

IN THE MATTER

of the Fast-track Approvals Act 2024 ("**FTAA**")

AND

IN THE MATTER

of an application for approvals by Harmony Energy
NZ #6 Limited ("**HENZ**") to develop a
comprehensively planned solar farm at the corner
of State Highway 29 and State Highway 27,
Hinuera ("**Project**")

**LEGAL CONSIDERATIONS ON BEHALF OF
HARMONY ENERGY NZ #6 LIMITED**

12 AUGUST 2026

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1. SUMMARY

- 1.1 This legal considerations memorandum is provided on behalf of HENZ in support of its substantive application ("**Application**") under the FTAA for approvals to construct and develop the Project at the corner of State Highway 29 and State Highway 27, Hinuera ("**Site**"). The Project is listed in Schedule 2 of the FTAA.
- 1.2 The Project involves constructing, operating and maintaining (and eventually decommissioning or repowering) a utility-scale solar farm and battery energy storage system) on approximately 154 ha of rural land. All electricity generated will be exported to the electricity network via the nearby Powerco Hinuera Substation.
- 1.3 HENZ seeks all resource consents that would otherwise be required under the Resource Management Act 1991 ("**RMA**") for the construction, operation, maintenance, and eventual decommissioning or repowering of the Project.
- 1.4 The Project will deliver significant regional and national benefits that strongly align with the purpose of the FTAA, including the generation of enough to power approximately 21,000 homes each year, generation of around \$42.6 million in GDP and a projected displacement of approximately 72,711 tonnes of CO₂-equivalent emissions per year.
- 1.5 By comparison, the adverse effects of the Project have been assessed as generally minor in nature, and are primarily related to effects during the construction phase which are inherently temporary in nature.
- 1.6 For the reasons set out in this legal considerations memorandum, the Panel can have confidence that the Project achieves the purpose of the FTAA, and HENZ respectfully requests that the Panel grant the resource consents on the proposed conditions.

2. OVERVIEW OF THE PROJECT

Project details

- 2.1 A detailed description of the Project is included in the Application and is not repeated here. In summary, the Project involves the construction, operation, maintenance, and eventual decommissioning or repowering of a utility-scale solar farm and battery energy storage system.

- 2.2 The Project is listed in Schedule 2 of the FTAA and is described as follows:¹

Project description

Construct, operate, and maintain a solar farm and battery energy storage facility with an installed capacity of approximately 100 MW DC, and connect and supply electricity to the national grid.

Approximate geographical location

152 hectares at Hinuera, Waikato.

- 2.3 All aspects of the Project are clearly covered within the Project description.

Approvals required

- 2.4 HENZ, through this Application, seeks resource consent as a non-complying activity under the RMA to authorise the construction and delivery of the Project summarised above. No other approvals are sought.

3. LEGAL CONTEXT

Decision making framework

- 3.1 The decision-making framework under the FTAA is set out in section 81. This provides that a Panel must, for each approval sought in a substantive application, decide whether to grant the approval and set any conditions, or decline the approval.
- 3.2 In making this decision, the Panel must consider a range of matters listed in section 81(2) and (given this Application is for resource consents) apply clauses 17 - 22 of Schedule 5.²
- 3.3 Clause 17(1) of Schedule 5 provides that when considering an application and setting conditions, the Panel must "take into account" the following, giving the greatest weight to paragraph (a):
- (a) the purpose of the FTAA (being "to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.");³

¹ FTAA, Schedule 2.
² FTAA, section 81(3)(a).
³ FTAA, section 3.

- (b) the provisions of Parts 2, 3, 6 and 8-10 of the RMA that direct decision making on an application for a resource consent (but excluding section 104D); and
- (c) the relevant provisions of any other legislation that directs decision making under the RMA.

