

BEFORE AN EXPERT PANEL **FTAA-**
STATE HIGHWAY 1 WELLINGTON IMPROVEMENTS PROJECT

UNDER the Fast-track Approvals Act 2024

IN THE MATTER OF an application by NZ Transport Agency Waka Kotahi for an alteration to an existing designation, resource consents, wildlife approvals, and archaeological authorities for the construction, maintenance and operation of the State Highway 1 Wellington Improvements Project

LEGAL SUBMISSIONS FOR NZ TRANSPORT AGENCY WAKA KOTAHI

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PART A: INTRODUCTION AND PROJECT OVERVIEW

1. INTRODUCTION

- 1.1 These legal submissions form part of an application by NZ Transport Agency Waka Kotahi (**NZTA**) under the Fast-track Approvals Act 2024 (**FTAA**) for an alteration to an existing designation, resource consents, wildlife approvals, and archaeological authorities.
- 1.2 The approvals are to enable the construction, operation, and maintenance of major improvements to State Highway 1 (**SH1**) in Wellington between north of the Terrace Tunnel and Kilbirnie (the **Project**).
- 1.3 The Project is listed in Schedule 2 of the FTAA.
- 1.4 NZTA's application is to be considered under the legal framework set out in the FTAA, legislation that is intended to provide a more efficient and certain approvals pathway for projects with significant regional or national benefits. To assist the Expert Panel (**Panel**), this document presents a summary of that framework and evaluates the Project against the key legal tests.
- 1.5 The structure of this document is as follows:
 - (a) **Part A** introduces these submissions, summarises the key legal reasons why the Panel should grant the approvals sought by NZTA, and provides a Project overview;
 - (b) **Part B** summarises the legal framework for the Panel's decision under the FTAA;
 - (c) **Part C** applies the framework to the Project, including by reference to the Project's environmental effects, the relevant planning instruments, and the relevant statutory considerations for each type of approval, and explains why there is no legitimate reason for the Panel to decline the approvals sought;
 - (d) **Part D** addresses the relevant considerations for the Panel to consider when imposing conditions; and
 - (e) **Part E** contains a brief conclusion.
- 1.6 Detailed information on the Project and how it has been evaluated within the relevant framework for each approval is provided in the suite of application documents prepared by expert planners, drawing on technical

advice provided by a large team of other experts. These legal submissions complement and are intended to be read alongside the application and its supporting materials.

2. PRINCIPAL SUBMISSION

Wellington's transport network is problematic and worsening

- 2.1 The way Wellington City's transport network is configured gives rise to notorious problems that have a detrimental effect on the lives of many thousands of Wellingtonians. These problems are long-standing and are steadily worsening as our population increases.
- 2.2 SH1 is the principal road that connects New Zealanders to key centres and destinations, including to our capital city. Unlike in other cities, though, SH1 also functions as the main arterial route traversing the most densely populated and busy areas of Wellington. National, regional, and local trips thus converge on this short section of SH1, making it the busiest stretch of road in New Zealand outside Auckland.
- 2.3 Despite its importance and multi-functional nature, SH1 through Wellington does not have sufficient capacity to convey traffic flows efficiently and it features several pinch-points with only one lane in one or both directions, namely around Aurora Terrace, heading south towards and through the Terrace Tunnel, in both directions through the Mount Victoria Tunnel (built in 1931), and along Ruahine Street and Wellington Road. Another problematic location is the Basin Reserve, where SH1 traffic and key local trips intersect.
- 2.4 The result is significant congestion and variability in the time it takes people to journey to and from home, work, study, healthcare, sporting and cultural activities, Wellington International Airport (the **Airport**), and many other destinations. This is problematic because:
 - (a) Spending more time in vehicles obviously reduces the time people have for more rewarding and productive activities; time with family or friends, working, studying, at leisure, and so on.
 - (b) A heavily congested network is also susceptible to disruption from incidents, as seen in the widespread delays whenever there is an accident in the Mount Victoria or Terrace Tunnels or at other key points in the network.

- (c) Variability in travel times is particularly problematic for time-critical trips; if travelling to the Airport sometimes takes 20 minutes but can take up to 45 minutes, most people will account for the latter timing (plus an extra contingency) and end up with a lot of unproductive time.
- (d) Because many thousands of people use this section of SH1 daily, these problems are amplified such that a very large amount of productive time is being wasted.

- 2.5 How to fix these problems has been understood for many decades but the solution is expensive to deliver, particularly in an urban environment. A pilot for a duplicate tunnel through Mount Victoria was formed over 50 years ago, in 1974, and construction of the Terrace Tunnel (which opened in 1978) included future-proofing elements for a second tunnel; competing funding priorities in both cases have led to further improvements being deferred since then.
- 2.6 Decades later, the problems continue to grow and are now becoming critical.

