

BEFORE AN EXPERT PANEL

IN THE MATTER of the Fast-track Approvals Act 2024 (“FTAA”)

AND

IN THE MATTER of a substantive application by Golden Ridge Farm Limited, Golden Ridge Park Limited, Industrie Property Rua Limited, and Southpark Agri Development Limited for approvals for Southern Links 1, a listed project under Schedule 2

LEGAL SUBMISSIONS ON BEHALF OF THE APPLICANTS

9 September 2026

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1. INTRODUCTION AND SCOPE OF SUBMISSIONS

- 1.1. Golden Ridge Farm Limited, Golden Ridge Park Limited, Industrie Property Rua Limited, and Southpark Agri Development Limited (together, the “Applicants”) have applied for approvals for Southern Links 1 (the “Project” or the “Application”) under the FTAA. The Project is a listed project under Schedule 2 of the FTAA.
- 1.2. These legal submissions are intended to assist the Panel by summarising the legal framework applying to the Panel’s decision-making for the Project under the FTAA and by evaluating the Application against that framework.
- 1.3. A comprehensive assessment of the Project is contained within the Overview Report, Industrial Assessment of Environmental Effects, and Residential Assessment of Environmental Effects (together, the “Substantive Application Report”), prepared by independent expert planners at Barker & Associates, drawing on specialist reports from a wide range of technical experts. The Substantive Application Report and technical assessments have been carefully crafted to address the FTAA requirements. The detailed independent technical assessments have not identified any adverse impacts that are sufficiently significant to outweigh the Project’s regional benefits.
- 1.4. These legal submissions are intended to contextualise the FTAA framework, and to be read alongside the Substantive Application Report and supporting technical assessments.
- 1.5. In these submissions, we:
 - (a) set out our principal submission;
 - (b) introduce the Applicants, the approvals sought, and the Project;
 - (c) address the applicable FTAA statutory framework;
 - (d) evaluate the Project in the context of the FTAA legal framework; and
 - (e) set out a conclusion.

2. PRINCIPAL SUBMISSION

- 2.1. The Applicants’ principal submission is that the Project satisfies the applicable provisions of the FTAA, including the relevant sections of the Resource Management Act 1991 (“RMA”) and Wildlife Act 1953 (“Wildlife Act”) that are referred to in the FTAA.

- 2.2. Independent economic consultants, Insight Economics, conclude that the Project will provide a range of significant regional and local benefits, which are outlined below.
- 2.3. The Project is founded on rigorous expert assessment and incorporates comprehensive management measures to address potential adverse impacts, including measures shaped by engagement with stakeholders. The adverse impacts of the Project are appropriately managed through careful design and the detailed proposed conditions of consent and management plans that have been submitted with the Application.
- 2.4. The purpose of the FTAA will be promoted by granting the Application. Overall, we submit that the Application demonstrates – and that the Panel can justifiably conclude – that all approvals sought should be granted, subject to appropriate conditions.

3. BACKGROUND TO THE APPLICANTS

- 3.1. Golden Ridge Farm Limited and Golden Ridge Park Limited are the authorised persons seeking approvals for the SL1 Residential South Development component of the Project; and Industrie Property Rua Limited and Southpark Agri Development Limited are the authorised persons seeking approvals for the SL1 Industrial North component.¹
- 3.2. The Applicants bring together a combination of proven property development expertise, logistics and infrastructure experience, and long-standing investment in the Waikato region. Supported by major institutional partners including Stride Property and J.P. Morgan, as well as established regional developers and landowners, the Applicants have both the track record and financial resources necessary to successfully deliver the Project.
- 3.3. The Applicants are committed to delivering high-quality, sustainable urban growth that supports Hamilton and Waipā districts’ – and the wider Waikato region’s – long-term economic and social well-being. For the Project, the Applicants have invested significant capital, time, and independent consultant expertise into comprehensive planning, design, and impact analysis. The Application is the result of that extensive assessment and testing, carefully designed not only to manage environmental effects, but to efficiently utilise strategic land and infrastructure resources to deliver a sustainable, high-amenity outcome for the district and region.

¹ Section 43(d) of the FTAA confirms that where there are multiple authorised persons for a project, proposed approvals can be held separately.

4. THE PROJECT

Project site

- 4.1. The Project site and surrounding environment are described in detail in the Substantive Application Report, including technical assessments by independent experts. The Overview Report addresses the entire Project, while detailed planning assessments and supporting technical assessments thoroughly assess the Industrial North Site and the Residential South Site in specific assessments.
- 4.2. The wider SL1 Growth Cell encompasses approximately 440ha of land situated on the southern edge of Hamilton, within the Waipā District.
- 4.3. The Project comprises residential and industrial components located within SL1 Growth Cell:
 - (a) the SL1 Industrial North Development (60ha); and
 - (b) the SL1 Residential South Development (46ha).
- 4.4. The Project is the first development proposal within the wider SL1 Growth Cell to lodge an application for environmental approvals.²
- 4.5. While the SL1 Industrial North and SL1 Residential South components are situated on separated land parcels owned by different authorised persons for the Project, they are being progressed collectively as a single, cohesive development in accordance with the Schedule 2 listing. This approach is not precluded by the FTAA, as evidenced by the Project's listing in Schedule 2 of the FTAA located on multiple properties, including separate residential and industrial areas, owned by multiple parties.³

Project summary

- 4.6. The Project is a comprehensively master-planned, staged⁴ residential and industrial development. Collectively, Residential South will provide for 938 residential lots and dwellings of various typologies and densities, a local commercial node, stormwater and riparian networks, and open space areas; and SL1 Industrial North will provide capacity

² Noting that other parts of the SL1 Growth Cell contain referred projects for which substantive applications have not yet been lodged.

³ Refer to footnote 1 above.

⁴ For the avoidance of doubt, references to 'staging' or 'staged' development in the context of this Project refer to the progressive physical and spatial sequencing of the master-planned residential and industrial components over time. It does not refer to, nor constitute, staged proposal under s37A of the FTAA (under which authorised projects may seek ministerial approval to lodge separate substantive applications for distinct project stages) or for the purposes of s43(2)(b).

for 22 industrial lots and buildings, and connectivity through transport infrastructure such as the Industrial North roundabout and industrial local roads and connections.⁵ More specifically, the Project includes:

- (a) **Residential development:** subdivision of 938 residential lots and associated residential development enabled through a mix of vacant lots and superlots,⁶ underpinned by comprehensive bulk and location controls, a design guide, and a varied mix of housing typologies;
 - (b) **Commercial node:** An approximately 1,000m² (433m² Gross Floor Area) local convenience commercial node within the residential development supporting three small retail tenancies (café, food and beverage, and small retail);
 - (c) **Industrial development:** Subdivision and site development of 22 industrial lots of varying sizes across approximately 60ha, associated industrial buildings subject to comprehensive controls, and a small 0.46ha food and beverage node;
 - (d) **Open space network:** An integrated open space network encompassing stormwater ponds, a neighbourhood park, riparian planting, ecological restoration, and wider ecological and recreational connectivity to the existing Mangakōtukutuku Gully; and
 - (e) **Infrastructure and utilities:** Supporting transport, utilities, and three-waters infrastructure. The Project will be serviced by extensions to the public wastewater and water supply networks, with onsite public stormwater management implemented and connected to the existing Hamilton City stormwater network.
- 4.7. The Application seeks all necessary resource consents and approvals to enable the subdivision and development works for the Project. This includes bulk earthworks, the construction of roading and three-waters infrastructure, and the creation of fully serviced lots and residential and industrial buildings.
- 4.8. The Application proposes a comprehensive framework prescribing controls for future development, including built form and wider site design:
- (a) **Residential South Development** (excluding the commercial node): the Project seeks all authorisations for development within the Residential South Site, subject

⁵ Refer Section 8 of the Overview Report for additional detail.

⁶ For the reasons outlined below, superlot approaches are permissible under the FTAA, and the enabled benefits of superlots are relevant benefits, notwithstanding subsequent consenting steps.

to the Residential Design Guidelines.⁷ These Guidelines contain two key components: tailored Core Controls (establishing “building envelopes” and site layout standards) and Discretionary Design Guidelines (managing qualitative aspects). These controls are proposed to be embedded through private covenants where relevant. Compliance with the Core Controls and consistency with the Discretionary Design Guidelines are proposed to be required to be certified by the SL1 Residential South Residential Design Advisor prior to the lodgement of a building consent with the territorial authority.

- (b) **Commercial node:**⁸ the Project seeks all authorisations for the 1,000m² local convenience commercial lot (433m² Gross Floor Area). The development of this lot is excluded from the Residential Design Guidelines and is instead subject to tailored Neighbourhood Centre Core Controls. These controls regulate the scale and intensity of development, building height, setbacks, active frontages, service areas, outdoor storage, access, and parking to ensure a pedestrian-oriented, visually active corner node that integrates with the adjacent residential neighbourhood and the proposed neighbourhood park.
- (c) **Industrial North Development:** the Project seeks all authorisations for development within the Industrial North Site, subject to tailored industrial Core Controls.⁹ These controls will be implemented through consent conditions and secured via consent notices under s221 of the RMA, establishing requirements for matters such as setbacks, landscaping, site layout, building envelopes, outdoor storage screening, and interface treatments. Specific controls on ancillary commercial retail and office activities are included.

Project benefits

- 4.9. The Project will deliver a range of significant local and regional benefits, including:¹⁰

- (a) **Industrial North benefits:**

⁷ See Appendix 2C.

⁸ Lot 499 within the Residential South component.

⁹ See Appendix 3B. The Residential Design Guidelines do not apply to the Industrial North component.

¹⁰ See the Economic Reports by Insight Economics, being Appendices 2R and 3R to the Substantive Application Report. Evaluated using a Total Economic Value framework measured in net present value terms over 50 years at an 8% discount rate. Localized costs reflect foregone agricultural production (\$5m), loss of ecosystem services (\$2m), and loss of option/bequest value (\$2m).

- (i) Construction and operation¹¹ of the Industrial North component is estimated to deliver \$2.41 billion in net economic benefit, comprising:¹²
 - 1) \$2.18 billion comprised of ongoing business production and economic activity (GDP);
 - 2) \$205 million in construction-phase economic contribution (GDP); and
 - 3) \$35 million in direct cost savings and value for industrial land buyers and occupiers.
- (ii) Construction of the Industrial North component over an indicative 12-year build is estimated to support:
 - 1) 1,830 job-years of employment (equivalent to around 152 FTE jobs per year); and
 - 2) \$100 million in direct wages and salaries.
- (iii) Operation of the industrial development at full build-out is estimated to support:
 - 1) nearly 1,540 ongoing FTE jobs; and
 - 2) \$144 million in wages and salaries every year.
- (iv) Industrial North will enable a substantial increase in greater Hamilton's industrial land supply at a time when the city faces a projected long-term deficit of industrial capacity. Introducing a large, master-planned development will increase land contestability, strengthen local market competition, and incentivise efficient development.
- (v) Co-locating industrial firms generates valuable agglomeration benefits, improving shared access to suppliers, expanding local skilled labour pools, and reducing transaction costs between businesses.
- (vi) Ongoing industrial operations will sustain a diverse workforce and provide long-term career development pathways from entry-level positions through to technical and managerial roles.

¹¹ Based on 12 years of construction and 50 years of ongoing operations.

¹² With approximately \$9 million in quantified economic costs.

(b) **Residential South benefits:**

- (i) Construction and operation¹³ of the Residential South component are estimated to deliver \$266 million in net economic benefit, comprising:¹⁴
 - 1) \$232 million in construction-phase economic contribution (GDP);
 - 2) \$34 million in direct benefits and improved value for homebuyers from increased housing supply;
 - 3) \$35 million in direct cost savings and value for industrial land buyers and occupiers; and
 - 4) \$8 million in ongoing economic activity from the neighbourhood commercial centre.
- (ii) Construction of the Residential South component over an indicative 9-year build is estimated to support 1,830 job-years of employment (equivalent to around 203 full-time jobs per year).
- (iii) Operation of the completed residential development will sustain ongoing local employment associated with the neighbourhood commercial centre and population servicing.
- (iv) Residential South will deliver a substantial contribution to housing capacity in a sub-regional market experiencing persistent shortfalls. It enhances housing affordability and choice through a diverse mix of section sizes and housing typologies.
- (v) Master planning integrates residential neighborhoods with a local commercial node (café/retail), neighborhood parks, stormwater wetlands, and active transport connections.

4.10. The Project will also deliver integrated infrastructure and strategic policy benefits across both components:

- (a) **Unlocking and sequencing strategic infrastructure:** The Project provides a defined demand base that directly strengthens the business cases for, and

¹³ Based on 9 years of construction and 50 years of ongoing operations.

¹⁴ Evaluated using a Total Economic Value framework measured in net present value terms over 50 years at an 8% discount rate. Localised costs reflect foregone agricultural production (\$4.5m), loss of ecosystem services (\$1.7m), and loss of option/bequest value (\$1.7m).

supports the delivery and sequencing of, major regional infrastructure investments – specifically the Southern Links Road of National Significance and the Southern Wastewater Treatment Plant.

- (b) **Strategic policy alignment:** The Project aligns with key sub-regional and national growth strategies, including the Future Proof Strategy, the Hamilton Urban Growth Strategy, and the Government’s Going for Growth agenda.

5. APPROVALS SOUGHT

5.1. The Application seeks all necessary approvals for the Project. These are set out in detail in the Overview Report and include:¹⁵

- (a) a range of **resource consents**,¹⁶ including subdivision consents, land use consents, water permits, and discharge permits; and
- (b) a **wildlife approval**¹⁷ (on a highly precautionary basis) to handle, salvage/relocate, and incidentally injure or kill any protected lizards, and associated activities, should this be required during bulk earthworks for the Residential South Development and the Industrial North Development.¹⁸

6. PRELIMINARY MATTERS

Authorised persons

- 6.1. Schedule 2 of the FTAA lists six authorised persons for the Project: Golden Ridge Farm Limited, Golden Ridge Park Limited, Industre Property Rua Limited, Southpark Agri Development Limited, Theodoor Bongers Limited, and Hamilton City Council.
- 6.2. This Application is lodged by the Applicants, being Golden Ridge Farm Limited, Golden Ridge Park Limited, Industre Property Rua Limited, and Southpark Agri Development

¹⁵ See Section 4 of the Overview Report.

¹⁶ FTAA, s42(4)(a). Overall, the resource consents required have an activity status of **non-complying**. Implications of a non-complying activity status under the FTAA are addressed at [7.4] below.

¹⁷ FTAA, s42(4)(h).

¹⁸ As we note below, the Residential South site contains a network of farm drains. Farm drains are explicitly excluded from the definition of rivers under the RMA, and it is the Applicant’s position that the NES-F does not apply to the reclamation or works with the farm drains. Notwithstanding, the installation of culverts is to be undertaken in accordance with the permitted activity standards set out in regulation 70 of the NES-F. In the event that the Panel does not agree with the Applicants that the features are farm drains, resource consents and a Standard Freshwater Fisheries Activity have been applied for (but expressly without prejudice to the position that such consents are not necessary). The Application complies with the information requirements for a Standard Freshwater Fisheries Activity.

Limited. Theodoor Bongers Limited and Hamilton City Council are not applying for approvals.

