

BEFORE THE FTAA-2504-1055 – RANGITOOPUNI EXPERT PANEL

Under

the Fast-Track Approvals Act 2024 (the *FTAA*).

In the matter of

the deliberations and final decision of the Expert Panel appointed under section 50 and Schedule 3 of the FTAA for the Rangitoopuni project requiring:

- (a) Resource consents under sections 9, 11, 13, 14 and 15 of the Resource Management Act 1991 to develop land at Old North Road and Forestry Road, Riverhead for a 208 lot countryside living subdivision and a retirement village of 260 retirement units and 36 care units; and
- (b) Authority under section 53 of the Wildlife Act 1953 to catch and relocate native lizards.

Expert Panel

Kitt R M Littlejohn
(*Chair*)

Karyn Kurzeja
(*Member*)

Nicholas Manukau
(*Member*)

***Comments received
under Section 53 of the
FTAA:***

17 September 2025

***Details of any hearing
under Section 57 of the
FTAA:***

[insert whether a hearing was held or not]

**(DRAFT) Record of Decision of the Expert Consenting Panel
under Section 87 of the
Fast-Track Approvals Act 2024**

Dated [insert date]

DECISION: *THE APPLICATION IS APPROVED SUBJECT TO CONDITIONS*

Date of Decision:

[insert date]

Date of Issue:

[insert date]

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DRAFT DECISION AND REASONS

[DRAFT IN PROGRESS]

**REASONS FOR DECISION MADE BY THE PANEL: FTAA-2504-1055 –
RANGITOOPUNI**

PART A: EXECUTIVE SUMMARY

- 1 This is an application for the development of 395 hectares of former Crown owned forestry land at Old North Road and Forestry Road, Riverhead, Auckland, but now Treaty Settlement land returned to Te Kawerau ā Maki, for a 208 lot countryside living subdivision and a retirement village of 260 retirement units and 36 care units (**Application**)¹. The Application has been made by Te Kawerau ā Maki in partnership with Avant Property Development Limited under the legal entity Rangitooopuni Developments Limited Partnership (**the Applicant**) and comprises, in summary, the following components:
 - (a) 208 countryside living lots on 222.75 hectares of land at an average density of just over 1 lot per hectare;
 - (b) A retirement village of 260 retirement units and 36 care units on 173.6 hectares of land with associated resident and public facilities;
 - (c) Community facilities for future countryside living residents including sports amenities, a community building and parking areas;
 - (d) Facilities for the general public including a public carpark and public access to an extensive walkway network across the site;
 - (e) Land development activities including vegetation clearance, earthworks, roading construction, stream and culvert works, and flood management works;
 - (f) Services development including wastewater and water supply infrastructure, stormwater management, and power reticulation;
 - (g) Native revegetation planting and landscaping; and
 - (h) All associated and incidental activities at Old North Road and Forestry Road, Riverhead, Auckland (**Site**).²
- 2 The Application was included as a listed project in Schedule 2 of the FTAA. On 21 July 2025 an expert panel was appointed to determine the Application (**Panel**).
- 3 The Panel has assessed the Application applying the relevant statutory criteria within the purpose and context of the FTAA.³

¹ For the purposes of this decision the 'Application' includes an application for approval to handle wildlife under the Wildlife Act 1953.

² Lots 1 and 2 DP 590677.

³ Legislation Act 2019, s 10; and FTAA, ss 10 and Schedules 5 and 7.

- 4 The Panel received comments from commentators and a response to those comments from the Applicant. The Panel has carefully reviewed all of that information in evaluating the Application.
- 5 The Panel has applied the statutory tests in the following provisions in determining and approving the Application.
 - 5.1 Schedule 5, clause 17 - criteria and other matters for assessment of resource consent applications.
 - 5.2 Schedule 7, clause 5 - the criteria for assessment of an application for a wildlife approval.
- 6 The Panel finds that, having considered all relevant matters, the Project meets the purpose of the FTAA.
- 7 The Panel therefore grants approval for the Application subject to the conditions in **Appendix A**.
- 8 This decision is made in accordance with section 87 FTAA. This decision covers all the approvals sought under the substantive application. This decision document includes:
 - 8.1 The decision – throughout and summarised in Part N;
 - 8.2 The reasons for the decision – throughout and summarised in Part N;
 - 8.3 A statement of the principal issues in contention – Part I and summarised in Part N;
 - 8.4 The main findings on the principal issues in contention – Part I and summarised in Part N.

PART B: OVERVIEW OF THE APPLICATION AND PROCEDURE

Application

Applicant

- 1 Rangitōopuni Developments Limited Partnership is the authorised person for the Rangitōopuni Project as set out in Section 42 of the FTAA. The limited partnership brings together the interests of Te Kawerau ā Maki in partnership and Avant Property Development Limited.

Site and surrounding environment

- 2 The Site comprises 395 hectares of former Crown owned forestry land at Old North Road and Forestry Road, Riverhead, Auckland, which has been returned to Te Kawerau ā Maki following the enactment of the Te Kawerau ā Maki Claims Settlement Act 2015. The Site is former pine production forest land located in a generally rural area but adjacent to the existing settlement of Riverhead. It is undeveloped for any activity other than forestry, but has been used historically for public recreation activities. The Site is located in the north-west of the Auckland Region and is part of the 3,275 hectare Rangitōopuni-Riverhead Forest owned by Te Kawerau ā Maki, located towards the southern end of the forest.