The Project delivers key system benefits

- 2.7 As a result, NZTA is seeking statutory approvals for this Project so that, when funding allows, it can promptly implement the most significant changes to Wellington's transport infrastructure since the urban motorway works of the 1970s, to improve the capacity of and traffic flows along SH1 and unlock the pinch-points noted above. Doing this will:
- (a) improve people's ability to access key destinations using SH1;
 - (b) achieve travel time savings on SH1 and make journey times much more reliable;
 - (c) lead to significant productivity gains, which will benefit the economic development of Wellington city and the surrounding region; and
 - (d) have wider benefits for Wellington's transport network, including by increasing the appeal of SH1 (over local roads) as a throughfare route, and separating north-south local traffic and westbound SH1 traffic at the Basin Reserve.
- 2.8 These transport benefits are very significant for Wellington and important for New Zealand as a whole. When considered alongside the co-benefits for

walking and cycling, safety, and public transport provided by the Project, and factoring in some 'disbenefits',¹ the Project's transport benefits are conservatively valued at over \$1.9 billion. The Project's resilience benefits to travellers are additional to that.

- 2.9 Moreover, because these improvements are so beneficial, they will alter people's behaviours in a way that gives rise to large-scale 'agglomeration' benefits. These arise when productivity in an area increases due to improved efficiency of businesses interacting with one another, and from additional businesses and workers being attracted to the area. The agglomeration benefits of this city-shaping Project are estimated at over \$1.5 billion over a 50-year period (in addition to the direct transport benefits noted above). The national and regional significance of these benefits, in an area that is already responsible for 4.6% of New Zealand's GDP, is obvious.
- 2.10 In addition, NZTA is developing the Project in partnership with Mana Whenua, Taranaki Whānui ki Te Upoko o Te Ika and Ngāti Toa Rangatira. Further key benefits of the Project will be delivered through this partnership, including good environmental outcomes and incorporation of cultural narratives into the Project design.
- 2.11 The Project will deliver many other benefits, including enabling further housing in the vicinity, better and safer access to key community facilities such as Hataitai Park, Wellington College, and St Mark's School, better connecting Pukeahu National War Memorial Park (**Pukeahu Park**) with the Canal and Basin Reserves, and new stormwater treatment infrastructure (leading to cleaner water discharging to Wellington Harbour).
- 2.12 The Project will not solve all of Wellington's transport issues; the transport network will keep adapting, as funding allows, to meet changing needs and behaviours. Importantly, though, the Project does not preclude any particular future improvements, including Mass Rapid Transit (**MRT**, which will be easier to deliver with this Project in place).

Adverse effects will be carefully managed

- 2.13 Delivering improvements of the scale of the Project will inevitably give rise to adverse effects, but care has been taken to minimise impacts on (and

¹ The system improvements resulting from the Project will encourage more travel (ie more vehicle kilometres travelled), which creates 'disbenefits' including in terms of increased vehicle operating costs.

otherwise interact appropriately with) numerous areas of sensitivity, including residential areas, the Wellington Town Belt, Pukeahu Park, local schools, the Basin Reserve, and a small area of the coast at Evans Bay (where a stormwater outfall will be upgraded).

- 2.14 Some adverse effects will be experienced while the Project is constructed, including temporary changes in the transport network, and careful management will be needed to ensure that any dust, ground settlement, and other construction issues are quickly addressed.
- 2.15 Detailed conditions are proposed to attach to the various approvals to ensure this occurs; more broadly, NZTA and key organisations have already established frameworks – a Network Planning Group (**NPG**) involving Wellington City Council (**WCC**) and Greater Wellington Regional Council (**GWRC**), and a Mana Whenua Steering Group – at which construction-phase issues and the measures to manage them can be discussed and coordinated.

Conclusion

- 2.16 Because the Project will deliver very significant benefits to the public, and because adverse effects will be carefully managed to achieve (in broad terms) the outcomes envisaged in the relevant planning documents and Part 2 of the Resource Management Act 1991 (**RMA**), there would be a very compelling case for the Project to obtain the necessary approvals under the RMA and other relevant legislative regimes.
- 2.17 Under the FTAA, there is no reasonable basis on which the Panel can decline NZTA's application; enabling the Project will strongly promote the purpose of the FTAA (to *"facilitate the delivery of infrastructure (...) projects with significant regional or national benefits"*), and the Project's regional and national benefits heavily outweigh its adverse effects.

3. PROJECT OVERVIEW

NZ Transport Agency Waka Kotahi

- 3.1 NZTA is the government agency responsible for managing the state highway network, investing in land transport, and providing access to the transport system. NZTA is a network utility operator approved as a requiring authority under section 167 of the RMA.