- 6.3. Section 42(2)(b) of the FTAA provides that where there is more than one authorised person for a project, the application is to be lodged jointly by “*every authorised person who is the proposed holder of an approval.*” Because neither Theodoor Bongers Limited nor Hamilton City Council are proposed holders of any approvals sought in this Application, they are not required to jointly lodge the Application. Therefore, the Application is made in accordance with section 42(2)(b).
- 6.4. For completeness, below we outline the context regarding the two non-applicant Schedule 2 authorised persons:
- (a) While Theodoor Bongers Limited is an authorised person for the Project, the land owned by it (which adjoins the Residential South site subject to the Application) is excluded from this Application. This is addressed further in the section on scope below. Theodoor Bongers Limited has been consulted on this Application and written support for the Application has been provided by Theodoor Bongers Limited.¹⁹
 - (b) Hamilton City Council has acknowledged that, although it is a listed authorised person, it is not seeking any approval under this Application. Furthermore, Hamilton City Council has confirmed it has no objection to the Application in its capacity as a landholder.²⁰

Scope

- 6.5. The project description for the Project in Schedule 2 of the FTAA provides:

Subdivide land and develop approximately 1035 residential allotments across approximately 48 hectares, and land for industrial activity across approximately 66 hectares

- 6.6. As outlined above, the Application is for (in summary):

- (a) the Residential South Development comprising 938 residential lots across approximately 46ha and associated dwellings, and a small (433m² Gross Floor Area) commercial node; and

¹⁹ Attached at Appendix 1M of the Application.
²⁰ See Appendix 1D6 of the Application.

- (b) the Industrial North Development comprising 22 industrial lots of varying sizes across approximately 60ha and associated industrial buildings, and a small food and beverage node.
- 6.7. The Project, as detailed in the Application, falls within the scope of the Project description in Schedule 2. The variations between the Schedule 2 description and the Application, namely: a minor reduction in the number of residential lots; a slight decrease in both residential and industrial land areas; and the inclusion of a commercial node within the Residential South Development and a food and beverage node within the Industrial North Development, do not take the Application outside the scope of its Schedule 2 listing.
- 6.8. Reasons are outlined below.

Minor reductions in residential lots, and the residential and industrial land areas

- 6.9. Regarding the Application's proposed minor reductions in the number of residential lots and the respective residential and industrial land areas, the use of the word "approximately" in the Project's Schedule 2 listing explicitly provides a degree of flexibility.
- 6.10. The variations represent a minor 9% reduction in residential lots (from 1,035 to 938), a 4% reduction in residential land area (from 48ha to 46ha), and a 9% reduction in industrial land area (from 66ha to 60ha). These minor reductions to number of proposed residential lots and respective land areas do not materially alter the nature or scale of the Project. It remains a large-scale, integrated residential and industrial development that is consistent with the Project's Schedule 2 description.
- 6.11. The High Court decision in *Jones v The Environmental Protection Authority*²¹ confirmed that project descriptions in Schedule 2 generally do not set an "inner limit" for substantive applications and that applications for projects of reduced scope can be permissible.²² Among other matters, the Court identified:
- (a) Many of the projects listed in Schedule 2 are described using language suggesting no inner limit applies, for example "up to" a certain scale of development.²³

²¹ [2026] NZHC 1872.

²² At [35].

²³ At [36].

- (b) The FTAA explicitly contemplates that projects will be modified as they progress, including pre-lodgement.²⁴ This is inconsistent with an argument that an application cannot be made for a project of reduced scope.
- (c) Requiring substantive applications to be exactly the same as Schedule 2 would lead to a “*strange outcome that Parliament could not have intended*,” such as a housing project listed for 1000 houses being non-compliant if it applied for 999 houses.²⁵
- (d) Implementing other rigid inner limits (less than a requirement to be *exactly the same* as Schedule 2) would create unworkable practical uncertainty as to when a reduced-scope project ceased to be the “same” project.²⁶

...if Schedule 2 described a 1000 house project, would an application for 950 houses be the “same” project? What about an application for 900 houses? Or an application for 600 houses? Parliament could not have intended this kind of uncertainty.

- (e) In practice, there is no downside to the Court's interpretation, as applicants are naturally disincentivised from reducing scope unnecessarily.²⁷

Reducing the scope of a project may reduce the benefit of the project for the applicant. In addition, if a project's scope is reduced too much, it will increase the risk that the panel concludes that the project does not have sufficient regional or national benefits to be approved.

6.12. The proposed minor reductions in the scale of the Project are also consistent with a number of other decisions under the FTAA:

- (a) In the *Homestead Bay* decision, the applicant sought approval for 1,438 dwellings and several undeveloped “superlots,” which opposing parties argued was a material reduction from the Schedule 2 listing of approximately 2,800 allotments and a commercial precinct.²⁸ The Expert Panel rejected arguments that a substantive application must perfectly replicate the Schedule 2 listing or that it

²⁴ At [37].

²⁵ At [38].

²⁶ At [39].

²⁷ At [41].

²⁸ [Homestead Bay](#) decision, 18 February 2026, at [58].

was strictly confined to assessing only the benefits of the immediately consented dwellings.²⁹ Instead, the Panel confirmed that:³⁰

...the FTAA does not prohibit a substantive application that delivers a portion of a listed project, and that the Act does not require identity between the application and Schedule 2. That view is supported by: (a) the text of ss 42–46; (b) the practical realities of large, staged developments; and (c) early FTAA decisions that have granted superlot-based subdivisions, treating enabled capacity as part of the benefits case (while recognising later consenting steps).

Overall, the Panel concluded that the application was within scope of the Schedule 2 listing, including because the total residential capacity (which was 2,531 units, including the superlot capacities) remained within a “reasonable range” of the Schedule 2 listing (2,800).³¹

- (b) In the *Delmore* decision, the proposed number of residential dwellings was less than the number listed in Schedule 2. The application sought “between 1,217 and 1,248” while Schedule 2 referred to 1,250 residential dwellings. The Expert Panel considered the proposal fell under the project description of 1,250 and was therefore satisfied there was no scope issue.³²
- (c) In the *Sunfield* decision, the applicant proposed changes resulting in a 14% reduction in an employment precinct area and a 3% reduction in the overall project development area.³³ In that case, the Expert Panel was satisfied that the amendments to the application were within scope.³⁴
- (d) The EPA’s s14 scope decision for the Mt Iron Junction Housing Scheme substantive application was that the application was within scope despite an approximate 5% reduction in dwellings (250 units instead of the listed 263). The EPA concluded that “[s]ince Schedule 2 already signalled the number was approximate, this small reduction in housing units does not alter the nature of the project such that it no longer relates to the listed housing scheme.”³⁵

²⁹ At [58]–[59].

³⁰ At [61]. In that case, the Schedule 2 description identified the development of approximately 2,800 residential allotments and an approximately 1,100m² commercial retail precinct. The substantive application lodged sought consent for only 1,474 standalone residential lots, leaving the remaining density to be delivered later via high/medium-density residential and commercial “superlots”. See [24] and [58].

³¹ At [60], [65] and [91].

³² *Delmore* decision, 10 August 2026, at [49]–[50].

³³ *Sunfield* decision, 10 March 2026, at [42].

³⁴ See [44].

³⁵ https://www.fasttrack.govt.nz/_data/assets/pdf_file/0017/22463/Substantive-Memo-on-assessment-of-compliance-with-requirements-of-Fast-Track-Approvals-Act-25-02-2026-9-35-37-AM_Redacted.pdf at paragraph 12(b).

- (e) The EPA's scope decision for the Foxton Solar Farm substantive application was that it was within scope despite a 9% increase in project area (from 400ha to 436ha). The EPA stated that *"[a]lthough this is slightly larger than the area referenced in Schedule 2, the increase is less than 10%, and I consider it to fall within an acceptable margin of variance."*³⁶
- (f) The *Bream Bay Extraction* substantive application was accepted as within scope by the EPA despite a 9.4% reduction in the spatial extent of the extraction area (from the listed 17 km² to a proposed 15.4 km²), with the EPA concluding that *"...this does not materially affect the project to the point that it is no longer within scope."*³⁷
- (g) The Hananui Aquaculture substantive application was accepted as within scope by the EPA despite a substantial 48.6% reduction in its total marine spatial area (from the listed 2,500 hectares to 1,285 hectares), with the EPA officer stating that: *"although the... proposed project area is reduced... it is still within the confines of the approximate geographical location listed in Schedule 2 area... I consider the application to be within scope of the project listed in Schedule 2."*³⁸

Inclusion of a commercial node in the SL1 Residential South Development and a food and beverage node in the SL1 Industrial North Development

6.13. The Application's inclusion of a small commercial node within the Residential South Development and a small food and beverage node within the Industrial North Development – in the absence of specific reference to such features in the project description in Schedule 2 – is within scope of the Schedule 2 listing:

- (a) Section 4 of the FTAA explicitly states that a "project" includes any activity that is *"involved in, or that supports and is subsidiary to"* a listed project. The small-scale commercial/food and beverage nodes proposed in the Project are supportive components, and are subsidiary to, the main residential and industrial activities identified in Schedule 2.
- (b) Several decisions under the FTAA have confirmed similar aspects as within scope:

³⁶ https://www.fasttrack.govt.nz/_data/assets/pdf_file/0020/22439/Substantive-Memo-on-assessment-of-compliance-with-requirements-of-Fast-Track-Approvals-Act-23-02-2026-12-56-09-PM.pdf at paragraph 16.

³⁷ https://www.fasttrack.govt.nz/_data/assets/pdf_file/0012/21126/Substantive-Memo-on-assessment-of-compliance-with-requirements-of-Fast-Track-Approvals-Act-30-01-2026-10-01-19-AM_Redacted.pdf at paragraph 11.

³⁸ https://www.fasttrack.govt.nz/_data/assets/pdf_file/0023/17690/Memo-on-assessment-of-compliance-with-requirements-of-Fast-Track-Approvals-Act-with-Checklists_Redacted.pdf at paragraph 14.

- (i) In the *Delmore* decision the Panel was satisfied that the inclusion of a commercial superlot that was not explicitly mentioned in that project's Schedule 2 description was within scope.³⁹
- (ii) In the *Maitahi Village* decision, the Expert Panel considered whether a "landfill/encapsulation cell" used to receive contaminated soil that was not included in the Schedule 2 listing was within scope.⁴⁰ The Panel considered that the activity was in support of, or subsidiary to, the 180 residential dwellings, commercial centre and retirement village project.⁴¹
- (iii) For completeness, in *Ngāti Kuku Hapu Trust v EPA*,⁴² the High Court considered whether the (first) Stella Passage substantive application was within scope of its Schedule 2 listing. The Schedule 2 description (which was subsequently amended) referred to an extension to the Port's Sulphur Point wharf; however, the substantive application for the Project also included an extension to the Port's Mt Maunganui wharf. The Court held that the substantive application did not comply with the FTAA because the inclusion of the Mount Maunganui extension meant it did not relate "solely" to a listed project (as provided for in s46(2)(b) of the FTAA).⁴³

We submit that *Ngāti Kuku* is not informative in the context of this Project given the fundamental difference in the nature and scale of the variations in that case. In *Ngāti Kuku*, approvals were being sought for a separate and major infrastructure component that simply was not included in the Schedule 2 project description.

Summary

6.14. For the above reasons, the Application's variations from the Project's Schedule 2 description – namely the minor reductions in residential lots and residential and industrial development areas, and the inclusion of ancillary commercial and food and beverage nodes – are within scope.

³⁹ See [48]-[50].

⁴⁰ [Maitahi Village](#) decision, 18 September 2025. See [157]-[167].

⁴¹ See [157], [164], and [167].

⁴² [2025] NZHC 2453.

⁴³ At [74].

Eligibility

- 6.15. The Applicants are eligible to apply for all approvals sought and the Project does not involve any ineligible activities.⁴⁴

Pre-lodgement engagement

- 6.16. Section 29 of the FTAA sets out pre-lodgment engagement requirements for listed projects. Relevantly, it requires that before lodging a substantive application for a listed project the authorised person must *consult* the groups identified in s11(1)(a)⁴⁵ of the FTAA and *notify* in writing the parties identified in s11(1)(b),⁴⁶ giving them 20 working days to respond.⁴⁷
- 6.17. The Fast-track Approvals Amendment Act 2025 includes transitional provisions for pre-lodgment consultation under s29.⁴⁸ Under these transitional provisions, an applicant is not required to notify parties they had already begun consulting with prior to 31 March 2026, provided they complete consultation with those parties under the former s29. For any relevant parties where engagement had not yet begun by that date, notification is required under current s29. These provisions apply to this Application as consultation commenced prior to the 31 March 2026 commencement date.
- 6.18. The Applicants have satisfied the pre-lodgment consultation and notification requirements in the FTAA.⁴⁹ The Application material identifies the parties that the Applicants were required to – and did – consult with and/or notify pre-lodgment.⁵⁰ This engagement is detailed in the Application materials and is summarised below.⁵¹
- 6.19. The Applicants have engaged in good faith with the relevant local authorities, administering agencies, the relevant iwi authority, adjacent property owners, and other key stakeholders regarding the Project over a considerable period of time. This has included targeted workshops and sharing of relevant draft technical assessments and

⁴⁴ FTAA, s43(1)(c). FTAA, s5 provides the meaning of “ineligible activity”. The Panel must decline an approval if it is for an ineligible activity, per FTAA s85(1)(a).

⁴⁵ There are no relevant applicant groups with applications for customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011 or ngā hapū o Ngāti Porou under s11(a) with respect to this Application.

⁴⁶ Relevantly for the Project, s11(1)(b) lists: the relevant local authorities; any relevant iwi authorities, hapū, and Treaty settlement entities, including certain listed parties; and the relevant administering agencies.

⁴⁷ The Fast-track Approvals Amendment Act 2025 (the “FTAA Amendment Act”) was enacted on 17 December 2025. Among the amendments introduced by the FTAA Amendment Act, it made changes to consultation requirements, including under s29 of the FTAA.

⁴⁸ Clause 11 of Part 2 of Sch 1.

⁴⁹ Relevantly, s29(2)(a) of the FTAA confirms that, where there is more than one authorised person for a listed project, any one of them may comply with the pre-lodgment engagement requirements.

⁵⁰ Refer to Section 14 of the Overview Report.

⁵¹ Refer Appendix 1D.

master plans with Waipā District Council, Hamilton City Council, and Waikato Regional Council. It has also included providing draft reports to the Department of Conservation and New Zealand Transport Agency, and sharing specific assessments and plans with mana whenua, the Ministry of Education, and Heritage New Zealand.

- 6.20. In summary, engagement by the Applicants has been comprehensive and meaningful. The Project design has been informed by this engagement and, where appropriate to do so, the Project, including draft technical assessments, conditions, and management plans have been updated based on comments received. Engagement is continuing and the Applicants are committed to ongoing dialogue with stakeholders.

7. THE STATUTORY FRAMEWORK FOR DECISION-MAKING UNDER THE FTAA

- 7.1. The FTAA prescribes a bespoke statutory framework for the consideration of substantive applications for listed projects.⁵²

- 7.2. In *Ngāti Kuku Hapū Trust v EPA*,⁵³ the High Court commented:⁵⁴

In enacting the FTA, Parliament made a deliberate decision to de-emphasise factors which might militate against approval. For example, the cabinet minute which approved the inclusion of the 149 listed projects noted it was the Government's intention to establish a consenting and permitting process that "makes it substantially easier for projects to be approved than the status quo, with a high bar needing to be reached for a panel to decline a project". ...

- 7.3. *The Downtown Carpark Redevelopment – Te Pūmanawa o Tāmaki* decision ("Downtown Carpark decision") included the following summary:⁵⁵

The overall position appears to be therefore that the FTAA presumes approvals will be granted, with refusal available only as an exception where adverse impacts outweigh the project's regional or national benefits and cannot be appropriately managed through conditions or modifications.