3.4 While this hierarchy approach is distinct from the RMA framework, the use of a hierarchy of considerations has precedent in other legislation, for example section 34(1) of the Housing Accords and Special Housing Areas Act 2013 ("**HASHAA**") similarly required decision-makers to give weight to the purpose of the HASHAA and the matters in Part 2 of the RMA in a prescribed order.⁴

3.5 Expert panels under the FTAA have adopted a generally consistent approach to the weighting exercise required under clause 17(1) of Schedule 5, as set out below.⁵

- (a) Each factor listed in clause 17(1) must be assessed individually. This individual assessment is important as it ensures a panel does not rely solely on the purpose of the FTAA at the expense of the other listed matters, for example environmental effects do not become less than minor simply because the project meets the purpose of the FTAA.
- (b) Once individual assessment has been completed of each factor, the panel must then stand back and conduct an overall weighting exercise in accordance with the prescribed weighting.⁶ As set out in the FTAA, the prescribed weighting requires a panel to give the greatest weight to the purpose of the FTAA.

Assessment of the Project against the purpose of the FTAA

- 3.6 The Panel must consider the evidenced national and regional benefits in relation to the Application, considering the facts before them.
- 3.7 The Application provides an analysis of the Project against the purpose of the FTAA and concludes that the Project provides for national-scale qualitative

⁴ Housing Accords and Special Housing Areas Act 2013, section 34(1).

⁵ For example, Wellington International Airport Southern Seawall Renewal Expert Panel decision dated 15 May 2026 at [89]-[91]. Bledisloe and Fergusson Wharf Extension Expert Panel decision dated 21 August 2025 at [121].

⁶ *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541 at [52] - [53].

benefits, quantified net economic benefits, employment and regional activities and wider benefits and strategic alignment.

- 3.8 The Project represents a \$150 million private-sector commitment in nationally significant renewable infrastructure, with associated investment signal effects in the Waikato region.⁷ The Project will generate a significant amount of renewable electricity – sufficient to power approximately 21,000 homes each year.⁸
- 3.9 The generation of renewable energy at this scale also has significant benefits from a climate change resilience perspective which will displace approximately 72,711 tonnes of CO₂-equivalent emissions per year.⁹
- 3.10 From an economic perspective, the Project will have wide-ranging economic benefits including:
- (a) a net benefit of approximately \$52 million (Net Present Value), with quantified benefits (\$75.5 million) exceeding costs (\$23.0 million) by more than three to one.¹⁰
 - (b) generation of around \$42.6 million in GDP;
 - (c) supporting a total of approximately 267 FTE-years of employment during its construction; and
 - (d) contributing approximately \$21 million in wages and salaries over the construction period.
- 3.11 The National Policy Statement for Renewable Electricity Generation ("**NPS-REG**") recognises the regional and national benefits of solar farms at Part 2(a), which assumes there are national, regional, and local benefits of renewable electricity generation and directs that they be provided for.¹¹ In the draft decision on the *Haldon Solar Farm* project, the Panel noted that the NPS-REG directly recognises solar farms as having national, regional, and local benefits.¹² This reinforces the significant regional and national benefits of the Project.

⁷ Hinuera Solar Farm Fast-Track Approvals Act 2024 Substantive Application at [8.1.4].

⁸ Hinuera Solar Farm Fast-Track Approvals Act 2024 Substantive Application at [7.2].

⁹ Hinuera Solar Farm Fast-Track Approvals Act 2024 Substantive Application at [8.1.1].

¹⁰ Hinuera Solar Farm Fast-Track Approvals Act 2024 Substantive Application at [8.1.2].

¹¹ Haldon Solar Farm Expert Panel draft decision (dated 26 June 2026) at [509].

¹² Haldon Solar Farm Expert Panel draft decision (dated 26 June 2026) at [509].

- 3.12 Although the requirement under the FTAA is only that a project has to demonstrate significant regional or national benefits, the Project here has both – it has significant regional benefits through the investment signal effects in the Waikato region and the increases to employment, and it has significant national benefits through the significant increase in renewable energy of a scale that is enough to power 21,000 houses each year.

Assessment against other statutory requirements

- 3.13 A full assessment of the Project's effects on the environment, and against the relevant planning instruments and the other applicable statutory requirements is set out in the Application at sections 8 and 9 and the technical reports submitted in support of it.
- 3.14 There are two matters we wish to address from a legal perspective.