- 3 The Applicant provides a detailed description of the Site, its significant cultural context, ownership, and its existing natural, historic and land use features in sections 4.1, 4.2 and 4.3 of its Assessment of Environmental Effects dated 5 May 2025 (**AEE**). An extensive description of the surrounding environment is also included in section 4.5 of the AEE.
- 4 Following its inspection of the Site and surrounding area and its review of the AEE and its supporting specialist reports, the Panel agrees with the descriptions provided and adopts them for the purposes of this decision.
- 5 The Site is wholly within the Auckland Region and subject to the provisions of the Auckland Unitary Plan (Operative in Part – Updated 24 October 2025) (**AUP**).
- 6 Under the AUP the site is Treaty Settlement Land and thus subject to the provisions in Auckland-wide chapter E21. In addition to that over-riding status, it is predominantly zoned Rural – Countryside Living Zone with small portions of Rural – Rural Production Zone. As summarised at section 2.0 of the AEE, a number of overlays and controls also apply to the Site, as well as an Airspace Restriction Designation.

Overview of the application

- 7 As described in the AEE and supporting materials, the Application includes the following key components:
- (a) The staged subdivision of the Site into 208 countryside living lots, a retirement village lot and various access, communal and balance lots;
 - (b) 208 countryside living lots on 222.75 hectares of land at an average density of just over 1 lot per hectare;
 - (c) A retirement village of 260 retirement units and 36 care units on 173.6 hectares of land with associated resident and public facilities;
 - (d) Community facilities for future countryside living residents including sports amenities, a community building and parking areas;
 - (e) Facilities for the general public including a public carpark and public access to an extensive walkway network across the site;
 - (f) Land development activities including vegetation clearance, earthworks, roading construction, stream and culvert works, and flood management works;
 - (g) Services development including wastewater and water supply infrastructure, stormwater management, and power reticulation; and
 - (h) Native revegetation planting and landscaping.

Resource consents

- 8 The Panel has reviewed all the documentation and the further information provided by the Applicant and the participants and summarises the necessary consents at **Appendix B**. The Panel agrees with the Applicant that, in terms of the AUP, overall the

Application is a non-complying activity.⁴

- 9 We note that the Auckland Council (**Council**) queries some of the reasons for consent and we set these out in Appendix B. These differences of opinion do not, however, affect overall activity status.
- 10 For these resource consents, Schedule 5, clause 17 sets out the criteria for their consideration namely, the purpose of the FTAA, the provisions of Parts 2, 3, 6, and 8 to 10 of the RMA that direct decision making on resource consent applications (but excluding section 104D), and the relevant provisions of any other related legislation.

Approvals relating to a wildlife approval under the Wildlife Act 1953

- 11 The Application also seeks approval under section 53 of the Wildlife Act 1953 (**WA**) to catch and relocate native lizards. The approval has been sought on a precautionary basis in order to ensure that if any native lizards are discovered at the time of land development works, an authority exists for them to be relocated out of harms way.
- 12 Schedule 7, clause 5 of WA sets out the criteria for consideration of an application for a wildlife approval namely, the purpose of the FTAA, the purpose of the WA and the effects of the project on the protected wildlife in question, and any specific information and requirements relating to the protected wildlife.

Procedure

- 13 The following matters of procedure are relevant for this decision.

Meetings and site visits

- 14 Shortly after its appointment, the Panel convened a project overview briefing conference with the Applicant and a number of its specialist advisers. This took place on 13 August 2025, at 7 Falcon Street, Parnell.⁵ The Panel found the briefing very helpful and is grateful to the Applicant for arranging it.
- 15 After the briefing conference on the 13th of August, the Panel undertook an extensive site visit which included a walkover of key parts of the Site and a drive around its immediate surrounds.
- 16 Much of the Panel's other correspondence, deliberations and decision-making occurred over email following review, drafting and commenting on drafts of further information requests, this decision report and the conditions. Notwithstanding this, the Panel met on the following occasions:

- (a) 2 October 2025 – to discuss further information received, comments received and the Applicant's response;

⁴ Clause 17(b) of Schedule 5 of FTAA excludes from consideration section 104D of the RMA with the effect that one of the 'gateway' tests for non-complying activities does not have to be passed for the application to be considered for approval under section 104B of the RMA.

⁵ Refer Minute 1 of the Panel dated 6 August 2025.

(b) 30 October, to discuss further information received, draft decision and conditions;
and

(c) [insert].

Invitations to comment

17 The Panel determined the parties from whom comments on the Application would be sought in its Minute 2⁶ and the EPA subsequently invited comments on the Application by letter dated 20 August 2025. Responses to this invitation were due on 17 September 2025. Comments were received on time from the following:

- a. Minister of Defence;
- b. Watercare Services Limited;
- c. Auckland Conservation Board;
- d. Minister for the Environment;
- e. Auckland Council;
- f. Auckland Council (Healthy Waters);
- g. Auckland Council (Auckland Transport);
- h. Minister for Seniors
- i. Game Animal Council;
- j. New Zealand Transport Agency;
- k. Waitemata Clay Target Club;
- l. Director-General of Conservation;
- m. Minister of Building and Construction;
- n. Lesley White; and
- o. Michelle Sclanders.

18 The Panel would like to thank all parties who commented for their contributions. The following is a summary of the matters raised in the comments:

- a. [TBC];
- b. [TBC].

⁶ Minute 2 dated 20 August 2025.

Applicant's response to invited persons comments

- 19 On 26 September 2025 the Applicant provided a response to the comments received on the application from those persons who were invited to comment under Section 53 of the FTAA.
- 20 The Panel has considered the Applicant's responses, and, where appropriate, refers to those responses within Section E of this report below.

Further information

- 21 At the Panel's direction the EPA made two requests for further information about the Application under section 67 FTAA.
- 22 The first, dated 20 August 2025, sought signed statements from the experts whose advice had informed the Application and its assessments as to their qualifications and experience. This request was made to ensure that the Panel was able to place appropriate evidentiary weight on the information and opinions in the Application. Thirty-three such statements were provided on 16 September 2025 and these are summarised in **Appendix C**.
- 23 This first request also sought information about a retail hub and micro-brewery that featured in the application materials when initially lodged. A response to this request was received on 1 September 2025.
- 24 The second information request, dated 8 October 2025, sought further information from the Applicant on matters raised by the Council in its comments on the Application, on flood modelling and on some traffic safety items identified in its response to comments. The Applicant provided its response to this request on 24 October 2025.