- 3.2 NZTA's statutory objective under the Land Transport Management Act 2003 (**LTMA**) is to *"undertake its functions in a way that contributes to an effective, efficient, and safe land transport system in the public interest."*² Its functions include constructing, operating, and maintaining the state highway network and investing in public transport and local road networks on behalf of the Crown.³ In meeting its objectives and undertaking its functions, NZTA must exhibit a sense of social and environmental responsibility, which includes avoiding, to the extent reasonable in the circumstances, adverse effects on the environment.⁴ NZTA must also use its revenue in a manner that seeks value for money.⁵
- 3.3 NZTA has been delivering on these responsibilities by:
- (a) devising a Project objective (discussed below) targeted at reducing the congestion and inefficiency prevalent along SH1 (and on related parts of the roading network) through Wellington;
 - (b) identifying and evaluating numerous options for transport improvements (and other potential interventions) to address that objective, and deciding on an appropriate configuration for the Project; and
 - (c) preparing this application for statutory approvals.
- 3.4 An important aspect of these processes has been defining the nature of the Project and the breadth of transport issues that it will address (given that NZTA's functions and responsibilities extend beyond this Project to the wider land transport network in this region and elsewhere).
- 3.5 While this Project will not (and cannot) provide a complete solution to the transport issues facing Wellingtonians, it will nonetheless:
- (a) comprehensively deliver on NZTA's statutory objectives and the Project objective; and
 - (b) realise very significant economic and social benefits for Wellington City, the wider Wellington region, and beyond.

² LTMA, s 94.

³ Section 61 of the Government Rounding Powers Act 1989 provides the Transport Agency with the sole powers of control for all purposes, including construction and maintenance, of all state highways, and the power to do all things necessary to construct and maintain in good repair any state highway. Land transport is broadly defined in section 5 of the LTMA as meaning *"transport on land by any means"*.

⁴ LTMA, section 96.

⁵ LTMA, section 96.

Background to and objective of the Project

- 3.6 There is significant history to this Project.
- 3.7 As alluded to above, the problems with Wellington's transport network have been understood for many decades. Around 15 years ago, NZTA carried out considerable work to investigate SH1 improvements through Wellington, as three separate packages of work.
- 3.8 NZTA sought RMA approvals for one of those packages, known as the Basin Bridge Proposal, which focused on addressing congestion at the Basin Reserve. The other packages related to a duplicate Mount Victoria Tunnel and a duplicate Terrace Tunnel respectively.
- 3.9 NZTA lodged a notice of requirement and application for resource consents for the Basin Bridge Proposal in June 2013. At that time the proposal was to construct, operate, and maintain a two-lane, one-way (westbound) bridge on the northern side of the Basin Reserve as part of SH1 between Paterson Street and Taranaki Street. The application was considered (by the Minister for the Environment) to be a proposal of national significance and accordingly was referred, in July 2013, to a board of inquiry under s 149J of the RMA.
- 3.10 The board of inquiry refused the approvals sought because it considered the proposal would have significant adverse effects, including on the heritage setting at and around the Basin Reserve, and so would not promote the sustainable management purpose of section 5 of the RMA.⁶ The Board also took issue with NZTA's processes for considering alternative sites / routes for the proposal.
- 3.11 Following the board of inquiry's decision, NZTA, WCC, and GWRC established the Let's Get Wellington Moving (**LGWM**) partnership with the express purpose of developing a coordinated programme of transport improvements for Wellington. By bringing together the key entities responsible for Wellington's transport network, LGWM was designed to address state highway and public transport needs in an integrated way. Its Transformational Programme sought to resolve a wide range of transport challenges on the SH1 corridor – including grade separation at the Basin Reserve, a duplicate Mount Victoria Tunnel, and improved eastern connections – while also delivering MRT between Wellington's centre and

⁶ Board of Inquiry Decision, at [1330].

southern suburbs. Transport modelling demonstrated that, even accounting for MRT and growth distributed along transit corridors, highway investment remained necessary, as constrained road capacity and conflict at the Basin Reserve continued to delay public transport services and otherwise create network inefficiencies.