- 7.4. A useful explanation of the decision-making framework is provided in the *Waihi North* decision.⁵⁶ There, the Expert Panel emphasised that the FTAA establishes a materially

⁵² FTAA, s40 provides that the process under the FTAA for obtaining approvals applies instead of the process for obtaining any corresponding approval under a specified Act (e.g. the RMA).

⁵³ [2025] NZHC 2453. That case concerned a judicial review in respect of initial processing steps of the (first) substantive application for the Stella Passage project.

⁵⁴ At [66].

⁵⁵ [Downtown Carpark](#) decision, 5 August 2026, at [113].

⁵⁶ [Waihi North](#) decision, 18 December 2025.

different decision-making framework from that ordinarily applicable under the RMA and other legislation:

- (a) Approval under the FTAA does not depend on a project necessarily being consentable outside of the FTAA.⁵⁷ The Panel in the *Maitahi Village* decision⁵⁸ noted that the FTAA is intended to enable approvals to be granted even where projects would otherwise be prohibited or inconsistent with RMA National Direction.⁵⁹
- (b) The FTAA generally requires decision-makers only to “take into account” specified statutory provisions and planning instruments, while expressly disapplying s104D of the RMA and its requirement that non-complying activities not be contrary to relevant objectives and policies.⁶⁰
- (c) The FTAA places substantial emphasis on the purpose of the FTAA and the regional and national benefits of projects, with those benefits to be given “the greatest weight” under the statutory framework. In doing so, the FTAA requires a broad evaluative assessment involving the weighing of potentially incommensurable considerations – for example, economic benefits on the one hand and environmental or cultural effects on the other – without imposing the type of “bottom line” constraints associated with the orthodox RMA framework following *Environmental Defence Society v The New Zealand King Salmon Company Limited*.⁶¹ The FTAA is designed to ensure that projects delivering significant benefits are not declined where those benefits outweigh identified issues.⁶²
- (d) Planning objectives and policies do not play as critical a role in relation to resource consent applications (particularly for non-complying activities) as they would under the RMA; and where activities (or effects) are not consistent with provisions in the planning instruments, there is greater focus on the significance of the effects at issue than would be permissible under the RMA.⁶³
- (e) Even where aspects of a proposal may not be fully consistent with all planning instruments, approval may nevertheless be appropriate where adverse effects

⁵⁷ *Waihi North* decision, Part M, at [9].

⁵⁸ *Maitahi Village* decision.

⁵⁹ At [51].

⁶⁰ *Waihi North* decision, Part M, at [10].

⁶¹ [2014] NZSC 38. *Waihi North* decision, Part M, at [12](a)-(b).

⁶² See the *Maitahi Village* decision at [51].

⁶³ *Waihi North* decision, Part M, at [12](c)-(d).

are appropriately avoided, remedied, mitigated, offset or compensated, and where those effects are not out of proportion to the project's regional or national benefits.⁶⁴

Decision-making on resource consent applications

- 7.5. In accordance with s81 and cls 17-22 of Sch 5 to the FTAA, the Panel must decide whether to grant or decline the resource consent. If it grants the approval, it may impose conditions.⁶⁵

Matters for assessment (clause 17(1) of Schedule 5)

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

- (a) the purpose of the FTAA; and
- (b) the provisions of Parts 2, 3, 6, and 8 to 10 of the RMA that direct decision making on an application for a resource consent (excluding s104D); and
- (c) the relevant provisions of any other legislation that directs decision making under the RMA.

- 7.7. Several FTAA Expert Panel decisions, including *Waihi North*, *Bledisloe North Wharf and Fergusson North Berth Extension*,⁶⁶ (“*Bledisloe decision*”) and *King’s Quarry Expansion – Stage 2*,⁶⁷ (“*King’s Quarry decision*”) have confirmed that the requirement in cl 17 of Sch 5 to the FTAA to “*take into account*” requires decision-makers to directly consider and give genuine weight to the identified matters, rather than paying mere “lip service” to them.⁶⁸

- 7.8. In doing so, the Panel in the *Bledisloe* decision applied the approach of the Supreme Court in *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency*.⁶⁹ Although that decision concerned a requirement to “have regard to”, the Panel considered that an equivalent obligation arises under cl 17 of Sch 5 to the

⁶⁴ *Waihi North* decision, Part M, at [13].

⁶⁵ FTAA, cl 18 of Sch 5. Any resource consent granted under the FTAA has full force and effect for its duration, and according to its terms and conditions, as if it were granted under the RMA, unless otherwise specified under the FTAA (FTAA, cl31(3) of Sch 5).

⁶⁶ [Bledisloe](#) decision, 21 August 2025.

⁶⁷ [King’s Quarry](#) decision, 18 December 2025.

⁶⁸ At [119]; Part G: Approvals relating to the Resource Management Act at [4]; and at [112], respectively.

⁶⁹ [2024] NZSC 26 at [169] and [224].

FTAA. That finding is consistent with decisions under the RMA regarding an obligation to “consider” a factor concerned in making a decision; being to weigh it along with other factors and to give it appropriate weight in the circumstances.⁷⁰

- 7.9. Importantly, cl 17(1) of Sch 5 to the FTAA expressly requires the Panel to give the greatest weight to sub-clause (a) (the purpose of the FTAA) when considering a consent application and setting conditions. Requiring a decision-maker to give greatest weight to a “prime” consideration (i.e. imposing a “hierarchy” or “two-tiered” framework of considerations) is different to the equivalent section in the RMA (s104). However, such an approach is not entirely novel. Section 34(1) of the Housing Accords and Special Housing Areas Act 2013 (“HASHAA”) required decision makers to have regard to a list of matters, giving greater to lesser weight to them in the order listed.
- 7.10. In the *Bledisloe* decision and the *Milldale – Stages 4C and 10 to 13* decision (the “*Milldale* decision”),⁷¹ the Panels considered the approach under the HASHAA, as interpreted by the Court of Appeal in *Enterprise Miramar Peninsula Inc v Wellington City Council*⁷² (“*Enterprise Miramar*”), to be instructive.⁷³ Those Panel decisions held that, based on the guidance from *Enterprise Miramar*: criterion (a) – the purpose of the FTAA – is to be afforded the greatest weight, and, by implication, criteria (b) and (c) are to be given equal statutory weight;⁷⁴ and that each matter in (a) to (c) must be considered individually before the panel steps back to conduct an overall weighting, giving greatest weight to the purpose of the FTAA.
- 7.11. In the *Maitahi Village* decision, the Expert Panel did not consider that HASHAA and *Enterprise Miramar* were particularly helpful, with the Panel noting that those provisions arose in a different statutory scheme with different wording.⁷⁵ The Panel nevertheless confirmed that the purpose of the FTAA must be afforded the greatest weight, noting that this does not mean it will always outweigh other considerations.⁷⁶
- 7.12. Despite the differing approaches taken by FTAA Panels to the relevance of HASHAA and *Enterprise Miramar*, we submit that the outcome is broadly consistent. Clause 17 of Sch 5 is clear in its application: the purpose of the FTAA must be given the greatest

⁷⁰ *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC); referred to in *Trustees of the Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2024] NZCA 134 at [15].

⁷¹ *Milldale* decision, 3 October 2025.

⁷² [2018] NZCA 541.

⁷³ *Bledisloe* decision at [120]; *Milldale* decision at [60].

⁷⁴ *Bledisloe* decision at [121]; *Milldale* decision at [60].

⁷⁵ At [69].

⁷⁶ At [70].

weight in the overall weighting exercise. Put another way, the Panel in the *Waihi North* decision stated that this could be best effected/demonstrated by:⁷⁷

considering all relevant considerations (including the purpose of the Act) first but only at the weighing up stage, give effect to the “greatest weight” requirement.

- 7.13. The Panels in the *Bledisloe* and *Milldale* decisions emphasised that the purpose of the FTAA does not alter the approach to the assessment of environmental impacts insofar as environmental impacts do not become less than minor simply because a project advances the FTAA’s purpose.⁷⁸ Instead, cl 17(1) of Sch 5 to the FTAA prescribes the weight that must be applied to those impacts – relative to the purpose of the FTAA and other considerations – in the overall decision.

The purpose of the FTAA (clause 17(1)(a) of Schedule 5)

- 7.14. The purpose of the FTAA is:⁷⁹

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

- 7.15. To “facilitate” the delivery of projects with the requisite benefits is a strong directive. It marks a clear departure from the more nuanced and balanced approach in s5 of the RMA.⁸⁰ It is clear that the purpose of the FTAA is about actively *facilitating* project delivery.

- 7.16. The Panel in the *Maitahi Village* decision acknowledged the FTAA reflects a clear legislative intent to expedite approvals for projects addressing infrastructure deficits, housing shortages, and energy needs.⁸¹

⁷⁷ Part G: Approvals relating to the Resource Management Act at [4].

⁷⁸ *Bledisloe* decision at [55] and *Milldale* decision at [60.3] referring to *Enterprise Miramar*.

⁷⁹ FTAA, s3.

⁸⁰ Section 5 of the RMA provides that the purpose of the RMA is promote the sustainable management of natural and physical resources. Sustainable management means “...*managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while— (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.*” (Emphasis added.)

⁸¹ At [51]. Referring to Beehive Media Release by Ministers Hon Chris Bishop and Hon Shane Jones in December 2024 when the Fast-track Approvals Bill passed its third reading.

7.17. The meaning of the term “facilitate” as it appears in the FTAA’s purpose was addressed in the *Ryans Road Industrial Development* decision.⁸² That Expert Panel referred to the following comments in the draft decision to decline approvals for *Taranaki VTM*:⁸³

The Panel considers that ‘facilitate’ has a partly substantive meaning, as described by the applicant; i.e. that “the process by which [a project] might be approved is an easier process, and one that makes the granting of approval more likely” than under (in this case) the EEZ Act. That is supported by the text: the common meaning of the word ‘facilitate’ is to make something possible or easier; and the scheme of the Act: the purpose of the Act must be given the most weight, and approvals must be granted unless specific grounds for decline are made out.

Meaning of “significant regional or national benefit”

7.18. The FTAA does not define what constitutes a significant regional or national benefit. The criteria in s22(2)(a) of the FTAA for the Minister to determine whether a referral application is for a project that would have significant regional or national benefits are relevant and provide useful guidance. This approach has been endorsed by most Panel decisions under the FTAA to date.⁸⁴

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

- (a) 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 NPS-UD);
- (b) will deliver significant economic benefits;
- (c) will address significant environmental issues; and
- (d) is consistent with local or regional planning documents, including spatial strategies.

7.20. The Expert Panel in the *Maitahi Village* decision noted that the question of whether regional or national benefits are “significant” is a question of fact in the circumstances, describing it as “essentially a forensic exercise”.⁸⁵ The Panel cited the Shorter Oxford Dictionary definition of “significant” as meaning “full of meaning or import” and

⁸² [Ryans Road Industrial Development](#) decision, 7 May 2026.

⁸³ At [83]; citing [Taranaki VTM](#) draft decision, 4 February 2026, at [69]. Note, the Taranaki VTM substantive application has been withdrawn.

⁸⁴ For example, see *Bledisloe* decision at [285]; *Maitahi Village* decision at [429]; *Milldale* decision at [186]; [Tekapo Power Scheme – Applications for Replacement Resource Consents](#) decision, 3 November 2025 (“*Tekapo* decision”), at [339]; [Drury Metropolitan Centre – Consolidated Stages 1 and 2](#) decision (“*Drury Metropolitan Centre* decision”) at [271]; *Waihi North* decision at [841]; *King’s Quarry* decision at [154].

⁸⁵ *Maitahi Village* decision, at [515].

“important, notable”, and was satisfied to apply the following working definition: “sufficiently great or important to be worthy of attention; noteworthy”.⁸⁶

- 7.21. In the *Waihi North* decision, the Expert Panel noted that “significant” is a word of indeterminate meaning. While it can denote something “game-changing”, it can also mean simply “worthy of note”. In the context of delivering “significant economic benefits” from activities such as mining or increasing housing supply, the Panel considered it unlikely that any single project would produce game-changing effects, particularly at a national or even regional level. Accordingly, “significance” is not to be assessed by reference to whether a project will appreciably change GDP or government tax revenue; rather, it is an indication of scale.⁸⁷ The Panel adopted a broader interpretation of “regional” than the statutory boundaries of a regional council under the Local Government Act. It concluded that, for the purpose of assessing significant benefits, the relevant “region” was the Hauraki District, encompassing the area in and around Waihi.⁸⁸
- 7.22. This definition of significance is therefore inherently contextual and must be assessed relative to the specific geographic and planning environment of the application. In the *Delmore* decision, the Expert Panel determined that for a project’s benefits to be considered “significant” in a regional context, they do not need to be of a scale that solves the issue; rather, it is sufficient that they make a “meaningful contribution” to the matter.⁸⁹ The Expert Panel considered that:⁹⁰

The significance of a project’s benefits is clearly contextual and determination of regional benefits is clearly dependent upon the region in which the application is made. Likewise, s.22 makes clear that benefits, in the context of the FTAA, extend beyond the economic, including inter alia alignment with government strategies and planning instruments, supporting primary industries and the development of natural resources, supporting climate change mitigation and climate change adaptation, and increasing housing supply and housing needs.

- 7.23. A number of Expert Panels have closely scrutinised how economic benefits (including disbenefits) should be quantified as part of its project’s significant regional or national benefits. The Expert Panel for *Waihi North* stated that:⁹¹

...where economic benefits are relied on by an applicant, any economic disbenefits should be allowed for, particularly if the benefits and disbenefits are of the kind that

⁸⁶ At [516].

⁸⁷ *Waihi North* decision, Part F, at [842]-[843].

⁸⁸ *Waihi North* decision, Part F, at [845].

⁸⁹ At [240].

⁹⁰ At [75].

⁹¹ *Waihi North* decision, Part F, at [784].

have market values against which they can be measured in money terms. But ... we do not accept that adverse environmental impacts must be monetised and factored directly into the assessment of economic benefit.

- 7.24. Building on this, the Expert Panel in the *Pound Road Industrial Development* decision⁹² (“*Pound Road* decision”) noted that the FTAA does not require a full monetised cost-benefit analysis. Citing *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board*,⁹³ it commented that ascribing a monetary cost to environmental, social and cultural costs in all circumstances is unnecessary; and sometimes a qualitative analysis of environmental, social and cultural benefits and costs is lawful. It stated that economic disbenefits should be recognised where material and capable of monetary assessment, but environmental and other non-market effects need not be monetised.⁹⁴ The Expert Panel considered the correct approach was to first consider economic benefits, then consider disbenefits and weigh the same, as part of its assessment of the extent of the regional benefits (as it were in that case) and its proportionality assessment (addressed below).⁹⁵
- 7.25. Notwithstanding, regardless of economic benefit, it has been recognised that cultural, social, and environmental outcomes can satisfy the regional (or national) significance threshold, with significance being a matter of scale.⁹⁶ Notably, despite having low-moderate confidence as to whether the project had significant economic benefits, the Expert Panel in the *Sunfield* decision considered that the project’s benefits were “collectively regionally and nationally significant” when considering the contribution it would make to increased housing supply in light of the principles of the NPS-UD, the broader concept of a well-functioning environment, contributions to climate change mitigation and adaption, resilience and recovery from natural hazards, and other environmental and sustainability outcomes.⁹⁷

“Extent” of benefits

- 7.26. Under s81(4), when taking into account the purpose of the FTAA, the Panel must consider the extent of the project’s benefits. “Extent” is not defined in the FTAA. The Panel in the *Maitahi Village* decision adopted the dictionary definition of “extent” as including “assessment”, “assessed value”, or “degree, size, magnitude, dimensions or

⁹² [Pound Road](#) decision, 1 May 2026.