Conditions

- 25 The Application included a detailed set of draft conditions for the resource consents sought in the Application.⁷ In its response to comments received, the Applicant indicated various amendments that it intended to make to these conditions to accommodate matters raised by commenting parties. To streamline this process, the Panel issued Minute 3 on 8 October 2025 directing a process for the co-operative preparation of an agreed set of conditions, to the extent that was achievable. This involved an exchange of condition proposals between the Council, in its capacity as a regulatory authority, and the Applicant, prior to those conditions being circulated more widely for comment in accordance with section 70 of FTAA, incorporating the Panel's input and amendments.
- 26 Responses to the Panel's draft conditions, circulated for comment on 31 October 2025, were received on 7 September 2025. The Panel received [insert number of responses] responses on the draft conditions from:

- a. The Applicant;

⁷ Appendix A to the AEE.

- b. The Council;
 - c. [insert]; and
 - d. [insert].
- 27 The Panel also prepared and circulated for comment at the same time a draft set of conditions for the proposed Wildlife Act approval. These draft conditions were based substantially on those proposed by the Department of Conservation and included as Appendix B to its report provided under section 51(2)(c) FTAA dated 3 September 2025.
- 28 The Panel has considered all comments received on the draft conditions as is required under section 70 FTAA and amended the conditions where appropriate. The Panel has addressed these comments throughout this decision report, and in Part K: Conditions below.

Hearing

- 29 [to be updated if hearing held following comments on conditions].

Approach to determination

- 30 The Panel is mindful of the emphasis on time limited decision-making in the present process, the purpose of the FTAA in section 3 - to facilitate the delivery of infrastructure and development projects with significant regional or national benefits, and the procedural principles in section 10 FTAA that require the Panel to take all practicable steps to use timely, efficient, consistent, and cost effective processes that are proportionate to the Panel's functions, duties or powers.
- 31 To this end, the Panel has endeavoured to conduct its processes efficiently, focussing on the issues in contention identified through the detailed information exchange process provided under the FTAA. It has also endeavoured to avoid repetition in completing its reasons for this decision, cross referencing and adopting analysis and assessments of others where appropriate and relying on the expert evidence and opinions provided to it in accordance with the Code of Conduct for Expert Witnesses.⁸

Timing of the Panel decision

- 32 In accordance with the panel convenor minute dated 21 July 2025 the time frame for the panel to issue its decision documents under sections 79 and 88 is 27 November 2025.

PART C: LEGAL CONTEXT

Legal context for a listed project under the FTAA

- 33 In accordance with section 42 an authorised person⁹ for a listed project may lodge a substantive application with the EPA. The substantive application is required to follow

⁸ Refer Appendix X.

⁹ FTAA, sections 4 and 42

the process set out in sections 43 and 44. The Applicant lodged the substantive application on 5 May 2025.

- 34 The EPA decided that the Application was complete and within scope¹⁰ on 30 May 2025. The EPA made a recommendation on whether there are competing applications or existing resource consents for the same activity on 13 June 2025.¹¹ The EPA then provided the Application to the panel convenor and at the same time requested a report from the Ministry responsible agency¹² under section 18 FTAA on [TBC]. A report was received on 30 June 2025.¹³

Decisions on approvals

- 35 Section 81 FTAA states:

81 Decisions on approvals sought in substantive application

- (1) 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.
- (2) For the purpose of making the decision, the panel—
 - (a) must consider the substantive application and any advice, report, comment, or other information received by the panel under section 51, 52, 53, 55, 58, 67, 68, 69, 70, 72, or 90;
 - (b) must apply the applicable clauses set out in subsection (3) (see those clauses in relation to the weight to be given to the purpose of this Act when making the decision);
 - (c) must comply with section 82, if applicable;
 - (d) must comply with section 83 in setting conditions;
 - (e) may impose conditions under section 84;
 - (f) may decline the approval only in accordance with section 85.
- (3) For the purposes of subsection (2)(b), the clauses are as follows:
 - (a) for an approval described in section 42(4)(a) (resource consent), clauses 17 to 22 of Schedule 5;
 - (b) for an approval described in section 42(4)(b) (change or cancellation of resource consent condition), in relation to a condition of a coastal permit specified under section 186H(3) of the Fisheries Act 1996, clauses 20 to 22 of Schedule 5;
 - (c) for any other approval described in section 42(4)(b) (change or cancellation of resource consent condition), clause 23 of Schedule 5;
 - (d) for an approval described in section 42(4)(c) (certificate of compliance), clause 27 of Schedule 5;
 - (e) for an approval described in section 42(4)(d) (designation), clauses 24 and 25 of Schedule 5;
 - (f) for an approval described in section 42(4)(e) (concession), clauses 7 to 9 of Schedule 6;
 - (g) for an approval described in section 42(4)(f) (land exchange), clauses 29 to 33 of Schedule 6;
 - (h) for an approval described in section 42(4)(g) (conservation covenant), clauses 45 and 46 of Schedule 6;
 - (i) for an approval described in section 42(4)(h) (wildlife approval), clauses 5 and 6 of Schedule 7;
 - (j) for an approval described in section 42(4)(i) (archaeological authority), clauses 4 and 5 of Schedule 8;
 - (k) for an approval described in section 42(4)(j) (complex freshwater fisheries activity approval), clauses 5 and 6 of Schedule 9;
 - (l) for an approval described in section 42(4)(k) (marine consent), clauses 6 and 7 of Schedule 10;

¹⁰ FTAA, section 43

¹¹ FTAA, section 47

¹² The Ministry for the Environment is the responsible agency for section 18.

¹³ Treaty Settlements and other obligations (Section 18) report.