- 3.12 LGWM produced a Programme Business Case in 2019 and an Indicative Business Case in 2021, before being dissolved in December 2023. When NZTA resumed responsibility for the state highway elements of the programme in 2024, it systematically revisited and retested earlier options that had been considered through the LGWM process.
- 3.13 The current Project has been configured in a way that reflects the same integrated thinking that underpinned LGWM's work, while directly addressing the weaknesses identified by the board of inquiry in the earlier Basin Bridge Proposal. At the key conflict point of the Basin Reserve, the Project achieves grade separation that separates SH1 (westbound) from local movements, enabling buses and other local traffic to move past the Basin Reserve more smoothly and delivering immediate improvements to public transport reliability.
- 3.14 The environmental outcomes for the heritage setting of the Basin Reserve are markedly better for this Project than those associated with the earlier Basin Bridge Proposal. The Project achieves grade separation at the north-west corner of the Basin Reserve and thus avoids the need for a raised SH1 structure directly to the north of the Basin, directly addressing concerns that led to the earlier proposal being refused.
- 3.15 The Project's design also does not foreclose the possibility of MRT in future, and structures and new elements introduced by the Project are future-proofed for MRT. Further, by resolving the fundamental conflict between state highway and local movements at this location, the Project makes future MRT through and around the Basin easier to achieve.
- 3.16 This Project is the result of more than a decade of detailed investigations and extensive technical study, drawing in particular from the LGWM programme and NZTA's subsequent work, and shaped throughout by the important lessons and feedback from the Basin Bridge Board of Inquiry process. That foundation of knowledge and analysis directly informed the alternatives assessment undertaken for the current Project, which has been designed to be comprehensive, transparent, and well-documented, and has

enabled the identification and refinement of a preferred option in a robust and logical way.

3.17 NZTA's objective for this Project is:

"To provide more efficient and reliable access on SH1 from north of the Terrace Tunnel to Wellington Airport and Wellington Hospital to support regional economic growth."

3.18 That objective is accompanied by the following explanation:

"The outcome sought is to support regional economic growth and productivity by improving access through reduced travel times (efficient) and improved journey time reliability (reliable) for all traffic on SH1 through Wellington city centre. The investment is targeting SH1 in both directions between the north of the Terrace Tunnel and Wellington International Airport, and sections thereof, as this route is part of many journeys to and from the Airport, the regional hospital, and the central city."

3.19 This objective is squarely addressed by the Project. The proposed package of improvements is expected to result in significant travel time savings during peak periods for key SH1 journeys, such as to the central business district, hospital, and Airport – including travel time savings for key bus routes – with travel time reliability to these key transport destinations expected to improve by around 40 percent.

3.20 By achieving the Project objective, NZTA will improve access to major national and regional destinations, and a freer-flowing state highway will also reduce traffic on alternative local roads, which will enable opportunities for improved public transport and broader amenity enhancement within the wider city.

The environmental setting for the Project

3.21 The application documents describe in detail the 'environment' against which the proposed activities involved with the Project are to be assessed. This section does not repeat those details but highlights key features.

3.22 The Project is situated in an urban environment that is already highly developed and densely occupied. The issues that arise are largely different to those associated with development impacting an undisturbed natural environment; rather, they are issues of urban character – effects on built

heritage, on existing communities and businesses, on amenity in an already urbanised landscape, and on the functioning of an established and complex transport network.

- 3.23 This is not to say that natural environment values are absent from the Project area; ecological values do exist, particularly around the tunnel portals and Town Belt margins, and these have been assessed, with appropriate mitigation and offset / compensation measures proposed.
- 3.24 Moreover, a significant proportion of the physical works required to deliver the Project will be carried out within the existing designation NZTA-1, which already enables state highway-related activities along the SH1 corridor (and which, in respect of such activities, disapplies district plan rules in respect of that land⁷).
- 3.25 However, the fact that works will be carried out within an area already subject to a state highway designation does not mean that effects within that area have been downplayed or treated as pre-determined. The experts who have assessed the Project's effects have undertaken a thorough and independent evaluation of all activities and effects within the existing designation extent, in the same way as they have assessed effects in areas outside the current designation.
- 3.26 A clear example of this approach is the treatment of heritage buildings on Paterson Street. Those buildings currently fall within the existing NZTA-1 designation boundary, which provides (in an RMA sense) existing authority to demolish them. Nevertheless, NZTA's expert heritage advisor has carried out a careful and detailed assessment of the effects of the proposed works on those buildings, and measures to address those effects are included as proposed mitigation measures. This includes repositioning the house 'Laureston' at 7 Paterson Street within the boundaries of its original site, even though that building is not scheduled for protection in the Wellington City District Plan, and relocating two other scheduled buildings on new sites on the reformed Paterson Street. In this context, the retention and relocation/repositioning of certain heritage items situated within the NZTA-1 designation is a positive outcome.
- 3.27 Another key contextual matter is that for many years the Crown has been acquiring land needed to upgrade SH1 through Wellington. As a result,

⁷ RMA, s 176(1)(a).