National Environmental Standards for Freshwater

- 3.15 As part of the Application, a discretionary resource consent is sought under regulation 45(6) of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 ("**NES-F**") for vegetation clearance, earthworks and the diversion of water within and adjacent to natural inland wetlands for the purpose of constructing specified infrastructure.
- 3.16 Regulation 45(6) requires that there is a "functional need for the specified infrastructure in that location".¹³ Given this, the concept of functional need is relevant for the assessment of this Application in relation to the installation of solar panels across two wetlands located on the Site.¹⁴
- 3.17 Functional need is defined in the National Policy Statement for Freshwater Management 2020 ("**NPS-FM**") as:¹⁵
- the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.
- 3.18 Despite the requirement for the consent authority to be satisfied there is a functional need for the specified infrastructure "in that location", the High Court in *Poutama Kaitiaki Charitable Trust and D&T Pascoe v Taranaki Regional Council* held that when determining functional need, the focus is not on a

¹³ Resource Management (National Environmental Standards for Freshwater) Regulations 2020, reg 45(6)(b).

¹⁴ A comprehensive assessment of functional need is provided in the Hinuera Solar Farm Fast-Track Approvals Act 2024 Substantive Application at [8.2.2].

¹⁵ National Policy Statement for Freshwater Management 2020 at [3.21].

particular "location", but the need for an activity to locate in a particular "environment", in accordance with the definition of functional need.¹⁶

- 3.19 Functional need has also been considered in the context of the National Policy Statement for Highly Productive Land.¹⁷ *Meridian Energy Ltd v Tararua District Council* concerned a proposal to locate a substation and transmission lines as part of a windfarm project over a small area of highly productive land.¹⁸ The Court considered Meridian Energy had demonstrated functional need as the wind farm needed to locate in an area with a high-quality wind resource, and the substation and lines forming an integral part of the windfarm project.
- 3.20 Considering the caselaw above in relation to this Application, the question is not whether the Project needs to be located specifically at the corner of State Highway 29 and State Highway 27, Hinuera, but whether the Project needs to be located in the type of environment that this location offers.
- 3.21 In terms of the type of environment needed for a solar farm, the Application sets out that the environment must:¹⁹
- (a) have substations or high voltage lines in close proximity, where a connection to the national grid is able to be provided (as provided for and recognised by the NPS-REG);
 - (b) have a suitably sized land parcel(s) to accommodate the extent of infrastructure required, noting this is most likely to be in the rural environment;
 - (c) have an appropriate amount of irradiation in an average year;
 - (d) the topography is flat to gently sloping; and
 - (e) have ground conditions that are appropriate for the driving of piles / natural hazards are not incompatible with the activity.
- 3.22 In this instance the Site:
- (a) is in close proximity to the Hinuera substation;

¹⁶ *Poutama Kaitiaki Charitable Trust and D&T Pascoe v Taranaki Regional Council* [2022] NZHC 629 at [53].

¹⁷ The National Policy Statement for Highly Productive Land 2022 provides that development, operation or decommissioning of specified infrastructure is not inappropriate where there is a functional or operational need for the use or development to be on highly productive land (clause 3.9(j)).

¹⁸ *Meridian Energy Ltd v Tararua District Council* [2025] NZEnvC 44.

¹⁹ Hinuera Solar Farm Fast-Track Approvals Act 2024 Substantive Application at [8.2.2].

- (b) encompasses an area of land that is large enough to accommodate an appropriately sized solar farm;
- (c) receives high levels of irradiation, relative to other areas of New Zealand; and
- (d) has appropriate topography and ground conditions for the construction of a solar farm.

3.23 Sites with the topography and size required to develop a solar farm, are highly likely to contain small depressions or low-lying areas that would meet the definition of a wetland under the NPS-FM.²⁰ Therefore, it is not that the solar farm must locate in a wetland, but that the solar farm must locate in the type of environment which is highly likely to contain wetlands. Avoiding the wetlands and providing setbacks in this case would result in an ineffective layout of solar panels which would have a substantial impact on the revenue of the Project. This impact is quantified in the Application.²¹

3.24 Although HENZ undertakes desktop assessment of potential sites (including to screen for potential wetlands), these desktop assessments will not always pick up every wetland, particularly where these are not identified in the relevant Council planning documents and are not visible on aerial photographs.²²

3.25 For the reasons above, and set out in the Application, the functional need test is met.

Protection of wetlands

3.26 The consent conditions proposed as part of the Application require a Restoration and Planting Management Plan ("**RPMP**") to be prepared.²³ The purpose of this is to restore and/or enhance wetland and stream ecosystems within the Site.²⁴ The RPMP is required to be implemented in the first planting seasons following completion of construction and the planting must be monitored and maintained for the life of the consent.²⁵

3.27 Prior to lodgement, HENZ engaged in discussions with Waikato Regional Council ("**WRC**"), and it was suggested by WRC that a condition could be offered to require a covenant to be registered on the certificate of title to protect

²⁰ Hinuera Solar Farm Fast-Track Approvals Act 2024 Substantive Application at [8.2.2].