- (m) for an approval described in section 42(4)(l) (access arrangement), clauses 7, 9, and 10 of Schedule 11:
 - (n) for an approval described in section 42(4)(m) (access arrangement), clauses 8, 9, and 10 of Schedule 11:
 - (o) for an approval described in section 42(4)(n) (mining permit), clauses 19 to 21 of Schedule 11.
- (4) When taking the purpose of this Act into account under a clause referred to in subsection (3), the panel must consider the extent of the project's regional or national benefits.
 - (5) For the purposes of subsection (4), if the substantive application was made under section 42(1)(b), the panel—
 - (a) must treat the stage of the project to which the application relates as constituting the project; but
 - (b) may consider the regional or national benefits of the whole project, having regard to the likelihood that any later stages of the project will be completed.
 - (6) Despite subsection (2)(a), the panel—
 - (a) is not required to consider any advice, report, comment, or other information it receives under section 51, 53, 55, 67, 69, 70, or 72 after the applicable time frame; but
 - (b) may, in its discretion, consider the information as long as the panel has not made its decision under this section on the approval.
 - (7) To avoid doubt, nothing in this section or section 82 or 85 limits section 7.

Ability to decline consent

- 36 Section 85 FTAA sets out the limited circumstances when approvals must or may be declined.
- 37 Following its consideration of the Application, the Panel has formed the view that, after taking account its proposed conditions, the adverse impacts are not sufficiently significant to be out of proportion to the project's regional or national benefits. The Panel has therefore concluded that the Applicant should be granted the approvals sought. No further comment about section 85 FTAA is required.

Approvals relating to the Resource Management Act 1991

- 38 The relationship of the FTAA with the RMA is outlined in Schedule 5 which provides the consent application process that applies rather than the standard RMA consent application process. Clause 17 states:

17 Criteria and other matters for assessment of consent application

- (1) For the purposes of section 81, when considering a consent application, including conditions in accordance with clauses 18 and 19, the panel must take into account, giving the greatest weight to paragraph (a),
 - (a) the purpose of this Act; and
 - (b) the provisions of Parts 2, 3, 6, and 8 to 10 of the Resource Management Act 1991 that direct decision making on an application for a resource consent (but excluding section 104D of that Act); and
 - (c) the relevant provisions of any other legislation that directs decision making under the Resource Management Act 1991.
- (2) For the purpose of applying any provisions in subclause (1),—
 - (a) a reference in the Resource Management Act 1991 to Part 2 of that Act must be read as a reference to sections 5, 6, and 7 of that Act; and
 - (b) if the consent application relates to an activity that is the subject of a determination under section 23 of this Act, the panel must treat the effects of the activity on the relevant land and on the rights or interests of Māori as a relevant matter under section 6(e) of the Resource Management Act 1991; and
 - (c) to avoid doubt, for the purposes of subclause (1)(b), when taking into account section 104(1)(c) of the Resource Management Act 1991, any Mana Whakahoā ō Rohe or joint management agreement that is relevant to the approval is a relevant matter.

- (3) Subclause (4) applies to any provision of the Resource Management Act 1991 (including, for example, section 87A(6)) or any other Act referred to in subclause (1)(c) that would require a decision maker to decline an application for a resource consent.
- (4) For the purposes of subclause (1), the panel must take into account that the provision referred to in subclause (3) would normally require an application to be declined, but must not treat the provision as requiring the panel to decline the application the panel is considering.
- (5) ...
- (6) For the purposes of subclause (1), the provisions referred to in that subclause must be read with all necessary modifications, including that a reference to a consent authority must be read as a reference to a panel.
- (7) Sections 123 and 123A of the Resource Management Act 1991 apply to a decision of the panel on the consent.

39 The Panel has considered clauses 17 and 18 of Schedule 5 FTAA and concluded that the purpose and principles of the RMA in sections 5, 6, and 7 remain relevant to our decision-making.

Approvals relating to a wildlife approval under the Wildlife Act 1953

40 Schedule 7, clause 5 sets out the criteria for assessment of an application for a wildlife approval. [TBC].

PART D: IWI AUTHORITIES

Section 18 Report for a listed project

41 The Ministry for the Environment provided a report under s18 in accordance with section 49. [TBC].

Substantive application information

42 [summary of what the substantive application contained with regards to the identification and/or engagement with iwi authorities TBC.]

Comments

43 Panel invited comments from [TBC] under s53(2)(b) – (g).

44 No comments were received.

Statutory requirements

Treaty settlements and recognised customary rights

45 Section 7 requires all persons performing functions and exercising powers under the FTCA to act in a manner that is consistent with the obligations arising under existing Treaty settlements and customary rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

7 Obligation relating to Treaty settlements and recognised customary rights

- (1) All persons performing and exercising functions, powers, and duties under this Act must act in a manner that is consistent with—
 - (a) the obligations arising under existing Treaty settlements; and
 - (b) customary rights recognised under—
 - (i) the Marine and Coastal Area (Takutai Moana) Act 2011:

- (ii) the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.
- (2) To avoid doubt, subsection (1) does not apply to a court or a person exercising a judicial power or performing a judicial function or duty.
- (3) In this section, **existing Treaty settlements** means Treaty settlements that exist at the time the relevant function, power, or duty is performed or exercised (rather than only those that exist at the commencement of this Act).

- 46 It is unclear to whether or not section 7(2) operates to exclude section 7(1) from our consideration. On the one hand, we are clearly exercising a “judicial function” in making these decisions, which would indicate that the section 7(1) does not apply.
- 47 On the other hand, section 82(3) and 84(1) below quite explicitly direct that the Panel is required to consider and apply section 7 in the context of making a decision or imposing a condition. In light of that ambiguity, we will include consideration of section 7(1) in the context of sections 82(3) and 84(1), however we will also state whether, if section 7(1) does not apply, our consideration of the matters identified in those sections would not have led to any different outcome.