NZTA / the Crown already hold legal interests in a significant amount of land that lies outside the current NZTA-1 designation extent but that is required to enable construction of the Project (including to accommodate permanent works such as the state highway itself, tunnels, bridges, retaining structures, and stormwater devices). The extent of Crown land holdings, and the properties in respect of which interests are yet to be acquired, are shown on the land ownership plans included within the application documents.⁸

- 3.28 All additional acquisitions of land and other property rights will, in time, be negotiated by Crown-accredited property consultants in accordance with Public Works Act 1981 (**PWA**) processes.

PART B: LEGAL FRAMEWORK – FAST-TRACK APPROVALS ACT 2024

4. INTRODUCTION TO THE FTAA

- 4.1 As noted above, the FTAA's purpose is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.
- 4.2 The Panel must interpret the FTAA from its text, read in light of its purpose (set out in section 3) and context.⁹
- 4.3 Notably, the FTAA consolidates multiple statutory approval processes that are typically required for large or complex projects into a 'one-stop-shop' arrangement. That is, the FTAA establishes an alternative consenting / approvals regime to the processes that exist under a range of "*specified Act[s]*".¹⁰ Where a substantive application for approvals for the Project is made under section 42, the process and requirements for obtaining approvals under the FTAA will apply instead of the equivalent processes under the relevant Acts.
- 4.4 As applicable to this Project, the approvals sought by NZTA include:
- (a) an alteration to existing designation NZTA-1 to enable the tunnels and additional roading infrastructure for which a notice of requirement (**NoR**) would otherwise be sought under the RMA;

⁸ Part H of the application.

⁹ Legislation Act 2019, s 10(1).

¹⁰ FTAA, s 4(1); as relevant to this Project, this term includes the RMA, the Heritage New Zealand Pouhere Taonga Act 2014, and the Wildlife Act 1953.

- (b) all the resource consents necessary under the RMA to construct, operate, and maintain the Project, pursuant to the relevant district and regional plans, the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (**NESCS**), and the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-F**);
 - (c) wildlife approvals that would otherwise be sought under the Wildlife Act for activities associated with catching, handling, and relocating native lizards and kororā / little penguin, and for any unintentional, incidental harming or killing of lizards or kororā during construction; and
 - (d) archaeological authorities that would otherwise be sought under the Heritage New Zealand Pouhere Taonga Act 2014 (**HNZPTA**), as the Project will affect pre-1900 buildings (which are 'archaeological sites' as defined under the HNZPTA) and construction activities have the potential to encounter in-ground archaeology in other areas.
- 4.5 NZTA's application is for all approvals required for the Project under section 42 of the FTAA; this package of approvals is sought so NZTA can quickly move to deliver the Project when funding allows.
- 4.6 The Panel's role is to process the application and make decisions on each approval sought. In that regard, the substantive decision-making provisions in the FTAA apply in the same way to both 'listed' (as in this case) or 'referred' projects.

5. PURPOSE OF 'FACILITATING DELIVERY'

- 5.1 As noted above, the purpose of the FTAA is to *"facilitate the delivery of infrastructure and development projects with significant regional or national benefits"* (emphasis added).¹¹
- 5.2 This purpose section was intentionally strengthened through the Parliamentary process; in its first reading, the purpose clause in the Fast-track Approvals Bill was *"to provide a fast-track decision-making process that facilitates the delivery of infrastructure and development projects with significant regional or national benefits."* The change in language from 'providing a process' to simply 'facilitating delivery' represents significant

¹¹ FTAA, s 3 (purpose).

strengthening of the purpose. This was intentional, as explained in the Select Committee report.¹²

- 5.3 The expert panel considering the Taranaki VTM project (in rejecting a submission that the word had a purely procedural meaning) found that 'facilitate' has a partly substantive meaning such 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 [the usual statutory process]."*¹³
- 5.4 The FTAA's purpose of 'facilitating delivery' of beneficial projects does not mean that the process involves a less-than-rigorous assessment of those projects, or that an application cannot be declined. However, there is a strong starting premise of 'facilitating delivery'; the foundational policy rationale for the FTAA is that the delivery of infrastructure with significant¹⁴ regional or national benefits should be facilitated.
- 5.5 This premise is reflected in a number of ways throughout the scheme of the FTAA:
- (a) A panel must give the greatest weight to the purpose of the FTAA in its decision-making, ahead of all other considerations.¹⁵ This deliberate aspect of the FTAA clearly intends to make decision-making more favourable to beneficial proposals than would otherwise be the case under usual (non-FTAA) processes.
 - (b) A panel only has discretion¹⁶ to decline an application where *"adverse impacts"* are *"sufficiently significant to be out of proportion to the project's regional or national benefits"* (even after considering conditions).¹⁷ There is therefore a clear tolerance for adverse impacts, provided they are not out of proportion to the regional and national

¹² Fast-track Approvals Bill, as reported from the Environment Committee, 18 October 2024, at page 3.