⁹³ [2021] NZSC 127.

⁹⁴ At [647] and [666].

⁹⁵ At [666].

⁹⁶ [Rangitooopuni](#) decision, 26 November 2025 at [280] and [317].

⁹⁷ At [531]-[540].

breadth of the thing being measured”.⁹⁸ The Panel noted that not all benefits lend themselves to precise financial or monetary quantification. In some cases, expressing value in absolute terms may not be possible. However, the broader context (whether regional or national) will influence how such benefits are understood and assessed.

RMA decision-making framework (clause 17(1)(b) of Schedule 5)

7.27. As outlined above, the FTAA imports decision-making provisions from the RMA, with modifications.⁹⁹ Clause 17(1)(b) requires the Panel to take into account the provisions of Parts 2, 3, 6, and 8-10 of the RMA *to the extent they direct decision-making for resource consents*.¹⁰⁰

7.28. We address key RMA provisions below, which the Panel must take into account.

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

7.29. Sections 104 and 104B of the RMA are key decision-making provisions for non-complying resource consent applications.

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

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

(a) any actual and potential effects on the environment;¹⁰¹

(b) any measure proposed by the applicant to ensure positive effects on the environment to offset or compensate for any adverse effects;¹⁰²

⁹⁸ At [515]; and cited by the Panel in the *Tekapo* decision at [336].

⁹⁹ FTAA, cl 17(1)(b). Clauses 17(3) and (4) provide that where a provision of the RMA requires a decision-maker to decline a resource consent application, the Panel must consider that provision but must not regard it as obliging the Panel to decline the application.

¹⁰⁰ Clause 17(1)(b) does not specify which provisions in the various Parts of the RMA that “direct decision” making apply. As outlined in the *Maitahi Village* decision at [73], it is therefore left to panels to determine which provisions are applicable and should be taken into account. In the *Maitahi Village* decision, the Panel considered that ss5, 6 and 7, and s104 were most relevant because they direct decision making under the RMA, and that Parts 3, 6, and 8-10 of the RMA were less relevant because they do not direct decision making in the same way (as cl 17(1)(b) requires) (at [74]-[75], specifically, ss5, 6(a)-(h), and 7(a)-(j) of Part 2; and s104 of Part 6). In the *Bledisloe* decision at [123], the Panel determined that the relevant RMA considerations were certain provisions in Parts 2, 3, and 6; conversely, Parts 8-10 of the RMA were not engaged.

¹⁰¹ Section 104(1)(a).

¹⁰² Section 104(1)(ab).

(c) the relevant statutory documents;¹⁰³ and

(d) any other matter the Panel considers relevant and reasonably necessary to determine the application.¹⁰⁴

7.32. In having regard to the statutory planning documents under s104(1)(b), the Panel must undertake “a fair appraisal of the objectives and policies read as a whole”.¹⁰⁵

The existing environment and the permitted baseline

7.33. It is important to outline the relevant context for the assessment required to be undertaken by the Panel in accordance with s104(1)(a), as it applies to the Project. That requires consideration of:

(a) first, the relevant “environment” against which the Project’s effects must be assessed; and

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

7.34. The former essentially involves consideration of the “existing environment”. The latter is the “permitted baseline” analysis.

a. The existing environment

7.35. The Court of Appeal decision in *Queenstown Lakes District Council v Hawthorn Estate Limited* (“*Hawthorn*”)¹⁰⁶ held that the environment against which effects are to be assessed includes the future state of the environment as it might be modified by: permitted activities; and the implementation of resource consents which have been granted, where the resource consent is likely to be implemented.¹⁰⁷ In subsequent decisions the High Court has cautioned against *Hawthorn* being applied “like a statute” and encouraged a “real world” and “non-artificial” approach to assessing the relevant environment which appropriately recognises the context of each proposal.¹⁰⁸

¹⁰³ Section 104(1)(b)(i) – (vi).

¹⁰⁴ Section 104(1)(c).

¹⁰⁵ *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26 at [79].

¹⁰⁶ [2006] NZRMA 424 at [84].

¹⁰⁷ The test in *Hawthorn* has been adopted by Expert Panels. See for example, the *Bledisloe* decision and the *Maitahi Village* decision.

¹⁰⁸ See for example *Queenstown Lakes District Council v Queenstown Lakes District Council* [2013] NZRMA 239 (HC) and *Royal Forest and Bird Protection Society of New Zealand Incorporated v Buller District Council* [2013] NZRMA 275 (HC). See also *Save Kapiti Inc v New Zealand Transport Agency* [2013] NZHC 2104 at

b. The permitted baseline

- 7.36. The concept of the permitted baseline is set out in s104(2) of the RMA and allows a consent authority to disregard certain effects of a proposed activity where a national environmental standard or plan permits an activity with that effect.¹⁰⁹

Section 104 and Part 2 of the RMA

- 7.37. The relationship between s104 and Part 2 of the RMA, given the “subject to Part 2” wording in s104, has been the subject of considerable jurisprudence. The Court of Appeal’s decision in *R J Davidson Family Trust v Marlborough District Council* “(*Davidson*)”¹¹⁰ confirmed that recourse to Part 2 is permissible – and in some cases necessary – in the context of decisions on resource consents.¹¹¹
- 7.38. The Panel in the *Maitahi Village* decision held that cl 17(1)(b) of Sch 5 to the FTAA requires decision-makers to take into account whether the Project meets specified provisions of Part 2 of the RMA:¹¹²
- (a) Section 5, which sets out the purpose of the RMA as promoting the sustainable management of natural and physical resources;
 - (b) Section 6, which requires recognition and provision for the matters of national importance listed in s6(a)-(h); and
 - (c) Section 7, which sets out additional considerations to be taken into account under s7(a)-(j).
- 7.39. The FTAA precludes the Panel from considering s8 of the RMA.¹¹³

RMA sections 105 and 107 (applications for discharge permits)

- 7.40. Sections 105 and 107 of the RMA are relevant to discharges:
- (a) Section 105 requires that the Panel must have regard to:

¹⁰⁹ [70]. Similarly, a real-world approach was adopted by the Panel in the *Tekapo* decision as to what comprised the existing environment for the purposes of assessing that application. See the Panel’s comment at [91]. As the Court of Appeal commented in *Hawthorn Queenstown Lakes District Council v Hawthorn Estate Limited* [2006] NZRMA 424 at [65], the purpose of the permitted baseline is “to isolate, and make irrelevant, effects of activities on the environment that are permitted by a district plan...”.

¹¹⁰ [2018] NZCA 316.

¹¹¹ [2018] NZCA 316. See in particular [47] and [51].

¹¹² At [866] and [868].

¹¹³ FTAA, cl 17(2)(a) of Sch 5 provides that, for the purpose of applying any provisions in FTAA, cl 17(1) of Sch 5, a reference in the RMA to Part 2 of that Act must be read as a reference to ss5 (purpose), 6 (matters of national importance), and 7 (other matters) of that Act (i.e. not s8 (Treaty of Waitangi)).

- (i) the nature of the discharge and the sensitivity of the receiving environment; and
 - (ii) the applicant's reasons for the proposed choice; and
 - (iii) any possible alternative methods of discharge, including discharge into any other receiving environment.
- (b) Section 107 provides that, except in limited circumstances,¹¹⁴ the Panel shall not grant a discharge permit if, after reasonable mixing, the discharge is likely to give rise to any of the following effects in the receiving waters:
- (i) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:
 - (ii) any conspicuous change in the colour or visual clarity:
 - (iii) any emission of objectionable odour:
 - (iv) the rendering of fresh water unsuitable for consumption by farm animals:
 - (v) any significant adverse effects on aquatic life.

Alternatives

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

- (a) The FTAA substantive application information requirements¹¹⁵ do not require an assessment of alternatives where it is likely an activity will result in any significant adverse effect.¹¹⁶ In contrast, cl 6(1)(a) of Sch 4 to the RMA, which does not apply to the Project, requires an AEE to include a description of any possible alternative locations or methods for undertaking the activity *"if it is likely that the activity will result in any significant adverse effect on the environment"*.
- (b) Including because there is no equivalent under the FTAA to cl 6(1)(a) of Sch 4 to the RMA (outlined above), we submit there is no general requirement for the Panel

¹¹⁴ As set out in FTAA, ss107(2) and (2A).

¹¹⁵ FTAA, cl 6 of Sch 5.

¹¹⁶ FTAA, cl 6(1)(c)(ii) of Sch 5 does require that, if the activity includes the discharge of any contaminant, the AEE must include a description of any possible alternative methods of discharge, including discharge into any other receiving environment. Corresponding s105 of the RMA is outlined below.

to consider alternatives, including alternative sites, under s104(1)(c) of the RMA (other matters) or otherwise.

- 7.42. Notwithstanding the above, some forms of consideration of alternatives – in particular contexts – is relevant to the Project. For example, because the Application includes discharge consents, as outlined above, the Panel must have regard to any possible alternative methods of discharge, including discharge into any other receiving environment (s 105 of the RMA).

RMA sections 108 and 108AA (conditions of consent)

- 7.43. The FTAA imports the relevant Parts of the RMA with respect to setting conditions.¹¹⁷ This includes s108 (conditions of resource consents) and s108AA (requirements for conditions of resource consents) of the RMA.

- 7.44. In summary, s108 provides a general discretion to impose consent conditions: consents may be granted on any condition the Panel considers appropriate,¹¹⁸ except as expressly provided in s108 itself and in s108AA. Section 108AA establishes limits on the wide power conferred by s108, requiring at least one of the following tests to be met before a condition can be included in a resource consent:

- (a) the applicant agrees to the condition;¹¹⁹ or
- (b) the condition is directly connected to an adverse effect of the activity; and/or an “applicable” district or regional rule, or a national environmental standard;¹²⁰ or
- (c) the condition relates to administrative matters that are essential for the efficient implementation of the consent.¹²¹

- 7.45. In addition to the limitations set out in ss108AA and 108 of the RMA, the case law provides further restrictions on the Panel’s powers to impose conditions. In *Cookie*

¹¹⁷ FTAA, cl 18 of Sch 5. The RMA provisions apply with all necessary modifications.

¹¹⁸ Including those kinds of conditions set out in s108(2).

¹¹⁹ Section 108AA(1)(a). This requirement legislates the principle in *Augier v Secretary of State for the Environment* (1978) 38 P & CR 219(QBD) that an applicant who volunteers a condition is bound by it (see *Lindis Catchment Group Inc v Otago Regional Council* [2020] NZEnvC 130 at [63]).

¹²⁰ Section 108AA(1)(b)(i)-(ii).

¹²¹ Section 108(1)(c).

*Munchers Charitable Trust v Christchurch City Council*¹²² the Environment Court expressed key requirements for lawful conditions as follows:¹²³

- *The condition must be for a resource management purpose, and not for an ulterior one.*
- *The condition must fairly and reasonably relate to the development authorised by the consent to which the condition is attached.*
- *The condition must not be so unreasonable that no reasonable planning authority duly appreciating its statutory duties could have approved it.*

7.46. Several other general factors go to the appropriateness and/or lawfulness of a condition, noting that many of these principles were endorsed by the Panels in the *Bledisloe* decision,¹²⁴ the *Maitahi Village* decision,¹²⁵ and the *Milldale* decision:¹²⁶

- (a) whether it is sufficiently certain;¹²⁷
- (b) whether it delegates or reserves too much discretion to a certifier/approver and is therefore invalid;¹²⁸
- (c) whether it would effectively nullify/negate the consent;¹²⁹
- (d) whether it relies on compliance by third parties and/or third-party consent (being outside the control of the applicant) and is therefore unenforceable and invalid;¹³⁰ and
- (e) proportionality of the conditioned response (including in terms of cost) in the context of the benefits achieved can be considered in determining the appropriateness of conditions.¹³¹

¹²² EnvC W090/08 at [24], citing *Newbury District Council v Secretary of State for the Environment* [1981] AC 578 (HL). The *Newbury* tests were endorsed by the Panel, for example, in the *Maitahi Village* decision at [682].

¹²³ See also the Supreme Court's decision in *Waitakere City Council v Estate Homes Ltd* [2007] NZRMA 137 (SC) at [61]. The Supreme Court's decision related to the pre-2017 form of s108 of the RMA.

¹²⁴ At [305].

¹²⁵ At [683]-[684].

¹²⁶ At [192].

¹²⁷ *Sustain Our Sounds v New Zealand King Salmon Ltd* [2014] NZRMA 421 (SC) at [125].

¹²⁸ *Turner v Allison* [1971] NZLR 833 (CA).

¹²⁹ *Richmond v Kapiti Coast District Council* [2016] NZEnvC 1 at [8]. See also *Lindis Catchment Group Inc v Otago Regional Council* [2020] NZEnvC 130 at [43].

¹³⁰ *Mackay v North Shore City Council* W146/95 (PT). See also *Campbell v Southland District Council* W114/94 (PT). *Campbell* has been referred to in several later cases, including *Dart River Safaris Ltd v Kemp* [2000] NZRMA 440 (HC).

¹³¹ *Donald Jones v Palmerston North City Council* [2014] NZEnvC 131 at [38].

7.47. Distilling the above, we submit that the process for the Panel when considering the imposition of conditions under the RMA (and therefore the FTAA) involves two stages:¹³²

- (a) First, an inquiry into whether or not the conditions in question can legally be imposed (i.e. do they satisfy the limitations in ss108 and 108AA of the RMA, and do they satisfy the *Newbury* tests?). If they do not, they are not valid conditions and simply cannot be imposed.
- (b) Second, if the Panel determines that the conditions can be validly imposed, it must then determine whether they are *appropriate* conditions (i.e. consider the conditions on their merits). Section 108 empowers the Panel to grant the proposal “...on any condition [it] considers *appropriate*...”.¹³³

7.48. Section 83 of the FTAA provides a further important limitation on the Panel’s discretion to impose conditions: the Panel must not set conditions that are more onerous than necessary to address the reason for which it is set.¹³⁴

Resource consent lapse and duration

7.49. A Panel’s decision may specify a date on which the approval lapses, which must be no less than two years after the approval commences.¹³⁵

7.50. Clause 17(7) of Sch 5 to the FTAA applies s123 of the RMA with respect to the duration of consents, meaning the RMA consent duration provisions apply, relevantly:¹³⁶

- (a) for land use consents, the default consent duration is unlimited, unless otherwise specified in the consent; and
- (b) for other resource consents, the maximum consent duration is 35 years.

Decision-making on wildlife approval applications

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

¹³² See *Cookie Munchers Charitable Trust v Christchurch City Council* EnvC W090/08 at [30]-[33], noting that the decision pre-dates s108AA of the RMA. This general summary of the law relating to conditions of consent reflects the decision in *Lindis Catchment Group Inc v Otago Regional Council* [2020] NZEnvC 130 at [19]-[22].

¹³³ Section 108(1). Our emphasis.

¹³⁴ The Panel in the *Maitahi Village* decision held at [101] that this proportionality test is not “*formulaic or mathematical*”; rather, it is an inherently evaluative process given many impacts are unable to be quantified.

¹³⁵ FTAA, s87(2)(b)(i) and cl 26 of Sch 5.

¹³⁶ FTAA, cl 17(7) of Sch 5.

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

- (c) the purpose of the FTAA; and
- (d) the purpose of the Wildlife Act¹³⁷ and the project's effects on the protected wildlife covered by the approval; and
- (e) information and requirements relating to the protected wildlife covered by the approval (including in the New Zealand Threat Classification System or any relevant international conservation agreement).