Effect of treaty settlements and other obligations

- 48 Section 82 provides:

82 Effect of Treaty settlements and other obligations on decision making

- (1) This section applies if a Treaty settlement, the Marine and Coastal Area (Takutai Moana) Act 2011, or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 is relevant to an approval.
- (2) If the settlement or Act provides for the consideration of any document, the panel must give the document the same or equivalent effect through the panel’s decision making as it would have under any relevant specified Act.
- (3) The panel must also consider whether granting the approval would comply with section 7.
- (4) In this section, **document**—
(a) means any document, arrangement, or other matter; and
(b) includes any statutory planning document amended as a result of the settlement or Act referred to in subsection (1).

[TBC].

Conditions relating to Treaty settlements and recognised customary rights

- 49 Section 84 provides:

84 Conditions relating to Treaty settlements and recognised customary rights

- (1) For the purposes of section 7, the panel may set conditions to recognise or protect a relevant Treaty settlement and any obligations arising under the Marine and Coastal Area (Takutai Moana) Act 2011 or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.
- (2) This section applies in addition to, and does not limit, any other powers to set conditions under this Act.

Assessment of consent application

- 50 As noted above clause 17 of Schedule 5 of the FTAA provides the criteria and other

matters for assessment of consent applications.

PART E: EVALUATION OF EFFECTS

51 Schedule 5 clause 5(4) requires a consent application to provide an assessment of an activity's effects on the environment covering the information in clauses 6 and 7.

These matters include:

- (a) an assessment of the actual or potential effects on the environment:
- (b) if the activity includes the use of hazardous installations, an assessment of any risks to the environment that are likely to arise from such use:
- (c) if the activity includes the discharge of any contaminant, a description of—
 - (i) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and
 - (ii) any possible alternative methods of discharge, including discharge into any other receiving environment:
- (d) a description of the mitigation measures (including safeguards and contingency plans where relevant) to be undertaken to help prevent or reduce the actual or potential effect of the activity:
- (e) identification of persons who may be affected by the activity and any response to the views of any persons consulted, including the views of iwi or hapū that have been consulted in relation to the proposal:
- (f) if iwi or hapū elect not to respond when consulted on the proposal, any reasons that they have specified for that decision:
- (g) if the scale and significance of the activity's effects are such that monitoring is required, a description of how the effects will be monitored and by whom, if the activity is approved:
- (h) an assessment of any effects of the activity on the exercise of a protected customary right.
- ...
- (a) any effect on the people in the neighbourhood and, if relevant, the wider community, including any social, economic, or cultural effects:
- (b) any physical effect on the locality, including landscape and visual effects:
- (c) any effect on ecosystems, including effects on plants or animals and physical disturbance of habitats in the vicinity:
- (d) any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural value, or other special value, for present or future generations:
- (e) any discharge of contaminants into the environment and options for the treatment and disposal of contaminants:
- (f) the unreasonable emission of noise:
- (g) any risk to the neighbourhood, the wider community, or the environment through natural hazards or hazardous installations.

52 The AEE provided a detailed assessment of these matters at. Participants who commented also raised a range of actual and potential effects.

53 [TBC - comment on collaboration process]

54 [TBC - comment on how the effects have been covered in the decision].

55 The following main categories of actual and potential effects on the environment exist:

- a. Effects on 'planned character' of the locality (urban/rural design);
- b. Natural Character, landscape and visual effects;
- c. Development intensity effects;
- d. Direct effects on adjoining sites;
- e. Cultural effects;
- f. Transportation effects;
- g. Effects from earthworks and construction activities, including noise and nuisance;
- h. Servicing and infrastructure effects;
- i. Stormwater discharge effects (quantity and quality);
- j. Potential flooding effects;
- k. Subdivision effects;
- l. Ecological effects;
- m. Acoustic reverse sensitivity effects;
- n. Archaeological effects;
- o. Effects of tree removal;
- p. Economic effects;
- q. Social effects; and
- r. Positive effects.

56 The Panel has addressed these effects thematically throughout our discussion below. The Panel has also had regard to the relevant planning provisions in evaluating the effects of the Project, as noted in Part H: Planning Framework [Approach TBC in final reasons].

57 In terms of the relevant receiving environment, the Panel has applied the test in *Hawthorn*.¹⁴ The environment includes that which presently exists. It also

...embraces the future state of the environment as it might be modified by the utilisation of rights to carry out a permitted activity under a district or regional plan or by the implementation of resource consents which have been granted at the time a particular

¹⁴ *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 at [84].

application is considered, where it appears likely that those resource consents will be implemented.¹⁵

[heading for effect]

[sub sub-heading if relevant]

58 [insert]

59 [insert]

Comments Received

60 [insert]

Applicant response to comments

61 [insert]

Panel Findings

62 [insert]

[heading for effect]

[sub sub-heading if relevant]

63 [insert]

64 [insert]

Comments Received

65 [insert]

Applicant response to comments

66 [insert]

Panel Findings

67 [insert]

[heading for effect]

[sub sub-heading if relevant]

68 [insert]

¹⁵ *Queenstown Lakes District Council v Hawthorn Estate Ltd* [2006] NZRMA 424 at [84].

69 [insert]

Comments Received

70 [insert]

Applicant response to comments

71 [insert]

Panel Findings

72 [insert]

73 [insert]

PART F: REGIONAL OR NATIONAL BENEFITS OF THE PROJECT

74 Section 3 of the FTAA states that the purpose of the Act is to facilitate the delivery of infrastructure and development projects with *significant regional or national benefits*.