¹³ Draft Decision, dated 4 February 2026 at [69].

¹⁴ The term *"significant"* is not defined in the FTAA. The Expert Panel on the Maitahi Village proposal adopted the meaning *"sufficiently great or important to be worthy of attention; noteworthy"* (at [516] in its amended Final Decision, dated 18 September 2025). The Expert Panel on the Waihi North project found (at [843] of its amended Final Decision, dated 18 December 2025) that in the context of significant economic benefits *"significance" is not to be determined by reference to whether implementation of the project will appreciably change national or regional gross domestic product or the annual tax revenue of the Government. Rather it is an indication of scale."*

¹⁵ FTAA, cl 17(1)(a) (resource consent), 20(3)(a)(i) (aquaculture decision), 24(1)(a)(i) (notice of requirement) of schedule 5; cl 7(1)(a)(i) (concession), 29(1)(a)(i) (land exchange) and 45(1)(a) (conservation covenant) of schedule 6; cl 5(a) (wildlife approval) of schedule 7; cl 4(1)(a) (archaeological authority) of schedule 8; cl 5(a) (freshwater fisheries activity approval) of schedule 9; cl 6(1)(a) (marine consent) of schedule 10; cl 7(1)(a)(i) and cl 8(1)(a)(i) (access arrangements), and cl 19(1)(a) (mining permit) of schedule 11.

¹⁶ There are also limited mandatory circumstances in which an application must be declined set out in section 85(1), which do not apply here.

¹⁷ Section 85(3).

benefits (and even if they are, a panel has a residual discretion to grant approvals¹⁸).

- (c) The 'proportionality' consideration means that the more significant the regional or national benefits of a proposal, the more significant the adverse impacts would need to be before the proposal could be declined. This consideration was introduced to the FTAA late in the legislative process (at the Committee of the Whole House stage), in order to *"clarify the high bar for declining an approval"*.¹⁹
- (d) That the bar is *"high"* is further underscored by Parliament's choice of language in the test. A panel's discretion to decline approvals does not arise if a project's adverse effects are merely 'significant', or 'greater than' its benefits. Rather, adverse effects must be *"sufficiently significant to be out of proportion to"* the regional or national benefits for the discretion to decline to be available; this indicates that the outcome of enabling a beneficial project (and thereby realising its benefits) is to be favoured unless adverse effects are markedly greater.
- (e) Moreover, before the discretion to decline an approval is available to a panel, it must first have taken into account the full extent of its powers to impose conditions (and any conditions that may be offered by an applicant).²⁰
- (f) The FTAA also requires a panel, if proposing to decline approvals, to provide the applicant with a copy of its draft decision and invite the applicant to propose conditions on, or modifications to, any of the approvals sought (or withdraw part of the substantive application).²¹
- (g) Any conditions imposed by a panel must be no more onerous than necessary to address the relevant matter.²² The clear intent of this provision is to prevent the imposition of conditions that are overly burdensome and may delay or prevent the delivery of a proposal.

¹⁸ Section 85(3) commences with *"a panel may decline an approval if (...)"*. Parliament's choice of the word 'may' (rather than 'must') provides a panel with the discretion to grant approvals even where the adverse impacts are out of proportion to regional or national benefits.

¹⁹ [Amendment Paper No 238 \(released 10 December 2024\) – New Zealand Legislation](#).

²⁰ Section 85(3)(b).

²¹ Section 69.

²² Section 83.

6. INFORMATION REQUIREMENTS

6.1 The information requirements for a substantive application for approvals are set out in section 43 and in various provisions in schedules 5 to 11, as relevant to each approval type that can be sought under the FTAA.²³ In particular, a substantive application must (relevantly):

- (a) explain how the proposal is consistent with the purpose of the FTAA;²⁴
- (b) demonstrate that the proposal does not involve any '*ineligible activities*' (within the meaning in section 5(1) of the FTAA);²⁵
- (c) comply with any requirements in schedules 5 to 11 that apply to the approvals sought;²⁶ and
- (d) for a listed project, provide information that would have been required to be included in a referral application under section 13(4).²⁷

6.2 Schedules 5 to 11 of the FTAA include additional information requirements for each type of approval sought.²⁸ For example, the specific form, manner and content required for consent applications are set out in clauses 5 to 7, and 12 (respectively) in schedule 5. Those clauses include additional information requirements than those specified in the RMA, including the requirement to provide information about any Treaty settlements that apply in a project area.²⁹ For some other approvals, the information requirements in the FTAA are likewise more prescriptive than the usual processes under the relevant Acts.³⁰

6.3 Information required for a substantive application under section 43 must be specified in sufficient detail to satisfy the purpose for which it is required.³¹ The Panel may request further information from a number of specified parties any time before making a decision on any approvals sought under section 81 of the FTAA.³²

²³ Relevantly, see FTAA, sch 5, cls 5 to 8 (resource consent); sch 5, cl 12 (notice of requirement); sch 7, cl 2 (Wildlife Act approval); and sch 8, cl 2 (archaeological authority).