7.53. With respect to the requirement to “take into account”, the purpose of the FTAA and the requirement to give the purpose of the FTAA the “greatest weight”, the same considerations as outlined above apply to the interpretation of cl 5 of Sch 7. This was reiterated in the *Bledisloe* decision.¹³⁸

7.54. If it grants the wildlife approval, the Panel may impose any conditions it considers necessary to manage the effects of the activity on protected wildlife.¹³⁹ In setting conditions the Panel must:¹⁴⁰

- (a) consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife covered by the approval;
- (b) where more than minor residual impacts on protected wildlife cannot be avoided, minimised, or remedied, ensure that they are offset or compensated for where possible and appropriate; and
- (c) take into account the New Zealand Threat Classification System or any relevant international conservation agreement that may apply in respect of the protected wildlife covered by the approval.

7.55. As outlined above, the Panel must not set conditions that are more onerous than necessary to address the reason for which it is set.¹⁴¹

¹³⁷ A principal purpose of the Wildlife Act is the protection of wildlife. See s3 and the long title of the Wildlife Act and the High court's decision in *Environmental Law Initiative v The Director-General of the Department of Conservation and others* [2025] NZHC 391 at [65] which refers to the Supreme Court's decision in *Shark Experience Ltd v PauaMAC5 Inc* [2019] NZSC 111 at [44].

¹³⁸ At [127].

¹³⁹ FTAA, cl 6(1) of Sch 7.

¹⁴⁰ FTAA, cl 6(2) of Sch 7.

¹⁴¹ FTAA, s83.

- 7.56. A wildlife approval granted under the FTAA has force and effect for its duration, and according to its terms and conditions, as a lawful authority for the purposes of the Wildlife Act and is treated as if it were granted under that Act.¹⁴²

Wildlife approval lapse and duration

- 7.57. The FTAA is silent as to duration and lapse period for wildlife approvals. Accordingly, there is scope for wildlife approvals to be granted without specified duration or lapse periods – as was the case in the *Bledisloe* decision.¹⁴³ However, some Expert Panels have elected to set specific durations. In the *Waihi North* decision, the wildlife approval was granted for a 30-year term, with the approval's commencement date coinciding with the decision issue date.¹⁴⁴ In the *Homestead Bay* decision, the wildlife approval was granted for a 15-year term from the date of approval.¹⁴⁵ More recently in the *Mahinerangi Wind Farm* decision, the wildlife approval was granted for 10 years duration for some activities and 30 years for other operational aspects.¹⁴⁶

The Panel's ability to decline an approval

- 7.58. The FTAA includes a novel limitation on a panel's ability to decline an approval. A panel may decline an approval only in accordance with s85.¹⁴⁷ Section 85 sets out circumstances where approvals *must* be declined, and circumstances where approvals *may* be declined.

- (a) Under s85(1), a panel *must* decline an approval if:¹⁴⁸
 - (i) the approval is for an ineligible activity;
 - (ii) it considers that granting the approval would breach s7 (obligation relating to Treaty settlements).
- (b) Under s85(3), a panel *may* decline an approval if the panel forms the view that:
 - (i) there are one or more adverse impacts (addressed below) in relation to the approval sought; and

¹⁴² FTAA, cl 7(1) of Sch 7.

¹⁴³ The *Bledisloe* decision and associated conditions of the wildlife approval granted are silent as to lapse and duration of the wildlife approval.

¹⁴⁴ Condition 4.1 of the wildlife approval conditions, [Appendix G](#) to the *Waihi North* decision.

¹⁴⁵ Condition 5 of the wildlife approval conditions, [Appendix A](#) to the *Homestead Bay* decision.

¹⁴⁶ [Mahinerangi Wind Farm](#) decision, 3 July 2026. See Condition 4 of the [wildlife approval conditions](#).

¹⁴⁷ FTAA, s81(2)(f).

¹⁴⁸ The below list includes those matters relevant to the Application.

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

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

7.59. Section 85(4) limits the discretion provided in s85(3), by providing that a panel may not form the view that an adverse impact meets the threshold above solely on the basis that it is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider.¹⁴⁹

“Adverse impact”

7.60. “Adverse impact”, as it appears in s85(3) and (4), is defined broadly as “*any matter identified through the section 81(2) assessment that weighs against granting the approval*”.¹⁵⁰ The Expert Panel in the *Pound Road* decision considered that given the broad definition of “adverse impact”, the assessment under s85(3) therefore requires a holistic and evaluative judgment rather than a formulaic or purely quantitative comparison.¹⁵¹ That said, in the *Ayrburn Screen Hub* decision, the Expert Panel found there was no meaningful distinction to be made between “adverse impacts” (under the FTAA) and “adverse effects” (under the RMA).¹⁵²

The ‘proportionality assessment’ under section 85(3)

7.61. A panel's discretion to decline an approval under s85(3) has been referred to in decisions under the FTAA as the “proportionality assessment”. In *Waihi North*, the Expert Panel identified the following key points in relation to the proportionality assessment under s85(3):¹⁵³

- (a) There is no explicit requirement for either the project's benefits or its adverse impacts to be quantified in monetary terms, even where the benefits relied on are economic in nature (such as job creation).

¹⁴⁹ FTAA, s81(4).

¹⁵⁰ FTAA s85(5)).

¹⁵¹ At [109].

¹⁵² [Ayrburn Screen Hub](#) decision, 13 May 2026 at [122].

¹⁵³ *Waihi North* decision, Part E, at [786].

- (b) If adverse impacts have already been monetised and incorporated into the assessment of benefits, there would be little utility in undertaking the separate weighing or balancing exercise required by s85(3), reinforcing that the provision contemplates a distinct evaluative judgment rather than a purely numerical or cost-benefit calculation.

7.62. The *Taranaki VTM* Expert Panel in its draft decision discussed what it means when s85(3)(b) references adverse impacts that are “out of proportion” to the benefits of a project. It found a test based on whether the identified adverse impacts (after mitigation by any consent conditions or modifications) are larger, worse, or more important than the benefit to be useful.¹⁵⁴

7.63. The *Arbyrn Screen Hub* Expert Panel did not agree with the test applied by the *Taranaki VTM* Expert Panel. It considered that test failed to put sufficient weight on the words “out of proportion”. It was instead of the view that:¹⁵⁵

*[a] finding that adverse impacts are out of proportion to the benefits of a project suggests to us that there is a **material difference** between the two, not just that adverse impacts are marginally greater than the benefits.*

7.64. In the *Haldon Solar* decision, the Expert Panel noted with respect to the s85(3) proportionality assessment that there is no formula or mathematical calculation that can assist, and in the end, it is a matter of judgment, informed by the relevant provisions of the FTAA and the information supplied.¹⁵⁶

Section 85(4) qualification to the proportionality assessment

7.65. As referred above, s85(4) provides that a panel may not form the view that an adverse impact meets the threshold for decline solely on the basis that it is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider.¹⁵⁷

7.66. The *Taranaki VTM* draft decision notes that s85(4) does not preclude a panel from having regard to inconsistency with or breach of a relevant legislative provision or document; rather, such inconsistency or breach cannot be the sole basis for concluding that an adverse impact is disproportionate.¹⁵⁸ Similarly, the *Waihi North* decision

¹⁵⁴ *Taranaki VTM* draft decision, 4 February 2026, at [247].

¹⁵⁵ At [115]. Our emphasis added.

¹⁵⁶ [Haldon Solar](#) decision, 10 August 2026 at [127].

¹⁵⁷ FTAA, s81(4).

¹⁵⁸ *Taranaki VTM* draft decision, at [241].

observes that s85(4) means that non-compliance with, for example, avoidance policies that would ordinarily preclude approval under the RMA is not, in itself, fatal to an application.¹⁵⁹

Treaty settlements

7.67. Section 7 of the FTAA provides that:

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

(a) the obligations arising under existing Treaty settlements...

(2) To avoid doubt, subsection (1) does not apply to a court or a person exercising a judicial power or performing a judicial function or duty.¹⁶⁰

7.68. The Panel in the *Bledisloe* decision identified the uncertainty regarding the application of s7(1) in light of s7(2).¹⁶¹ While acknowledging that the exercise of a “judicial function” may exclude the application of s7(1) from a panel’s decision-making functions, the Panel noted that ss82(3) and 84(1) expressly require consideration of s7 in decision-making under the FTAA. Given the ambiguity, the Panel proceeded to consider s7(1) within that statutory context. However, it stated that if s7(1) ultimately did not apply, its consideration of the relevant matters would not have led to a different outcome.

7.69. The Substantive Application Report addresses the Treaty settlements relevant to the Project.¹⁶² We submit that granting all approvals sought for the Project would not be inconsistent with relevant Treaty settlement obligations.

8. APPLICATION OF THE LEGAL FRAMEWORK – RESOURCE CONSENTS

Summary

8.1. As outlined, the Applicants are seeking a range of resource consents under the FTAA to authorise the Project. Overall, resource consents are sought as a non-complying activity.

8.2. In summary, as detailed in the Application and in these submissions:

¹⁵⁹ *Waihi North* decision, Part C, at [10]. See also the *Downtown Carpark* decision at [548] to the same effect.
¹⁶⁰ Other s7 provisions relating to customary rights recognised under the MACA Act and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 are not relevant in the context of the Project.

¹⁶¹ At [110].

¹⁶² Substantive Application Report at Section 15.2.

- (a) The Project will have significant regional benefits and is entirely consistent with the purpose of the FTAA.
- (b) The Project satisfies all applicable provisions of the RMA, including ss104 and 104B, and Part 2:
 - (i) the Project is consistent with the RMA planning framework, including the Waipā District Plan, the Waikato Regional Plan, the Waikato Regional Policy Statement; the National Policy Statement for Urban Development (“NPS-UD”), the National Policy Statement for Freshwater Management (“NPS-FM”), the National Policy Statement for Indigenous Biodiversity (“NPS-IB”), and the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (“NES-CS”) and Te Ture Whaimana o Te Awa o Waikato; and
 - (ii) with respect to the National Policy Statement for Highly Productive Land (“NPS-HPL”) and the National Environmental Standards for Freshwater 2020 (“NES-F”), the Project’s inconsistencies with aspects of these RMA documents do not, for the reasons outlined in these submissions below, amount to matters that significantly weigh against the approvals being granted in this context nor justify the approvals being declined;
 - (iii) all adverse effects can be appropriately managed.
- (c) The Panel is not required to decline the approvals under s85 of the FTAA. We further submit that, with respect to the Panel’s discretion to decline the approval under s85, the adverse impacts of the Project are not sufficiently significant to be out of proportion to the Project’s regional benefits. To the contrary, we submit that the Project’s positive effects demonstrably outweigh its adverse effects.¹⁶³

8.3. Below we address certain key matters regarding the Panel’s consideration of the Application.

¹⁶³ See the *Maitahi Village* decision at [884] where it concluded in that case that “... because the adverse impacts as found have been avoided, remedied, mitigated, offset or compensated for by the conditions set out in Appendix A, there is simply no prospect that these adverse impacts could be found to be “sufficiently out of all proportion to the regional or national benefits” discussed earlier. The weighing exercise under s85(3) therefore comes down squarely against the conclusion that any adverse impacts are sufficiently significant to outweigh the Project’s regional or national benefits as found in this decision.”

The purpose of the FTAA

- 8.4. The purpose of the FTAA is set out in paragraph 7.14 of these submissions. As outlined, when considering the Applicants' resource consent application, the Panel must give **greatest weight** to the purpose of the FTAA in the ultimate weighing exercise.¹⁶⁴
- 8.5. An assessment of the Project against the purpose of the FTAA is set out in the Substantive Application Report.¹⁶⁵ We submit that the Project is on all fours with the purpose of the FTAA, being a development project with demonstrably significant regional benefits. The Project's regional benefits are outlined above in these submissions above.
- 8.6. Applying the contextual test articulated in the *Delmore* decision, significance must be assessed in the context of the wider geographic area, including Hamilton and Waipā districts. The combined scale of the Residential South and Industrial North Developments represents a major private capital investment, generating substantial benefits (outlined above).
- 8.7. These benefits are of a scale that is unequivocally "worthy of attention", as stated in the *Maitahi Village* decision. In accordance with the *Waihi North* and *Pound Road* decisions, while the Project will result in some minor physical loss of agricultural use, the significant benefits outweigh that loss.
- 8.8. Furthermore, consistent with the *Sunfield* decision, the Project delivers significant non-market benefits that further elevate its regional significance. These include the comprehensive ecological restoration of the upper Mangakōtukutuku Stream tributary and the critical integration of the local roading network with the future Hamilton Southern Links transport corridor.

RMA decision-making framework

Potential impacts

Introduction

- 8.9. The Applicants' careful Project design is borne out in the independent assessments of the effects: in short, the Project will deliver significant local and regional benefits, with local adverse impacts that will be appropriately managed. Where adverse impacts cannot be avoided, they have been carefully managed, including through the design of

¹⁶⁴ FTAA, cl 17(1) of Sch 5.

¹⁶⁵ See Section 10 of the Overview Report.

the Project and through proposed conditions (and in accordance with the effects management hierarchy as appropriate). The iterative design refinement process, including through pre-lodgment engagement with relevant stakeholders, has resulted in amendments to the Project which have reduced the potential for adverse impacts.

- 8.10. Conservative approaches have been adopted with respect to the assessment of impacts by Applicants experts, as described in the Substantive Application Report. Notwithstanding, the relevant Applicant experts all consider that the Project is appropriate in the relevant legislative context, including the applicable RMA planning framework in the case of the resource consents sought. We submit that the Application material, including the robust and conservative approach adopted with respect to the assessment of effects, should give the Panel confidence that the delivery of the Project will occur in a manner that appropriately manages adverse effects.

Existing environment

- 8.11. Consistent with the case law outlined above at paragraphs 7.33-7.35, the Substantive Application Report describes the existing environment in detail.¹⁶⁶

The permitted baseline

- 8.12. The relevant regional and district planning documents provide for a range of permitted activities at the Residential South and Industrial North sites, reflective of their zoning. Notwithstanding, the range of permitted activities do not form a useful comparison with the Project, and the Applicants' experts have adopted a conservative approach and have not discounted effects permitted under the relevant plans.

Effects (RMA section 104(1)(a))

- 8.13. The Project has been shaped and assessed by numerous technical specialists. The assessment reports form part of the substantive application and are each addressed within the Substantive Application Report. Below is a summary of conclusions reached by the Applicants' experts for key adverse effects:¹⁶⁷

¹⁶⁶ See Section 2.4 of Volume 2 – Residential South AEE and Section 2.1.3 of Volume 3 – Industrial North AEE.

¹⁶⁷ The below is not a comprehensive summary of all project impacts.

(a) **Landscape, visual and amenity**

Industrial North:¹⁶⁸ Barker & Associates confirm that the Industrial North component will result in overall low (less than minor) adverse landscape and visual effects. While the development represents a permanent transition to a comprehensively planned industrial environment, the magnitude of this change is moderated by the site's status as a highly modified transitional landscape with limited natural character. The proposal will consolidate and extend Hamilton's existing industrial edge, replacing fragmented pastoral elements and artificial drains with large-format warehouse buildings and an integrated blue-green infrastructure network. Because the receiving environment is already heavily influenced by established industrial activities, the railway corridor, and the Hamilton Southern Links designation, Barker & Associates conclude the Industrial North development will be perceived as a logical urban extension rather than an unfamiliar land use introduced into an intact rural landscape.