75 As noted above in Part C section 81(4) FTAA specifically requires the panel to consider the extent of the project's regional or national benefits.¹⁶

76 The assessment of adverse impacts in relation to an approval sought is particularly relevant in the context of a decision to decline an approval. An approval can only be declined if the adverse impacts are out of proportion to regional or national benefits.¹⁷

77 There is no specific definition of significant regional or national benefits in the context of listed projects. Section 22 FTAA, which relates to the criteria for assessing a referral application, provides the following:

- (2) For the purposes of subsection (1)(a), the Minister may consider—
 - (a) whether the project—
 - (i) has been identified as a priority project in a central government local government, or sector plan or strategy (for example, in a general policy statement or spatial strategy), or a central government infrastructure priority list;
 - (ii) will deliver new regionally or nationally significant infrastructure or enable the continued functioning of existing regionally or nationally significant infrastructure;
 - (iii) will increase the supply of housing, address housing needs, or contribute to a well-functioning urban environment (within the meaning of policy 1 of the National Policy Statement on Urban Development 2020);
 - (iv) will deliver significant economic benefits;
 - (v) will support primary industries, including aquaculture;
 - (vi) will support development of natural resources, including minerals and petroleum;
 - (vii) will support climate change mitigation, including the reduction or removal of greenhouse gas emissions;

¹⁶ If the application was a referral application – the panel must treat the stage of the project to which the application relates as constituting the project; but may consider the regional or national benefits of the whole project, having regard to the likelihood that any later stages of the project will be completed (section 81(5) FTAA).

¹⁷ Section 85(3) FTAA

- (viii) will support climate change adaptation, reduce risks arising from natural hazards, or support recovery from events caused by natural hazards:
- (ix) will address significant environmental issues:
- (x) is consistent with local or regional planning documents, including spatial strategies:

78 The AEE included a detailed assessment of the potential economic benefits of the Application. The Panel received critical commentary on this assessment from the Council. We have specifically addressed this material and section 81(4) FTAA as a matter in contention in Part I of this decision.

PART G: STATUTORY DOCUMENTS

79 The AEE addressed the relevant statutory documents and identified relevant provisions. Rather than repeat all of that, this section addresses the documents of particular relevance to the Application (particularly relevant provisions) and the comments received. The Panel also relies on our conclusions on effects and the conditions we have decided to impose in support of the conclusions reached on relevant planning provisions (including Part H: Regional and District Planning Framework as relevant to the topic area).

National Policy Statements

9 The relevant National Policy Statements were addressed in section 10 of the AEE. We agree with the Applicant that they only comprise the following:

- a. National Policy Statement for Freshwater Management 2020 (**NPSFM**);
- b. National Policy Statement for Indigenous Biodiversity 2023 (**NPSIB**); and
- c. New Zealand Coastal Policy Statement 2010 (**NZCPS**).

National Policy Statement for Freshwater Management 2020

10 The NPSFM sets out a framework under which local authorities are to manage freshwater (including groundwater).¹⁸

11 The objective of the NPSFM is to ensure that natural and physical resources are managed in a way that prioritises the:¹⁹

- a. health and well-being of water bodies and freshwater ecosystems;
- b. health needs of people (such as drinking water); and
- c. ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

12 This objective reflects the hierarchy of obligations in Te Mana o te Wai.²⁰

13 The Applicant in the AEE has assessed the Project against the objective and policies of the NPSFM in terms of the direction that local government manages water in an

¹⁸ NPSFM clause 1.5.

¹⁹ NPSFM clause 2.1.

²⁰ NPSFM clause 1.3.

integrated and sustainable way while providing for economic growth within set water quantity and quality limits.²¹ The Panel has considered this analysis and agrees with it.

14 The Panel notes [insert details of waterbodies or wetlands relevant to the application. Note any comment made by the applicant and footnote this reference in the footnotes]²².

15 [note findings in relation the objectives and policies of the NPSFM].

National Policy Statement for Indigenous Biodiversity 2023

16 The objective of the NPSIB is:

- (a) to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date; and
- (b) to achieve this:
 - (i) through recognising the mana of tangata whenua as kaitiaki of indigenous biodiversity; and
 - (ii) by recognising people and communities, including landowners, as stewards of indigenous biodiversity; and
 - (iii) by protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity; and
 - (iv) while providing for the social, economic, and cultural wellbeing of people and communities now and in the future.

17 [TBC]

18 [placeholder] The Panel considers that the conditions adopt a precautionary approach and are necessary and appropriate to avoid outcomes for indigenous biodiversity on the Site that would otherwise be contrary to the objective of the NPSIB.

19 The Panel is satisfied that the proposal is consistent with the NPSIB.

New Zealand Coastal Policy Statement 2010

20 The objective of the NZCPS is:

21 [TBC]

National Environmental Standards

22 The AEE states that the project triggers no requirement for consents under any relevant National Environmental Standards. No party contended otherwise and we adopt that position.

²¹ [insert reference in AEE here].

²² [insert reference here].

PART H: REGIONAL AND DISTRICT PLANNING FRAMEWORK

- 23 An assessment of the relevant statutory plans has been included within the AEE as is required by Schedule 5, clause 5(1)(h).
- 24 The Panel has reviewed and considered the assessment provided by the Applicant and the comments provided by the Council [and any other participants]. We outline the key matters in the following sections (as well as adding further considerations and assessment).

Regional Policy Statement

- 25 [insert reference from the AEE]

Panel Finding

- 26 [insert].

Operative District Plan

- 27 [insert reference from the AEE].

Panel Finding

- 28 [insert].

Conclusion regarding consistency with the regional and district planning framework

- 29 [insert].

Planning documents recognised by a relevant iwi authority and lodged with the Council

- 30 An application for a resource consent must include an assessment of the activity against any relevant provisions of a planning document recognised by a relevant iwi authority and lodged with a local authority.²³

- 31 It is the Panel's understanding that the following planning documents recognised by relevant iwi authorities have been lodged with the Council:

a. [TBC].

- 32 [insert what the AEE provided].

Treaty settlements

- 33 As noted in Part D sections 7 and 8 FTAA state:

7 Obligation relating to Treaty settlements and recognised customary rights

- (1) All persons performing and exercising functions, powers, and duties under this Act must act in a manner that is consistent with—
- (a) the obligations arising under existing Treaty settlements; and

²³ Schedule 5, clause 5(1)(h) and clause 5(2)(g).