²⁴ FTAA, s 43(1)(b)(i).

²⁵ FTAA, s 43(1)(c).

²⁶ FTAA, s 43(1)(e)(i) and (ii).

²⁷ FTAA s 43(2), with reference to s 13(4).

²⁸ FTAA, sch 5, cls 5 to 11 (resource consent) and 12 (notice of requirement); sch 6, cls 2 and 3 (concessions), 23, 24, 27 (land exchanges) and 42 (conservation covenants); sch 7, cl 2 (wildlife approval); sch 8, cl 2 (archaeological authority); sch 9, cl 3 (complex freshwater fisheries activity approval); sch 10, cl 2 (marine consent); sch 11, cls 2 and 3 (access arrangement), cls 15 and 16 (mining permit).

²⁹ FTAA, sch 5, cl 5(1)(i) and 12(1)(e).

³⁰ See for example, s 53 of the Wildlife Act.

³¹ FTAA, s 44.

³² FTAA, s 67(1)(a). Specified parties are the applicant, a relevant local authority, a relevant administering agency or any person invited to provide comments under ss 35 (referral application) or 53 (substantive application).

- 6.4 For completeness, and in order to satisfy section 43 and the relevant schedules of the FTAA, the Environmental Protection Authority's (**EPA**) application form completed by NZTA outlines how the information requirements are met and where the information is located.

7. RELEVANT CONSIDERATIONS FOR THE APPROVALS SOUGHT

- 7.1 In respect of this substantive application, the process for obtaining approvals under the FTAA applies, rather than the usual processes for obtaining approvals under the relevant Acts.³³
- 7.2 The FTAA identifies a range of matters the Panel must consider in determining whether to grant or decline the approvals sought. The Panel must apply the relevant criteria to each approval sought and decide whether to grant or decline that approval (and whether to impose conditions). The criteria that the Panel must consider will depend on the types of approvals being sought, and it must make separate decisions for each approval (albeit these can be in one decision document), subject to the relevant criteria.

Panel decisions on approvals sought in substantive application

- 7.3 Section 81 and the relevant schedules to the FTAA are relevant to the Panel's decision-making in respect of approvals sought in a substantive application. In particular, section 81(2) sets out the matters relevant to the Panel when considering the application. In making a decision for each approval sought, the Panel:³⁴
- (a) must consider the application and any advice, report, comment, or other information received by it throughout the fast-track approvals process³⁵ and within the applicable timeframe;³⁶
 - (b) must apply the applicable clauses that set out the criteria for decision-making in schedules 5 to 11³⁷ (including in relation to the weight to be

³³ FTAA, s 40(a).

³⁴ FTAA, s 81(2).

³⁵ Information received by a panel under ss 51-53, 55, 58, 67-70, 72 or 90.

³⁶ FTAA, s 81(6).

³⁷ FTAA, s 81(2)(b) and (3). The applicable clauses are: for a resource consent, cls 17 to 22 of schedule 5; for a change or cancellation of a resource consent for aquaculture, cls 20 to 22 of schedule 5; for any other change or cancellation of a resource consent, cl 23 of schedule 5; for a certificate of compliance, cl 27 of schedule 5; for a designation, cls 24 and 25 of schedule 5; for a concession, cls 7 to 9 of schedule 6; for a land exchange, cls 29 to 33 of schedule 6; for a conservation covenant, cls 45 and 46 of schedule 6; for a wildlife approval, cls 5 and 6 of schedule 7; for an archaeological authority, cls 4 and 5 of schedule 8; for a complex freshwater fisheries activity approval, cls 5 and 6 of schedule 9; for a marine consent, cls 6 and 7 of schedule 10; for an access arrangement, cls 7, 9 and 10, or 8, 9 and 10 of schedule 11; for a mining permit, cls 19 to 21 of schedule 11.

given to the purpose of the FTAA when making a decision on an approval);

- (c) must comply with section 82, if applicable;
- (d) must comply with section 83 in setting conditions;
- (e) may impose conditions under section 84; and
- (f) may decline the approval only in accordance with section 85.