Residential South:¹⁶⁹ Barker & Associates confirm that the Residential South component will result in a substantial and permanent change from working rural land to a masterplanned residential neighbourhood. This is within the context of the wider Southern Links Growth Cell, the existing Hamilton urban edge, planned urban growth, and strategic transport infrastructure. With the implementation of the extensive mitigation measures proposed, the overall combined landscape and visual effect is assessed as moderate, with effects concentrated within the site and its immediate visual catchment.

(b) **Ecology**

Industrial North:¹⁷⁰ ecoLogical Solutions' assessment confirms the Industrial North site's terrestrial ecological values range from negligible to very high (due to the presence of long-tailed bat habitat). There are no known long-tailed bat roosts within the Site, and while long-tailed bats have been recorded as present (in low numbers), the Industrial North Site is not 'core' habitat. The presence of long-tailed bats for commuting/foraging therefore needs to be considered in the context of large parts of Hamilton City and Waipā District also record the presence of long-tailed bats. As noted in the ecoLogical Solutions assessment, the terrestrial features present on the Industrial North Site are limited. Freshwater ecological

¹⁶⁸ Volume 3 Industrial North – Appendix 12: Landscape Visual Impact Assessment.

¹⁶⁹ Volume 2 Residential South – Appendix 12: Landscape Visual Impact Assessment.

¹⁷⁰ Volume 3 Industrial North – Appendix 23: Ecological Impact Assessment and Management Plans.

values are negligible to low, with the aquatic environment limited to artificial farm drains.

With the effects management measures proposed, including implementation of management plans for bats, lizards, birds, and fish, the overall ecological effects of the development are assessed as ranging from very low to low, with no ecological compensation or offsetting required.

Residential South:¹⁷¹ ecoLogical Solutions' assessment is that the Residential South site's terrestrial ecological values range from negligible to very high (due to the presence of long-tailed bats); while freshwater ecological values range from negligible to high due to the presence of two natural inland wetlands. Similar to the Industrial North Site, there are no known long-tailed bat roosts located within the Residential South Site. While long-tailed bats have been recorded as being present (in low numbers), the Residential South Site is not 'core' habitat, and the presence of long-tailed bats for commuting/foraging needs to be considered in the context of large parts of Hamilton City and Waipā District also record the presence of long-tailed bats. As noted in the ecoLogical Solutions assessment, the terrestrial features present on the Residential South Site are limited.

With the effects management measures proposed, including management plans for bats, lizards, birds, fish, and wetlands and onsite wetland creation/enhancement, the overall ecological effects of the development are assessed as ranging from very low to moderate. Due to residual adverse effects associated with the loss of bat habitat, ecological compensation measures are proposed.

- (c) **Transport**:¹⁷² BBO's Integrated Transport Assessment ("ITA") confirms that the Industrial North and Residential South components of the Project can proceed with acceptable transport effects, with the proposed comprehensive mitigation, staging, and infrastructure delivery framework. For the Residential South component, the Ohaupo Road / Saxbys Road / Tomin Road roundabout is the primary network constraint. Transport modelling confirms that the site can operate with acceptable transport effects up to the construction of 543 dwellings (in a scenario that does not include the delivery of the Hamilton Southern Links). Beyond this, a further ITA is required to evaluate receiving environment assumptions and determine if

¹⁷¹ Volume 2 Residential South – Appendix 23: Ecological Impact Assessment and Management Plans.

¹⁷² Volume 2 Residential South and Volume 3 Industrial North – Appendix 16: Transport Assessment.

additional mitigation is required. Proposed consent conditions address this and other transport matters.

- (d) **Infrastructure and servicing:**¹⁷³ Maven confirms that both the Industrial North and Residential South Developments can be fully serviced for three waters, power, and communications without generating adverse effects on existing infrastructure or the receiving environment. Servicing will be delivered via a coordinated, multi-stage framework designed to match development demand. Both sites include integrated, staged blue-green networks to treat stormwater runoff and safely attenuate flows prior to discharge – into the Waitawhiriwhiri drainage network for the Industrial North development, and into the Mangakōtukutuku Stream for the Residential South Development. Wastewater and potable water will be managed via new internal reticulation systems connecting to the Hamilton City networks. Comprehensive capacity assessments and modelling confirm there is sufficient water supply and wastewater network capacity to support the industrial and residential developments.

(e) **Highly productive land**

The Substantive Application Report confirms that having regard to the detailed LUC assessment, the existing level of site modification, the site's relationship with the established urban area, the Hamilton Southern Links designation, and the strategic planning framework anticipating urban development in this location, the adverse effects of the proposal on productive capacity are considered to be less than minor in regard to both the Industrial North and Residential sites.

Industrial North:¹⁷⁴ Overall, the Industrial North Development will have less than minor adverse effects on the productive capacity of land. While the New Zealand Land Resource Inventory (NZLRI) mapping identifies approximately 97% of the site as LUC Class 2 at the regional scale, site-specific investigations by Landsystems identify that only 29% is LUC Class 2, 23% is LUC Class 3, and 48% being LUC 4 or greater (i.e. not highly productive land as described in the NPS-HPL). There have been considerable modifications to the land use (particularly the northern half of the site which is in light industrial usage) and significant earthworks have been undertaken. Landsystems identifies that the realistic actual productive land currently available on the Industrial site is estimated to be approximately 29.33 ha, or 52% of the total area. While this land is currently utilised for dairy

¹⁷³ Volume 2 Residential South and Volume 3 Industrial North – Appendix 13: Infrastructure Report.

¹⁷⁴ Volume 3 Industrial North – Appendix 28: Soil and Land use Capability classification assessment.

farming, its practical usability is significantly constrained, including due to the Hamilton Southern Links designation which bisects the Industrial site thereby limiting the ability to use the two areas collectively for a single land use, such as a stand-alone dairy unit. This fragmentation splits the available productive area into two disconnected blocks: approximately 14.8 ha to the west and 14.5 ha to the east.

Residential South:¹⁷⁵ Regional scale mapping records the Residential site as containing LUC 2w2 and 2s5. Landsystems' detailed site-specific analysis confirms that much of the site is LUC2 with 8% LUC 4 and 10% non-productive land.

AgFirst has undertaken an NPS-HPL assessment and confirmed that the Residential South component of the Project satisfies the exception requirements of cl 3.10 of the NPS-HPL, concluding that the 46ha site is not economically viable or sustainable for long-term land-based primary production. While regional-scale mapping classifies approximately 97% of the site as LUC 2 HPL, detailed site-specific soil mapping demonstrates that the site is highly fragmented, with only 13.6ha (29.6%) qualifying as High Class Soil under the Waipā District Plan due to the prevalence of drained organic Motumaoho peaty soils. Comprehensive economic modelling across multiple farming scenarios confirms that no reasonably practicable land-use option can cover operating and infrastructure redevelopment costs while supporting a family's living requirements. Due to permanent physical, regulatory, and infrastructural constraints, including the Southern Links designation and PC1 restrictions, there are no viable alternative options to retain the site's productive capacity, and its transition to urban use will not fragment any cohesive productive rural resources.

The NPS-HPL is addressed further below at paragraphs 10.5-10.16.

- (f) **Noise and vibration:**¹⁷⁶ Styles Group confirms that potential construction and operational noise from the Industrial North and Residential South Developments can be managed to comply with the permitted noise standards of both the Waipā District Plan and the Hamilton City District Plan. Construction noise and vibration levels are typical for developments of the scale proposed and will be managed in accordance with *NZS 6803:1999 Acoustics - Construction Noise* and *German*

¹⁷⁵ Volume 2 Residential South – Appendix 26: AgFirst Productivity Report; and Appendix 29: Soil and Land use Capability classification assessment.

¹⁷⁶ Volume 2 Residential South – Appendix 27: Noise and Vibration Assessment; and Volume 3 Industrial North – Appendix 26: Noise and Vibration Assessment

Standard DIN 4150-3:1999, including through the implementation of Construction Noise and Vibration Management Plans. Overall, the long-term and temporary noise effects are assessed as compatible with adjacent land use activities.

The applicable planning framework (RMA section 104(1)(b))

8.14. The Substantive Application Report analyses the planning documents that are relevant to the Application.¹⁷⁷ Key planning documents include:

- (a) the Waipā District Plan;
- (b) the Waikato Regional Plan;
- (c) the Waikato Regional Policy Statement;
- (d) the NPS-UD;
- (e) the NPS-HPL;
- (f) the NPS-FM;
- (g) the NPS-IB; and
- (h) the NES-F;
- (i) the NES-CS; and
- (j) Te Ture Whaimana o Te Awa o Waikato.

8.15. Each of these documents contains a number of relevant objectives, policies and/or rules, which are addressed in detail in the Substantive Application Report from a planning perspective, and by other experts in relation to their specialist areas.

8.16. Directive enabling policy support for the Project is provided throughout the planning hierarchy. This includes strong strategic alignment with the urban development, growth management, and infrastructure integration provisions of the Waikato Regional Policy Statement (and the Future Proof Strategy), and with the NPS-UD.

8.17. The Substantive Application Report confirms that, overall, and drawing upon the Application material by the Applicants' technical experts, the impacts of the Project will be managed such that the proposal is generally aligned with all applicable planning

¹⁷⁷ See Residential South and Industrial North Planning Attachments 7.

documents, and that the statutory framework supports the grant of the resource consents subject to the proposed conditions.¹⁷⁸

- 8.18. With respect to the NPS-HPL and the NES-F, the Project's inconsistencies with aspects of these RMA documents do not, for the reasons outlined in these submissions, amount to matters that significantly weigh against the approvals being granted in this context nor justify the approvals being declined.
- 8.19. We submit that, overall, the Project – subject to the proposed conditions – is consistent with the objectives and policies of the applicable statutory plans and is strongly aligned with a number of key plans and planning provisions for the reasons set out in the Application material and the Substantive Application Report.

Part 2 RMA

- 8.20. The Substantive Application Report provides a fulsome assessment of the Project against Part 2 of the RMA.¹⁷⁹ While, in accordance with the case law outlined above at paragraph 7.37-7.38, reference to Part 2 does not add much in the context of the Project given that the applicable planning framework has been prepared having regard to Part 2, in our submission reference to Part 2 simply confirms the appropriateness of the Project.¹⁸⁰
- 8.21. In terms of s5, the Project represents the sustainable management of natural and physical resources. It directly enables the Hamilton and Waipā communities to provide for their social, economic, and cultural wellbeing by delivering residential dwellings of diverse typologies and enabling strategic industrial land to support regional employment and economic growth. Importantly, these wellbeing benefits are achieved while safeguarding the environment through targeted ecological restoration, including the enhancement of the Mangakōtukutuku Gully network, and ensuring that any potential adverse effects are appropriately managed.
- 8.22. The Project appropriately addresses all relevant matters of national importance and other matters under ss6 and 7 of the RMA. With respect to s7(b), which requires particular regard to the efficient use and development of natural and physical resources, the Project represents an efficient expansion of urban land. Situated contiguous to the existing Hamilton City boundary and within a strategically identified growth cell, the

¹⁷⁸ See Residential South and Industrial North Planning Attachments 7.

¹⁷⁹ See Residential South and Industrial North Planning Attachments 7.

¹⁸⁰ As outlined in fn 114, the FTAA proscribes consideration of s8 of the RMA as part of any Part 2 assessment.

development enables the highly efficient use of land and physical infrastructure by leveraging and extending existing municipal transport and three-waters utility networks

- 8.23. We submit, therefore, that granting approvals for the Project – in accordance with appropriate conditions – will promote sustainable management.

Discharges (RMA sections 105 and 107)

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

Consideration of alternatives

- 8.25. As outlined above, the Application material demonstrates that:

- (a) in every context where an assessment of alternatives is required (e.g. for discharges under s105 of the RMA), alternatives have been appropriately considered;¹⁸¹ and
- (b) there are demonstrable justifications for the Project design, including infrastructure layouts.

- 8.26. We have outlined above that under the FTAA framework applying to the Project, there is no general requirement to consider alternatives, including alternative sites.

Consent conditions

- 8.27. The Applicants, together with their expert advisors, have developed proposed consent conditions that they consider will appropriately and effectively manage the Project's potential adverse effects. The conditions are lawful and appropriate, and suitably stringent in the context of a major residential/industrial project, recognising the requirement under the FTAA that conditions be no more onerous than necessary.¹⁸² The conditions provide clear and certain delivery obligations for infrastructure before subsequent stages can be advanced.

Management plans

- 8.28. Use of management plans is accepted practice – indeed best practice – for major projects under the RMA and FTAA. Almost every project under the FTAA has involved

¹⁸¹ See Section 8.4.3 of Volume 2 – Residential South AEE and Section 7.4.8 of Volume 3 – Industrial North AEE.

¹⁸² FTAA, s83.

management plans as a key component of the overall effects management framework.¹⁸³

- 8.29. With respect to management plan consent conditions, the Environment Court has stated that these are to set the “*outcomes, criteria and standards that management plans are to achieve*”.¹⁸⁴ This principle was endorsed in the *Maitahi Village* decision.¹⁸⁵
- 8.30. The management plan conditions proposed by the Applicants have been drafted in accordance with the guidance in the case law, including the following key requirements for “fit for purpose” management plan conditions:¹⁸⁶
- (a) A requirement for the management plan to be prepared by suitably qualified personnel.
 - (b) A clear objective, a stated scope, and performance management requirements.
 - (c) Specification of processes for council certification and for amending a certified management plan.
 - (d) A requirement to comply with the certified management plan.
- 8.31. The identification in conditions of management objectives, content requirements, and relevant objective criteria/standard in conditions is broadly consistent with the approach taken for many other projects under the FTAA.
- 8.32. 27 comprehensive draft management plans have been provided with the Application.¹⁸⁷ The proposed conditions require the plans ultimately presented for certification to be in general accordance with the draft management plans provided through the application.

¹⁸³ See, for example, the [Southland Wind Farm](#) decision, 2 April 2026 at [81] and section E1 of the *Waihi North* decision at [4]-[6].

¹⁸⁴ *Waka Kotahi NZ Transport Agency v Manawatu-Wanganui Regional Council* [2020] NZEnvC 192 at [277]-[278]. In its Interim Decision, the Environment Court in *Summerset Villages (Lower Hutt) Ltd v Hutt City Council* [2020] NZEnvC 31 at [156], stated that: “As a general principle it is important that the conditions of a consent set out the outcomes required and how these outcomes are to be achieved. Management plans provide a way to identify what steps are to be taken to ensure that clear, certain and enforceable outcomes contained in conditions of consent are achieved. They are not a substitute for conditions locking in the standards that are to be met to ensure environmental effects are kept within an acceptable level.”

¹⁸⁵ At [698].

¹⁸⁶ Refer to the decision of the Expert Consenting Panel for Te Ara Tupua - Ngā Ūranga Ki Pito—One - Shared Path under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (issued 5 February 2021) at [265] where these requirements were cited.

¹⁸⁷ **Separate management plans for both the Residential South and Industrial North (i.e. a separate management plan for each component):** Construction Management Plan, Earthworks Management Plan, Construction Noise and Vibration Management Plan, Stormwater Management Plan, SW Operation and Maintenance Plan, Geotechnical Effect Management Plan, Contaminated Soils Remedial Action Plan, Ecological Management Plans, Lizard Management Plan, Bat Management Plan, Bird Management Plan, and Fish Management Plan. **Combined management plans (covering both components in a single management plan):** Acid Sulphate Management Plan and Construction Traffic Management Plan. **Management plan for Residential South only:** Wetland Management Plan.