- (b) customary rights recognised under—
 - (i) the Marine and Coastal Area (Takutai Moana) Act 2011;
 - (ii) the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.
- (2) To avoid doubt, subsection (1) does not apply to a court or a person exercising a judicial power or performing a judicial function or duty.
- (3) In this section, **existing Treaty settlements** means Treaty settlements that exist at the time the relevant function, power, or duty is performed or exercised (rather than only those that exist at the commencement of this Act).

8 Te Ture Whaimana

- (1) Te Ture Whaimana is intended by Parliament to be the primary direction-setting document for the Waikato and Waipā Rivers and activities within their catchments affecting the rivers (see the legislation referred to in subsection (3)).
- (2) Te Ture Whaimana—
 - (a) prevails over any inconsistent provision in a national policy statement, New Zealand coastal policy statement, or national planning standard; and
 - (b) in its entirety is deemed to be part of the Waikato regional policy statement; and any regional plan or district plan that affects the Waikato River or the Waipā River or activities within their catchments must give effect to Te Ture Whaimana.
- (3) In this section, **Te Ture Whaimana** means the vision and strategy set out in—
 - (a) Schedule 2 of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010; and
 - (b) Schedule 1 of the Ngāti Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010; and
 - (c) Schedule 1 of the Nga Wai o Maniapoto (Waipa River) Act 2012.

34 The Panel understands²⁴ that the following Settlement Acts (and associated Treaty settlement deeds) are of relevance to the Application area:

- a. [insert by reference to the section 18 report and any information in the AEE or in the comments].

35 As noted in Part B the Panel directed the EPA to seek comment from the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development under section 72 FTAA. [insert comments received here].

36 As noted in Part X re s82

37 As noted in part X re 84 conditions

PART I: PRINCIPAL ISSUES IN CONTENTION

38 From the extensive materials provided by the Applicant and the comments received from other participants, the Panel identifies the following principal issues in contention with the Application:

- a. What is the extent of stream bed loss and does the Application adequately mitigate the ecological effects of that loss?
- b. Are permits required for the dam / culvert attenuation structures?
- c. Are the stormwater management works associated with the Forestry Road

²⁴ Based on the AEE and the lack of any contrary views or evidence provided to the Panel.

- upgrades required for the CSL subdivision component?
- d. Is the proposed indigenous revegetation in Lot 2 required for mitigation purposes?
 - e. Are the effects of additional ponding in Lot 2 acceptable?
 - f. Which CN values should be utilised for modelling the stormwater runoff effects of the proposal?
 - g. Should Access 4 be removed and an alternative access of other access ways be provided to Lot 68 in Stage 4?
 - h. Should a restriction on the number of houses able to be occupied ahead of the SH16 upgrade works be incorporated into the conditions?
 - i. Are potential reverse sensitivity matters associated with the gun club appropriately addressed?
 - j. Has the Application adequately justified that it will achieve a net regional or national economic contribution or benefit?
- 39 The Panel's findings on these principal issues in contention are:
- 40 [TBC in final reasons].

PART J: OTHER CONSIDERATIONS

- 41 [TBC].

PART K: CONDITIONS

FTAA general requirements for conditions

- 42 Section 81 provides that the Panel must set any conditions to be imposed on the approval. The statutory requirements on what conditions are set is determined by what approvals are being sought.
- 43 Section 83 must be complied with and provides:
- 83 Conditions must be no more onerous than necessary**
- 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.
- 44 How the Panel has complied with this section is discussed below in relation to the conditions that have been set.
- 45 If a Treaty settlement, the Marine and Coastal Area (Takutai Moana) Act 2011, or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 is relevant to an approval then section 82 applies. This section provides:

82 Effect of Treaty settlements and other obligations on decision making

- (1) This section applies if a Treaty settlement, the Marine and Coastal Area (Takutai Moana) Act 2011, or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 is relevant to an approval.
- (2) If the settlement or Act provides for the consideration of any document, the panel must give the document the same or equivalent effect through the panel's decision making as it would have under any relevant specified Act.

- (3) The panel must also consider whether granting the approval would comply with section 7.
- (4) In this section, **document**—
 - (a) means any document, arrangement, or other matter; and
 - (b) includes any statutory planning document amended as a result of the settlement or Act referred to in subsection (1).

FTAA requirements for conditions

Resource consent

- 46 For a resource consent the following clauses of Schedule 5 apply:

18 Conditions on resource consent

When setting conditions on a consent, the provisions of Parts 6, 9, and 10 of the Resource Management Act 1991 that are relevant to setting conditions on a resource consent apply to the panel, subject to all necessary modifications, including the following:

- (a) a reference to a consent authority must be read as a reference to a panel; and
- (b) a reference to services or works must be read as a reference to any activities that are the subject of the consent application.

Wildlife approval

- 47 For the grant of a wildlife approval the following clause of Schedule 7 apply:

6 Conditions

- (1) A panel may set any conditions on a wildlife approval that the panel considers necessary to manage the effects of the activity on protected wildlife.
- (2) In setting any condition under subclause (1), the panel must—
 - (a) consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife that is to be covered by the approval; and
 - (b) where more than minor residual impacts on protected wildlife cannot be avoided, minimised, or remedied, ensure that they are offset or compensated for where possible and appropriate; and
 - (c) take into account, as the case may be, the New Zealand Threat Classification System or any relevant international conservation agreement that may apply in respect of the protected wildlife that is to be covered by the approval.

- 48 Generally speaking, a resource consent condition must:²⁵

- a. be for a resource management purpose, not an ulterior one;
- b. fairly and reasonably relate to the development authorised by the resource consent or designation; and
- c. not be so unreasonable that a reasonable planning authority, duly appreciating its statutory duties could not have approved it.

