has been sought by the Applicant.</p>	Council’s comment is correct.
Flood Risk		
Does the Council consider the flood risk assessment prepared by the applicant is fit for purpose, including with respect to flooding where	<p>Healthy Waters have responded as follows:</p> <p>A copy of the flood model was sought as part of initial feedback provided to the Applicant’s Agent on 19th May 2025 and it was provided on the 12th June 2025.</p>	<p>Refer to the following documents:</p> <ul style="list-style-type: none"> Appendix 52.1: OLFP Memo

roads cross the main stream, including hazard to vehicles, risk of scour damage to road fill?	<p>Healthy Waters have not yet been afforded sufficient time to review the Applicant’s modelling information to accurately verify and assess upstream and downstream effects, ensure the reliability of model outputs, and confirm HW’s support for the proposed stormwater management strategy.</p> <p>The modelling utilises 2021 LiDAR data which does not account for the subdivision downstream (visible in the 2025 imagery on GeoMaps). Looking at the aerial images, the subdivision is founded in engineered fill. It is important that consideration be given to the stability of this in relation to flows in the watercourse downstream of the site to assess the stability of any constructed embankment within the floodplain.</p> <p>Further analysis is therefore required to demonstrate that the proposal does not result in increased flood risk to downstream established properties.</p> <p>Healthy Waters’ position will be confirmed once the model has been reviewed.</p>	<ul style="list-style-type: none"> Appendix 52.2: Flood Model Response
<p>Erosion and sediment control</p> <p>Are soil loss assessments required at this time to assess risk of downstream sedimentation and provide guidance on the need and quantum of staging requirements to limit open areas of earthworks?</p>	<p>Yes, Council’s Regional Earthworks Specialist has made clear that an Adaptive Management Plan is required for this application given the significant scale of the earthworks (as reflected in their Memo (Annexure 12)). This has been included as a recommended consent condition, but the applicant in their responses to date have pushed-back on this request.</p> <p>The recommendations are for best practice (GD05) erosion and sediment controls to be implemented and for an AMP to be implemented (as noted above). This is effectively the gold standard when it comes to erosion and sediment control and proper earthworks management, and whilst the entire area of works is significant at 60ha, the applicant has accepted agreed to a condition that restricts the open area to 30ha at any one time, which, in itself, is also a significant area.</p> <p>If it turns out that the applicant cannot manage 30ha of open ground at one time, it will most certainly be reflected in the sampling results and reporting required by the AMP, which includes provisions for closing down (stabilising) portions of the site in response to poor performance.</p> <p>The applicant has not, however, agreed to acceptance of a condition requiring an AMP. This is problematic and not at all consistent with similarly large developments across Auckland. Further, the Fast-Track applications in Milldale, less than 2kms south of the Delmore project, and the Drury Metro Centre development application, have acknowledged that implementation of an AMP is appropriate.</p> <p>The AMP requirement is the key factor for helping to ensure the potential effects of sedimentation are managed appropriately.</p>	<p>Refer to the following document:</p> <ul style="list-style-type: none"> Appendix 49.1: Earthworks Response Memo
Transportation matters		
<p>ITA (Appendix 28 of the application)</p> <p>The initial comments by AT mentioned that the ITA needed more of a roading hierarchy than just one</p>	<p>Council/ AT consider that several roads should be updated to collector roads and these should be aligned, as broadly identified on the Structure Plan provided with the application. AT’s Memo (Annexure 20) provides a more detailed response, and it notes that ‘that roads which are planned to connect through to Russell Road (Road 1) and Upper Ōrewa Road (Road 17) should</p>	<p>The applicant’s technical assessments show that collector roads are not needed, and their adoption would have significant implications for the</p>

arterial and multiple local roads. Which roads do AT consider should be upgraded to collector?	<p>be built to a Collector Road standard and be suitable for buses. The following connecting roads must also be built to accommodate buses:</p> <ul style="list-style-type: none"> • Road 1 • Road 17 Upper Orewa Road to Road 14 • Road 14 from Road 17 to Road 05 • Road 05' 	<p>development's urban environment and amenity. Refer to the following documents:</p> <ul style="list-style-type: none"> • Commute Response memo Appendix 51.2 • Collector Road memo Appendix 47.3
<p>Road grades</p> <p>Advice on the acceptability of the portions of roads with longitudinal grades of 12.5% with respect to individual and cumulative lengths of roads with 12.5% grade and necessary measures within the road reserve to provide acceptable connectivity for pedestrians and cyclists.</p> <p>Advice on longitudinal grade of the steeper proposed JOALS, say over 15% grade, with respect to trafficability and accessibility to on-site parking.</p>	<p>AT has reiterated its original concerns with regard to the steepness of the land (alongside the walking distances and lack of public transport) which discourages pedestrian movement. The application also fails to provide any intersection design details and levels, making a full assessment not possible.</p>	<p>Refer to the Commute Response memo Appendix 51.2</p>
<p>Issue for NZTA</p> <p>Comment on whether the applicant's flood hazard assessment for proposed development is considered adequate with respect to the flow capacity and resilience to flooding of the existing culvert under SH1</p>	<p>NZTA's comments are provided within the accompanying Memo (Annexure 31) and have raised concerns with regard to the flood modelling assessment and the wider effects from the development, including on the existing culvert. NZTA formally requests additional clarification from the applicant team, noting they have flagged that as a minimum, the inlet will need a culvert relief riser and erosion and scour protection / resilience measures.</p>	<p>The applicant's technical assessment confirms the current infrastructure is adequate. Refer to Appendix 51.4.</p>
<p>Specific issue for Watercare</p> <p>Comment on the existing and planned and funded future capacity of bulk water infrastructure and its ability to provide potable water to the proposed development</p>	<p>Watercare's response is included within Annexure 7. It confirms that there is insufficient wastewater and water capacity and reiterates their position that no connection will be provided to service the development in the immediate future.</p>	<p>The analysis undertaken by McKenzie & Co shows Watercare is incorrect. There is sufficient capacity within both service areas. Refer to the following documents in Appendix 45.</p>
General issue with regard to conditions		
<p>There are specific issues raised with regard to the proposed consent conditions above. Specific comment on the conditions generally is critical.</p> <p>Note there will be a specific opportunity to comment on conditions under section 70 FTAA but the timing for this step is short.</p>	<p>Council considers that significant changes are required to the consent conditions, as outlined within the accompanying Memos.</p> <p>Some of the initial comments / requests by the Council have been incorporated into the revised conditions set by the applicant team (19 June), though we will need additional time to review the updated set once all other matters are resolved, finalised plans have been received, the full set of Management Plans have been reviewed etc.</p>	<p>An updated set of conditions is attached as Appendix 57. Comments from Council have been incorporated where practicable.</p>