This further evidences the robustness of the condition/management plan approach, and should give the Panel additional comfort regarding the management plan approach.¹⁸⁸

Lapse period and duration

Lapse

- 8.33. The Applicants are seeking a range of consent lapse periods, from five to 15 years, to reflect the proposed delivery of the Project. These are detailed in the Substantive Application Report.
- 8.34. The Applicants consider that the lapse periods sought will provide the necessary flexibility and certainty for a major urban development proposal that will be delivered in stages, and is appropriate given the nature, scale, and level of investment involved:
- (a) The Project is of significant regional importance, involving the coordinated delivery of 938 residential allotments and 60 hectares of master-planned industrial land, representing a private investment exceeding \$1.04 billion.
 - (b) The reality of delivering a master-planned community is that there are long lead times for detailed design, funding, and construction. The Project relies on staged implementation over indicative 9-year (Residential) and 12-year (Industrial) build programs. These timelines must accommodate pre-development works, geotechnical stabilisation, environmental remediation, and integration with wider SL1 Growth Cell infrastructure.
 - (c) A period of two years (the default period under the FTAA for resource consents) or five years (the general default period under the RMA for resource consents) would be an insufficient period. The default periods may be appropriate for smaller-scale, localised developments, but not for regionally significant infrastructure and master-planned urban expansions involving the complexities identified above. Relying on default lapse periods would inevitably result in secondary applications to extend the lapse periods under the RMA, resulting in unnecessary administrative burden, cost, and commercial uncertainty.¹⁸⁹

¹⁸⁸ In *Panuku Development Auckland Ltd v Auckland Council* [2018] NZEnvC 179 the Environment Court stated at [170]: “The management plans are not the subject of certification by us. That is for council officers later. Our focus is on setting objectives through conditions that will be implemented by the plans. Nevertheless, we have been greatly assisted by the plans having been developed by the [applicant] to the extent that they have been already...”

¹⁸⁹ See FTAA Sch 5, cl 31(5)(a).

- (d) Construction timing for large-scale residential and industrial subdivisions is influenced by external factors which the Applicants cannot control.
- (e) The requested 15-year period for certain later-stage consents is not inconsistent with the approach taken by previous fast-track Expert Panels. Extended lapse periods for resource consents have been approved in FTAA decisions such as: *Drury Metropolitan Centre* decision – a comparable master planned urban development (10-year lapse period);¹⁹⁰ and *Takitimu North Link – Stage 2* decision (20-year lapse period imposed).¹⁹¹

While the Expert Panel in the *Drury Metropolitan Centre* decision considered a 10-year lapse period (as opposed to 15 years) was appropriate, the nature and scale of the Project justifies a longer lapse period. The tiered lapse structure proposed for the Project inherently prevents “land banking”, which was a concern in the *Drury Metropolitan Centre* decision. By committing to a 5-year lapse period for the initial enabling and early-stage consents, the Applicants are demonstrating an immediate commitment to commence physical works. The requested 15-year period for the later stages is not intended to delay development; rather, it is a practical necessity given these later stages cannot be enacted until the preceding stages are complete.

- (f) An extended lapse period is not inconsistent with the planning framework.¹⁹²

Duration

8.35. With respect to duration, the Applicants seek the following:

- (a) unlimited durations for all land use and subdivision consents; and
- (b) 35 years (from commencement) for all other regional resource consents.

8.36. The consent durations sought are justified with reference to s123 of the RMA and the various factors outlined by the Environment Court in the leading case of *PVL Proteins*;¹⁹³ including in the context of the scale, cost and design of the Project, and its significant

¹⁹⁰ *Drury Metropolitan Centre* decision, 7 November 2025, at [351].

¹⁹¹ *Takitimu North Link – Stage 2* decision, 20 April 2026, at [15].

¹⁹² See for example *Body Corporate 970101 v Auckland City Council* [2000] NZRMA 202 (HC).

¹⁹³ *PVL Proteins Ltd v Auckland Regional Council* EnvC A061/01. The Environment Court’s decision reviews several cases regarding appropriate terms of consent and has been referred to/applied in numerous recent cases.

regional benefits. 35-year terms for the regional consents will provide long-term security of consents, providing appropriate certainty for the Project.

8.37. Additional reasons include the following:¹⁹⁴

- (a) Regional consent durations of 35 years will provide appropriate certainty and security of investment.¹⁹⁵
- (b) The potential adverse effects of the Project are well understood and are proposed to be comprehensively managed through stringent conditions and management plans, while also providing sufficient security for the considerable investment required for the Project.¹⁹⁶
- (c) The consent authorities' ability to review regional consent conditions under s128 of the RMA¹⁹⁷ should give the Panel additional comfort.
- (d) A 35-year duration is consistent with other residential development projects under the FTAA, including *Drury Metropolitan Centre*,¹⁹⁸ *Ashbourne*,¹⁹⁹ *Delmore*,²⁰⁰ and *Rangitooopuni*.²⁰¹

9. APPLICATION OF THE LEGAL FRAMEWORK – WILDLIFE APPROVAL

9.1. As outlined above, the Applicants are seeking a wildlife approval on a highly precautionary basis to authorise things that would otherwise require wildlife permits under the Wildlife Act 1953: namely the handling, salvage/relocation, and incidental injury/death of, protected lizards.

¹⁹⁴ Many of the factors addressed below are discussed by the Court in *PVL Proteins Ltd v Auckland Regional Council* EnvC A061/01.

¹⁹⁵ The Court in *PVL Proteins Ltd v Auckland Regional Council* EnvC A061/01, confirmed at paragraph 30 that: "[u]ncertainty for an applicant of a short term, and an applicant's need (to protect investment) for as much security as is consistent with sustainable management, indicate a longer term." Security of investment was also held to be a relevant factor in setting consent durations in *Te Rangatiratanga o Ngati Rangitahi Inc v Bay of Plenty Regional Council* (2010) 16 ELRNZ 312 (HC) and *Crest Energy Kaipara Ltd v Northland RC* [2011] NZEnvC 26.

¹⁹⁶ In *Te Rangatiratanga o Ngati Rangitahi Inc v Bay of Plenty Regional Council* (2010) 16 ELRNZ 312 the High Court held that consent conditions would appropriately manage environmental concerns while also protecting the investment of the applicant and therefore contributing to the national and regional economy, an objective within the purpose of the RMA. A similar approach was adopted by the Court in granting a 35-year consent for a significant tidal electricity generation proposal in *Crest Energy Kaipara Ltd v Northland RC* [2011] NZEnvC 26, [2011] NZRMA 420.

¹⁹⁷ Noting that under Sch 5, cl 31 of the FTAA, resource consents granted under the FTAA has full force and effect for its duration, and according to its terms, as if granted under the RMA, and any review of consent conditions would occur under RMA processes.

¹⁹⁸ See [Appendix A – Conditions of Consent](#) at pages 41, 47, and 51.

¹⁹⁹ *Ashbourne* decision. See 'Appendix A – WRC – Permanent' Conditions of Consent.

²⁰⁰ See General Condition 1.3(3) in [Appendix A – Conditions of Consent](#).

²⁰¹ Schedule 2, Appendix A1 of the *Rangitooopuni* decision. See Consent Duration table at page 4.

- 9.2. While ecological surveys did not detect any protected species, and confirmed that the Residential South and Industrial North Sites contain limited suitable habitat, a wildlife approval is sought in case protected lizard species are encountered during bulk earthworks (most likely the copper or ornate skink).
- 9.3. Given the wildlife approval needs to cover the bulk earthwork activities, and as the Project is being staged over a number of years, a 15-year term is sought.
- 9.4. As outlined above:
- (a) The Panel may grant or decline the wildlife approval.
 - (b) If it grants the wildlife approval, the Panel may impose any conditions it considers necessary to manage the effects of the activities on protected wildlife.
- 9.5. In the context of the relevant legal framework outlined above, we submit:²⁰²
- (a) For the reasons outlined above, the Project is strongly aligned with the purpose of the FTAA.
 - (b) The Project, including the wildlife approval sought, is consistent with the purpose of the Wildlife Act, which is essentially the protection of wildlife. The overall effect of the Project, including proposed wildlife approval conditions, is consistent with the protection of populations of wildlife and individual wildlife. The Applicants will, including by complying with the Lizard Management Plans and proposed wildlife approval conditions, take reasonable steps to manage any adverse effects of the lawful activity on lizards.
 - (c) The Project's effects on the protected wildlife covered by the wildlife approvals are assessed as being low with the implementation of the proposed pre-vegetation clearance lizard capture and relocation programme as well as lizard habitat restoration to be included in enhancement plantings across the development; and – with proposed effects-management measures – effect on lizards can be appropriately addressed, in the context of the applicable legal and planning framework, including Schedule 7 of the FTAA and the Wildlife Act.
 - (d) The Applicants' proposed wildlife approval conditions will appropriately manage potential Project impacts on protected wildlife covered by the approval. Lizard Management Plans have been submitted which sets out salvage effort and

²⁰² See FTAA, cl 5 of Sch 7.

techniques (including assessment against the Department of Conservation's Principle of Salvage); handling requirements; procedures to be followed in event of injury/death; the proposed release site and habitat enhancement at the release site.

- (e) The proposed 15-year wildlife approval term is appropriate, including in the context of the commencement, lapse, staging and durations of the other approvals forming part of the suite of approvals sought for the Project. It is also broadly consistent with the durations of FTAA wildlife approvals granted for other projects, where durations have been specified (for example *Waihi North*, where approvals were granted for 30 years).²⁰³
- (f) All FTAA information and other requirements relating to the protected wildlife covered by the approval are addressed in the Substantive Application Report²⁰⁴ and ecoLogical Solutions technical assessment and draft management plans;²⁰⁵ and the Project is appropriate in this context.

10. OTHER MATTERS

Section 176 RMA approval from NZ Transport Agency

- 10.1. NZ Transport Agency holds a designation for the Hamilton Southern Links roading project, which traverses part of the Industrial North Site. The Applicants have been engaging with NZ Transport Agency regarding the Project, the design of which has been carefully planned with respect to the Hamilton Southern Links roading project. In short, the Project has been designed to integrate with the Hamilton Southern Links roading project once constructed.
- 10.2. Section 176(b) of the RMA provides, in summary, that no person may – without the written consent of the relevant requiring authority – do anything in relation to land subject to a designation that would prevent or the project to which the designation relates.
- 10.3. Therefore, to the extent the Industrial North Site is subject to the Hamilton Southern Links designation, before giving effect to resource consents within the Hamilton Southern Links designation area, the Applicants will need the written approval of NZ Transport Agency under s176 of the RMA. This is not an unusual situation for

²⁰³ See footnote 145.

²⁰⁴ See Volume 2 Residential South and Volume 3 Industrial North – Appendices 32: Wildlife Act Approval Documentation.

²⁰⁵ See Volume 2 Residential South and Volume 3 Industrial North – Appendices 23: Ecological Impact Assessment and Management Plans

development projects and, as confirmed by the Environment Court,²⁰⁶ represents no impediment to the Panel granting the approvals for the Project. A resource consent condition highlighting the need for s176 approval from NZ Transport Agency is proposed to reinforce this requirement, although not strictly necessary.

- 10.4. Transport effects of the Project and the approach to integrating the Project both pre and post Hamilton Southern Links is thoroughly canvassed in the Substantive Application Report and the Integrated Transport Assessment prepared by BBO

NPS-HPL

- 10.5. The NPS-HPL is engaged due to presence of highly productive land the 'high-level', regional scale NZLRI LUC mapping. Because finer-grained mapping has not yet been undertaken and included in the Waikato Regional Policy Statement, cl 3.5 of the NPS-HPL applies. Clause 3.5(7) provides that highly productive land is land zoned General Rural or Rural Production at the commencement date (being 17 October 2022) and is classified as LUC 1, 2 or 3. An exception applies for land which has been identified for future urban development, and although SL1 Growth Cell has been identified for urban growth (as outlined above), it does not meet the narrow definition of that exception.
- 10.6. The NPS-HPL contains a single objective: to protect highly productive land for land-based primary production, both now and for future generations. Clause 3.9 provides that territorial authorities must avoid the inappropriate use and development of highly productive land that is not land-based primary production. While cl 3.9 lists examples of land use that are not considered inappropriate, these do not extend to residential or industrial development.
- 10.7. Clause 3.10 provides that territorial authorities may only allow highly productive land to be subdivided, used, or developed for activities not otherwise enabled under cls 3.7, 3.8, or 3.9 if satisfied that:

(a) there are permanent or long-term constraints on the land that mean the use of the highly productive land for land-based primary production is not able to be economically viable for at least 30 years; and

(b) the subdivision, use, or development:

²⁰⁶ See for example, *Aokautere Land Holdings Ltd v Palmerston North City Council* [2021] NZEnvC 122 at [17]. The decision also confirmed that a designation and its "intersection" with an application for resource consent may be relevant as "another matter" under s104(1) of the RMA.

- (i) *avoids any significant loss (either individually or cumulatively) of productive capacity of highly productive land in the district; and*
- (ii) *avoids the fragmentation of large and geographically cohesive areas of highly productive land; and*
- (iii) *avoids if possible, or otherwise mitigates, any potential reverse sensitivity effects on surrounding land-based primary production from the subdivision, use, or development; and*
- (c) *the environmental, social, cultural and economic benefits of the subdivision, use, or development outweigh the long-term environmental, social, cultural and economic costs associated with the loss of highly productive land for land-based primary production, taking into account both tangible and intangible values.*

10.8. AgFirst has undertaken a comprehensive assessment against cl 3.10 and confirms that the Residential South Site is subject to permanent and long-term constraints that prevent economically viable primary production for at least the next 30 years.²⁰⁷ AgFirst concludes that while the Residential South Site contains highly productive soils, it does not function as a cohesive, economically viable, or versatile productive land resource. More particularly AgFirst confirms that:

- Detailed soil mapping demonstrates that only a relatively small proportion of the site comprises High Class Soil under the Waipā District Plan definition.
- The Site is already heavily constrained by fragmentation, urban encroachment, and infrastructure designations.
- The loss of productive capacity represents an insignificant proportion of the district-wide highly productive land resource.
- Reverse sensitivity effects of urban development on surrounding rural land are limited, primarily due to physical separation by the Hamilton Southern Links.
- The Site is already fragmented and causes no fragmentation of large, cohesive productive areas (the protection of which is the aim of the NPS-HPL).
- There are no reasonably practicable options available to overcome these constraints.

²⁰⁷ Volume 2 Residential South – Appendix 26: AgFirst Productivity Report.

- The environmental, social and economic benefits of urban development substantially outweigh the productive capacity lost.

10.9. As detailed earlier in these submissions, AgFirst's comprehensive economic viability assessment of various potential agricultural land use activities concluded that no reasonably practicable land use options can cover operating expenses, service redevelopment debt, provide adequate return to support the living requirements of a family, and generate sufficient surplus for reinvestment and growth. AgFirst concluded that the Residential South Site cannot be considered economically viable for long-term land-based primary production.

10.10. The Industrial North Site is also significantly constrained by existing, unproductive industrial activities, including as a consequence of large-scale earthwork activities across much of the site. Landsystems' detailed, finer-grained assessments of the site confirm that half of the Industrial North Site is either unproductive or LUC Class 7 and is devoid of functioning soil. The Site is also fragmented by the Hamilton Southern Links designation and is subject to poor to very poor drainage.

10.11. Together, the expert assessments from Landsystems and AgFirst (in respect of the Residential South component of the Project) demonstrate that both sites are subject to significant constraints and limitations such that the Project falls within cl 3.10 and is not contrary to the NPS-HPL.