- 49 The underlying purpose of the conditions of a resource consent is to manage environmental effects by setting outcomes, requirements or limits to that activity, and

²⁵ *Newbury District Council v Secretary of State for the Environment* [1980] 1 All ER 731 (HL), at 739.

how they are to be achieved.²⁶

50 Conditions must also be certain and enforceable.²⁷

51 A condition must also not delegate the making of any consenting or other arbitrary decision to any person, but may authorise a person to certify that a condition of consent has been met or complied with or otherwise settle a detail of that condition.²⁸ Such authorisation is subject to the following:

- a. The basis for any exercise of a power of certification must be clearly set out with the parameters for certification expressly stated in the relevant conditions.
- b. This power of certification does not authorise the making of any waiver or sufferance or departure from a policy statement or plan except as expressly authorised under the Act (s 84 of the RMA).
- c. This power of certification does not authorise any change or cancellation of a condition except as expressly authorised under the Act (s 127 of the RMA).

52 Section 220 specifies the conditions that may be imposed on a subdivision consent.

Project conditions

53 [Describe process followed in relation to conditions development].

54 The Panel also received comments on the draft conditions from:

a. [insert].

55 The Panel has accepted most of the proposed amendments for the reasons outlined by the commentators. The main outstanding issues related to:

a. [insert].

56 [TBC The Panel has considered the views and generally accepted the suggested wording and reasoning of one or other party as relevant, subject to some drafting refinements. In particular, the Panel advises it has made the following decisions with respect to the different views presented].

Consent notices pursuant to s221 of the RMA

57 Consent notices are necessary to require the following conditions to be complied with on an ongoing basis:

a. [insert]

58 The consent notices are targeted and appropriate to ensure that there is ongoing compliance with these requirements beyond the completion of the relevant stage of subdivision and that all future owners of each residential lot are fully informed as to

²⁶ *Summerset Village (Lower Hutt) Ltd v Hutt City Council* [2020] MZEnvC 31 at [156].

²⁷ *Bitumix Ltd v Mt Wellington Borough Council* [1979] 2 NZLR 57.

²⁸ *Turner v Allison* (1970) 4 NZTPA 104.

their obligations with respect to these matters.

Conclusion regarding conditions

59 [insert].

60 To the extent the final set contains minor errors, the Panel notes it has powers under section 89 of the FTAA to make minor corrections.

PART L: RMA 1991

61 As noted in Part C, Schedule 5, clause 17 sets out how the application is to be accessed under various provisions of the RMA.

62 It is important to note that the purpose of the FTAA must be given the greatest weight. [TBC - summary of how the Panel has done this in this decision here].

Panel finding

63 The Applicant addressed Part 2 of the RMA in the AEE.²⁹ As a result of the conclusions reached on the effects of the Application and in the context of the relevant planning provisions and the conditions, the Panel finds that the Application is consistent with Part 2.

PART M: FTAA, SECTION 3

64 The Panel's decision is subject to the purpose of the FTAA, contained in section 3, namely to: facilitate the delivery of infrastructure and development projects with significant regional or national benefits.

65 As noted, and following its findings on this issue that was in contention, the Panel accepts that the Project will deliver development with significant national and regional benefit.

PART N: OVERALL ASSESSMENT

66 As noted in Part C the Panel may decline an approval if, in complying with section 81(2), 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
 - (ii) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.³⁰
- (4) To avoid doubt, a panel may not form the view that an adverse impact meets the threshold in subsection (3)(b) solely on the basis that the adverse impact is inconsistent

²⁹ [insert reference here].

³⁰ Section 82 FTAA

with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider in complying with section 81(2).

- 67 This test is different from the test developed over the years under the RMA which culminated in the decision of *Environmental Defence Society v The New Zealand King Salmon Company Limited & Ors (King Salmon)*³¹. The King Salmon case was clear – the approach by the Courts and local authorities of adopting an overall judgement approach to environmental decision making under the RMA was incorrect.
- 68 In contrast the FTAA clearly envisages an overall judgment or balancing approach to decision making. The Panel must balance the adverse impacts against the regional or national benefits of the project.
- 69 [With reference to Part I principal issues of contention - summarise the Panel's finding on the adverse impacts (including by reference to the Act that applies or any other document the Panel must take into account) and the regional or national benefits. Include a conclusion on these matters].

PART O: FINAL DECISION

- 70 The Panel has considered the Application and supporting information as well as the comments received on it and on the draft conditions, as well as the further information provided as a result of comments received from other participants and the subsequent refinement of the Application. We thank all those who commented for their contributions, particularly [TBC].
- 71 Overall, the Panel is satisfied that the matters set out in section 81 of the FTAA have been addressed appropriately and that purpose of the FTAA is achieved by this Decision. In reaching that view, the Panel has had regard to the actual and potential effects on the environment of allowing the activity as set out above. The Panel has also had regard to the relevant planning documents.
- 72 The Panel determines to grant the RMA approvals sought subject to the Conditions attached as Appendix A1 to this Decision, and to approve the Wildlife Act approval sought subject to the Conditions attached as Appendix A2.
- 73 As required by section 99 of the FTAA the persons listed in that section are entitled to appeal and must commence any appeals within the 20-working day period from the day this Decision is published under section 88(3).

Kitt R M Littlejohn
(Chair)

Karen Kurzeja
(Member)

³¹ [2014] NZSC 38

Nicholas Manukau
(Member)

DRAFT DECISION AND REASONS

APPENDIX A1: CONDITIONS OF RMA CONSENTS

DRAFT DECISION AND REASONS

APPENDIX A2: CONDITIONS OF WILDLIFE ACT APPROVAL

DRAFT DECISION AND REASONS

APPENDIX B: CONSENTS REQUIRED

DRAFT DECISION AND REASONS

APPENDIX C: QUALIFICATIONS AND EXPERIENCE OF EXPERTS RELIED ON

DRAFT DECISION AND REASONS