²¹ Hinuera Solar Farm Fast-Track Approvals Act 2024 Substantive Application at [8.2.2].

²² Hinuera Solar Farm Fast-Track Approvals Act 2024 Substantive Application at [8.2.2].

²³ Proposed Consent Conditions at E10.

²⁴ Proposed Consent Conditions at E11.

²⁵ Proposed Consent Conditions at B13 and E12.

the wetland restoration planting area in perpetuity. HENZ does not agree this type of condition is necessary for the reasons set out below and has not included this condition in its proposed conditions provided with the Application.

- 3.28 As a starting point, the FTAA establishes a higher threshold for imposing conditions than what it is provided under the RMA. Under the FTAA, a panel must not impose a condition that is "more onerous than necessary to address the reason for which it is set".²⁶
- 3.29 As outlined in the Ecological Impact Assessment, the planned restoration planting on the Site is:²⁷
- ...expected to lead to an increase in biodiversity and a small increase in extent, as well as a functional net gain for the site wetlands.
- 3.30 The ecological assessment provided with the Application was undertaken on the basis of the areas being protected during the life of the consent. The protection of the restoration planting area in perpetuity was not considered to be required.
- 3.31 The conditions proposed by HENZ – to establish restoration planting and to maintain this for the life of the consent – reflect what is considered necessary by HENZ's expert team to mitigate the effects of the Project. Therefore, the imposition of a condition requiring a covenant to protect the wetlands in perpetuity would go beyond what is necessary to mitigate the effects of the Project.
- 3.32 Further, the wetland restoration planting areas are protected under the NPS-FM and NES-F. Even without the existence of a covenant, any future activity in these restoration areas would require consent under the NES-F, given their proximity to wetlands.
- 3.33 A further consideration is that HENZ is not the owner of the Site. In order to register a covenant on the title, HENZ would have to enter further negotiations with the landowners which could have the potential to threaten the viability of the project or to otherwise cause delays.
- 3.34 For these reasons, it is submitted that the conditions proposed by HENZ in relation to the restoration planting areas are appropriate and no further

²⁶

FTAA, section 83.

²⁷

Ecological Impact Assessment dated 23 June 2026 at [4.2.4.3].

condition is required to require a covenant to be registered on the certificate of title.

The Project aligns with the FTAA

3.35 Section 85 of the FTAA confirms the basis on which approvals should be granted, by specifically clarifying when the Panel can decline approvals. The Project satisfies each of the relevant criteria, as:

- (a) the approvals sought are for an eligible activity;²⁸
- (b) granting the approvals is consistent with section 7 for the reasons set out in the application;²⁹ and
- (c) the approvals do not relate to an aquaculture area.³⁰

3.36 Section 85(3) also provides that a Panel may decline an approval where there are one or more adverse impacts, and those adverse impacts are sufficiently significant to be out of proportion to the Project's regional or national benefits (after taking into account conditions). As set out in the Application, the Project delivers significant regional and national benefits, and there are no significant adverse effects or adverse impacts that would be disproportionate to those benefits. The Project is therefore deserving of consent.

4. CONCLUSION

4.1 In our submission the Panel can have confidence that the adverse effects of the Project will be appropriately managed through the proposed conditions, and the Project will achieve the purpose of the FTAA.

4.2 HENZ respectfully requests the Panel grant the resource consents.

DATED 12 August 2026

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²⁸ FTAA, section 85(1)(a).

²⁹ FTAA, section 85(1)(b); see also Hinuera Solar Farm Fast-Track Approvals Act 2024 Substantive Application at [4.4].

³⁰ FTAA, section 85(2).