10.12. In the event that the Panel concludes that the Project is inconsistent with the NPS-HPL (contrary to our submissions and evidence), inconsistency with a national policy statement is not, in itself, a reason to decline a project.²⁰⁸ The FTAA requires a balanced of considerations, where the adverse impacts of a project are weighed against its regional or national benefits. As the Panel in the *Sunfield* decision held, it must therefore be considered whether the inconsistency with the NPS-HPL would give rise to any substantive adverse effects.²⁰⁹ In our submission, given the severe constraints on both sites, no such adverse effects arise.

10.13. The *Maitahi Village* decision referred to the Legislative Statement of the FTAA which states Parliament's intention for decision making under the FTAA: The purpose and provisions of the Act will take primacy over other legislation in decision making. This means that approvals can be granted despite other legislation not allowing them, such as, projects that are prohibited activities or those which are inconsistent with RMA

²⁰⁸ Section 85(4) of the FTAA.

²⁰⁹ At [624].

National direction. This approach is intended to ensure key infrastructure and development projects with significant benefits for communities are delivered where the benefit of approving the project outweighs any adverse impact identified.

10.14. In the *Sunfield* decision, the Panel granted approvals for a large residential development (along with commercial and community facilities) despite finding it to be contrary to the NPS-HPL. The Panel's reasoning was that the benefits of the project outweighed the adverse impact of losing the highly productive land. The Panel concluded that:²¹⁰

Whilst we found that the loss of HPLs would (in isolation) be contrary to Part 2 of the RMA, when we weigh the overall benefits of the project with reference to the purpose of the FTAA, we are satisfied that consent should be granted.

10.15. A different approach was taken by the Panel in the *Ashbourne* decision which declined approval for resource consent for the retirement village component of the project on highly productive land. The Panel in that case stated it did not consider the FTAA to be a "licence to override" the strong directive to "avoid" development on rural highly productive land where there was alternative appropriate land which was zoned and serviced.²¹¹ In our submission, the Project does not seek such a licence and this Project's factual context is different from that in *Ashbourne*.

10.16. Even if the Project was found inconsistent with the NPS-HPL (which, in our submission, it is not), s85(4) provides that a panel may not form the view that an adverse impact meets the threshold above solely on the basis that it is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider.

NPS-FM and NES-F

Works within artificial farm drains

10.17. The assessments by Maven and ecoLogical Solutions confirm that there are a number of artificial farm drains (artificial watercourses, as opposed to natural or modified rivers), on both the Industrial North Site and Residential South Site.

10.18. Some of the farm drains will be infilled to facilitate the Project. Other farm drains will be retained as part of the Projects' stormwater treatment system. Retained farm drains will

²¹⁰ At [785].

²¹¹ At [787(c)].

be enhanced for amenity and ecological purposes through extensive riparian planting, and culverts will be installed in some of the farm drains to provide roading access.

10.19. As outlined by ecoLogical Solutions, some of the farm drains contain native fish species and a Fish Management Plan has been prepared to manage effects on fish.

The NPS-FM and NES-F do not apply

10.20. The artificial farm drains are not captured by the NPS-FM or NESF.

- (a) The NPS-FM and NES-F provisions on “rivers”, including NPS-FM Policy 7 which provides that the loss of river extent and values is avoided to the extent practicable, do not apply to the artificial farm drains. While the farm drains contain water (and have some limited ecological values, including due to the presence of fish species) the RMA defines a river as “*a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including [a]... farm drainage canal)*”.²¹²
- (b) The NPS-FM and NES-F “natural inland wetland” provisions do not apply to the artificial farm drains. The definition of natural inland wetland explicitly excludes a wetland that has developed in or around a deliberately constructed water body, since the construction of the water body.²¹³
- (c) The NPS-FM and NES-F provisions relating to “culverts”, including Regulations 70 and 71, do not apply to the artificial farm drains. The definition of culvert relates only to certain structures that have “*an inlet an outlet that is in, and that connects the water or bed of, the same river or connected area*”.²¹⁴ In addition, regulations 70 and 71 (culverts) themselves only apply to the placement, use, alteration, extension, or reconstruction of a culvert in, on, over, or under the bed of any river or connected area. The artificial farm drains do not come within the scope of “river or connected area”. The definition of river is addressed above, and a connected area is defined “*as any part of the coastal marine area that is upstream from the mouth of a river*”.

²¹² Emphasis added. Clause 1.4(2) of the NPS-FM provides that terms defined in the RMA and used in the NPS-FM have the meanings in the RMA, except as otherwise specified.

²¹³ This is putting aside the initial issue of whether any aspect of the artificial farm drains meet the definition of “wetland” as defined in the RMA.

²¹⁴ NES-F, cl 3.

Notwithstanding that Regulations 70 and 71 do not apply, the Applicants have confirmed that fish passage within those farm drains that are to be retained will be maintained in accordance with the fish passage requirements of Regulation 70.

The proposed works are not “standard freshwater fisheries activities”

10.21. The “standard freshwater fisheries activity” provisions under the FTAA, which impose certain information requirements for applications including such activities,²¹⁵ also do not apply. Standard freshwater fisheries activity is defined in the FTAA²¹⁶ as an activity that includes construction of any of the following:²¹⁷

- (d) *a culvert or ford that could impede but not permanently block fish passage:*
- (e) *weirs that comply with the conditions of regulation 72 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020:*
- (f) *works –*
 - (i) *that require active disturbance to a water body, including diversions, in-stream operations, and removal of gravel, that does not persist for more than 3 months; or*
 - (ii) *that require disturbance of any duration outside the whitebaiting season to a water body within 500 m of the coast; or*
 - (iii) *that require disturbance of any duration outside the relevant spawning season to a water body that is known for the spawning of trout, salmon, or native fish; or*
 - (iv) *that require repeated disturbance to a water body and are temporary works for which there is a period of more than 6 months between each period of work.*

10.22. With respect to (a) and (b), as outlined above, the proposed structures in the artificial farm drains are not culverts as defined; nor are they fords or weirs. With respect to (c), water body is defined in the RMA²¹⁸ as “fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the

²¹⁵ Refer to cl 9 of Sch 5 of the FTAA. Panels may also set conditions dealing with standard freshwater fisheries activities (see cl 19 of Sch 5 of the FTAA).

²¹⁶ Section 4.

²¹⁷ Emphasis added.

²¹⁸ Section 2.

coastal marine area".²¹⁹ Water contained within an artificial farm drain does not fall within the scope of any of the listed features.²²⁰

10.23. Notwithstanding our above submissions, the Applicants have adopted a highly conservative approach and applied for resource consents to reclaim some of the artificial farm drains. In adopting such a conservative approach there is sufficient scope to grant the applications and standard freshwater fisheries activity should the Panel determine the farm drains are rivers.

10.24. Similarly, although we do not consider the FTAA standard freshwater fisheries activity provisions apply; the Applicants have provided the necessary information requirements and have approached the design of culverts and works within the artificial farm drains as if the works were subject to the NESF and standard freshwater fisheries activities requirements under the FTAA. In particular the design ensures the maintenance of fish passage, works will not persist for more than 3 months, and relevant information required for a standard freshwater fisheries activity has been provided.

Prohibited activity

10.25. As outlined in the Application documents, the Project includes one activity that would otherwise be prohibited under the RMA. The unavoidable removal of one small (285m²) natural inland wetland (Wetland A) is proposed as part of the Residential South Development.²²¹ Notwithstanding that Wetland A is highly modified and degraded, being a pasture wetland reflecting historic grazing patterns, its removal is a prohibited activity under Regulation 53 of the NES-F (drainage of natural inland wetlands).²²²

10.26. The FTAA explicitly confirms that a substantive application can seek an approval for an activity that is a prohibited activity under the RMA.²²³

10.27. In its decision-making, a panel must take into account that the RMA would normally require such an application to be declined,²²⁴ but must not treat that as requiring the panel to decline the application the panel is considering.²²⁵

²¹⁹ Emphasis added.

²²⁰ As outlined above, artificial farm drains are not rivers, or streams.

²²¹ As outlined in the Application documents, there are no natural inland wetlands on the Industrial North Site.
²²² Regulation 53 provides that earthworks within a natural inland wetland are prohibited if they result in, or are likely to result, in the complete or partial drainage of all or part of a natural inland wetland, and does not have another status under any of regulations 38 to 51.

²²³ FTAA, s45(5)(a).

²²⁴ Under s87A(6) of the RMA, cross referred to in cl17(3) of Sch 5 of the FTAA.

²²⁵ Clause 17(4) of Sch 5 of the FTAA.

10.28. As outlined above, in the *Waihi North* decision and *Maitahi Village* decision, the Panels confirmed (respectively) that:

- (a) approval under the FTAA does not depend on a project necessarily being consentable outside of the FTAA;²²⁶ and
- (b) the FTAA is intended enable approvals to be granted even where projects would otherwise be prohibited or inconsistent with RMA instruments.²²⁷

10.29. In the *Green Steel* decision,²²⁸ the Panel granted approvals involving the destruction of two small wetlands that was a prohibited activity under the RMA.²²⁹ In the *Lake Pukaki Hydro Storage and Dam Resilience Works* decision,²³⁰ the Panel granted approvals involving a prohibited water take and use, stating:²³¹

The FTAA expressly enables approval to be granted for an activity that would otherwise be prohibited under an RMA planning instrument. The prohibited status is therefore a matter to be weighed, rather than a jurisdictional bar or a presumption of decline.

10.30. Overall, the proposed loss of Wetland A is demonstrated to be acceptable in the FTAA context, including with respect to the limited adverse impacts of Wetland A's removal, the applicable planning framework, and the significant Project benefits:

- (a) The Application documents detail the effects management measures proposed to appropriately address the loss of the highly modified and degraded Wetland A. This involves comprehensive restoration and enhancement of Wetland B (part of the upper tributary of the Mangakōtukutuku Stream) which will result in the creation of new wetland extent and values.
- (b) Regulation 45C of the NES-F expressly provides a restricted discretionary activity pathway for activities in wetlands for urban development. However, for the reasons outlined in the Application material, the Project does not come within the exacting scope requirements of that NES-F pathway, given the zoning applying to the Project land.²³² There is no fundamental policy or effects-based reason why the

²²⁶ *Waihi North* decision, Part M, at [9].

²²⁷ *Maitahi Village* decision at [51].

²²⁸ [Green Steel](#) decision, 19 November 2025. See paras [28], [334], and [644]-[654].

²²⁹ The Panel treated the wetland destruction as, in substance, a discretionary activity.

²³⁰ [Lake Pukaki Hydro Storage and Dam Resilience Works](#) decision, 3 July 2026. See paras [27]-[31], and [573]-[585].

²³¹ At [583].

²³² Regulation 45C does not apply to rural-zoned land. Regulation 45C provides: "A resource consent for a restricted discretionary activity under this regulation must not be granted if the activity— (a) occurs on land

prohibited activity status applying to the Project's removal of a single small wetland should be determinative of, or of significant weight to, the Panel's decision-making in the context of the Project, especially when the Project's significant benefits are taken into account in the manner required by the FTAA.

Encumbrance

10.31. The record of title for Lot 1 DP 603134 (part of the Industrial Site) is subject to registered encumbrance 12988232.5 (the "Encumbrance"), under which the Hamilton City Council is the Encumbrancee and Southpark Agri Development Limited is the Encumbrancer. The Encumbrance provides that:

The Encumbrancer will not allow any activities on the land other than those permitted in the Rural Zone under the Waipa District Plan and will not seek resource consent for any activities which are not permitted in that zone.

10.32. The remainder of the Industrial Site and the Residential Site are not subject to the Encumbrance.

10.33. Notwithstanding the terms Encumbrance, Hamilton City Council has provided written notice in its capacity as the Encumbrancee consenting to the lodgement of the Application. The Encumbrance does not raise any ineligibility issues under s5 of the FTAA. Southpark Agri Development Limited does not seek the removal of the Encumbrance as part of the FTAA process and its final resolution will need to be dealt with outside the FTAA process; however, it does not hinder the consideration of the Application.

Cancellation of consent notice

10.34. Consent notice 6837043.1 (the "Consent Notice") is registered on the following properties:

- (a) Lot 1 DP 584573;
- (b) Lot 1 DP 603134;
- (c) Lot 2 DP 603134; and
- (d) Lot 1 DP 365434.

other than land that is identified for urban development in the operative provisions of a regional or district plan; or (b) occurs on land that is zoned in a district plan as general rural, rural production, or rural lifestyle."

10.35. The Consent Notice provides that Lot 1 DP 365434 cannot be further subdivided pursuant to standards (specifically Rule 10.6.1.1) of the then Operative Waipā District Plan and that Lot 2 DP 365434 can create only one additional lot on the site through subdivision in accordance with those standards.

10.36. These are historic restrictions and an application under s221(3)(a) of the RMA to Waipā District Council outside of the FTAA process will be necessary prior to subdividing those lots. However, no decision in respect of the Consent Notice is required by the Panel under the FTAA.

10.37. It is noted that, since the Consent Notice was registered in 2006, there have been fundamental and material changes in circumstances which render the restriction inappropriate and unnecessary. In particular:

- (a) The Consent Notice conditions relate to Rule 10.6.1.1 of the 2006 Waipā District Plan. However, as a consequence of subsequent plan reviews and the current Operative Waipā District Plan, Rule 10.6.1.1 has been superseded and no longer applies.
- (b) The future urbanisation of the wider SL1 Growth Cell (including the Industrial North Sites) has been identified in various strategic planning documents, including Hamilton City Council's Emerging Areas, Future Development Strategy, and Potential Blue Sky supply areas for the Hamilton Metro Area, and most recently by Future Proof in its North Waipā-South Hamilton Spatial Study. Furthermore, in October 2022, Hamilton City Council and Waipā District Council included the SL1 Growth Cell in the Strategic Land Agreement as an area of land that is intended to come within Hamilton City's boundary, subject to terms to be agreed between those councils.
- (c) Parliament has explicitly recognised and prioritised the Site for development by listing the Project under Schedule 2 of the FTAA.
- (d) Lot 2 DP 365434 – one of the allotments to which the density restrictions apply – no longer exists.

10.38. The Consent Notice does not hinder the decision under the FTAA, including in respect of the subdivision application.

11. CONCLUSION

11.1. The Applicants have invested significant time and resources in advancing the Project. They have engaged with key stakeholders and other parties to ensure a well-considered application is presented.

11.2. We submit that:

- (a) the Project satisfies the requirements of the FTAA, including the relevant sections of the RMA and the Wildlife Act that are “imported” by the FTAA;
- (b) the Project is strongly aligned with the purpose of the FTAA;
- (c) the Project receives strong support from the RMA planning framework and central government policy direction, including the NPS-UD;
- (d) the Substantive Application Report demonstrates that the Project has been carefully shaped by independent expert input, and that there are appropriate measures in place – including through comprehensive conditions which appropriately stage the Project and a suite of draft management plans – to ensure that any adverse impacts are appropriately managed.
- (e) In the context of the legal framework established by s85 of the FTAA, the adverse impacts of the Project are not sufficiently significant to be out of proportion to the Project’s regional benefits. To the contrary, the Project’s positive effects demonstrably outweigh its adverse effects.

11.3. The Applicants therefore respectfully request that the Panel grant all approvals sought, subject to the conditions proposed by the Applicants.²³³

JR Welsh and SJ Mutch

Counsel for Colliers Project Leaders NZ Limited (as agents and representative of Golden Ridge Farm Limited, Golden Ridge Park Limited, Industrie Property Rua Limited, and Southpark Agri Development Limited)

9 September 2026

²³³ Or as otherwise refined through the substantive application process.