- 7.4 Section 82 applies if a Treaty settlement, the Marine and Coastal Area (Takutai Moana) Act 2011 or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 is relevant to an approval. If a Treaty settlement or those Acts provide for the consideration of a document (such as a statutory document amended as a result of a Treaty settlement), the Panel must give it the same or equivalent effect through its decision-making as it would under the relevant specified Act.
- 7.5 Further, the Panel must consider section 7 of the FTAA in its decision-making by acting in a manner that is consistent with the obligations in existing Treaty settlements and recognised customary rights. Section 82(3) requires the Panel to consider whether granting an approval would comply with section 7, and the Panel may set conditions to recognise or protect a relevant Treaty settlement and any obligations arising under the above Acts.³⁸ For completeness, nothing in sections 81, 82 or 85 limits section 7.³⁹
- 7.6 Section 83 requires that any conditions imposed by the Panel under the FTAA must be no more onerous than necessary to address the relevant matter.
- 7.7 Finally, the Panel must prepare a decision document for its decision on each approval sought and that decision document must set out (among other things) the reasons for the Panel's decision, a statement of the principal issues that were in contention and the Panel's main findings on those issues.⁴⁰

³⁸ FTAA, s 84.

³⁹ FTAA, s 81(7).

⁴⁰ FTAA, s 87.

Weight given to the purpose of the FTAA in decision-making

- 7.8 The weight that the Panel must give to the purpose of the FTAA is set out in in schedules 5 to 11, as relevant to the type of approval. Section 81(4) requires the Panel, when taking the purpose of the FTAA into account under the applicable clauses in the schedules, to consider the extent of the Project's regional or national benefits.
- 7.9 The applicable clauses in schedules 5 to 11 expressly require the Panel to give the greatest weight to the purpose of the FTAA in its decision-making, ahead of all other considerations.⁴¹ This includes the considerations that would apply in respect of those approvals under the relevant Acts. As noted above, the clear intent of this statutory framing is to make decision-making more favourable to beneficial proposals than would otherwise be the case under usual non-FTAA processes. That is, while other considerations must be given due consideration on their own terms, a Panel must always give the purpose of the FTAA the greatest weight when it stands back and undertakes its overall evaluation.
- 7.10 For example, for resource consent approvals, after taking into account each of the matters individually, the Panel must conduct an overall evaluation giving the greatest weight to the purpose of the FTAA, and lesser weight to:⁴²
- (a) the provisions of Parts 2,⁴³ 6, and 8 to 10 of the RMA that direct decision-making on an application for a resource consent (but excluding section 104D); and
 - (b) the relevant provisions of any other legislation that directs decision-making under the RMA.
- 7.11 A similar structure applies to the criteria for assessing applications for (as relevant to this Project) an alteration to a designation, wildlife approvals and archaeological authorities.⁴⁴

⁴¹ See footnote 15 above.

⁴² FTAA, sch 5, cl 17.

⁴³ References to Part 2 of the RMA in cl 17 and 24 exclude section 8 which requires persons exercising functions and powers under the RMA to take into account the principles of the Treaty of Waitangi.

⁴⁴ FTAA, sch 5, cl 24(1)(a) (notice of requirement); sch 7, cl 5 (wildlife approvals); and sch 8, cl 4(1) (archaeological authorities).

8. GROUNDS FOR DECLINING AN APPROVAL

- 8.1 The FTAA prescribes limited grounds by which the Panel can decline to grant an approval,⁴⁵ which are provided in section 85. That section sets out when a Panel **must** decline an approval and when an approval **may** be declined (if the adverse effects of that activity are considered to be out of proportion to the regional or national benefits of the proposal).
- 8.2 Under section 85(1), the Panel **must** decline an approval if one or more of the following matters apply:
- (a) the approval is for an ineligible activity;
 - (b) the Panel considers that granting an approval would breach section 7 of the FTAA; and
 - (c) the approval does not meet the relevant criteria under the schedules.⁴⁶
- 8.3 Under section 85(3), the Panel **may** decline an approval, but only if, in complying with section 81(2), it forms the view that:
- (a) there are one or more "*adverse impacts*"⁴⁷ in relation to the approval sought; and
 - (b) those adverse impacts are sufficiently significant to be out of proportion to the proposal's regional or national benefits under section 81(4), even after taking into account:
 - (i) any conditions that the Panel may set in relation to those adverse impacts; and
 - (ii) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.
- 8.4 Significantly, the above threshold cannot be met solely on the basis that an adverse impact is inconsistent with or contrary to a provision of a specified Act, or any other document that a panel must take into account or otherwise consider in complying with section 81(2).⁴⁸ So, for example, if a relevant

⁴⁵ FTAA, s 81(2)(f).

⁴⁶ FTAA, sch 5, cls 23 (change or cancellation of conditions) and 27 (certificate of compliance); sch 6, cl 7(3) (concession) and cl 29(2) or (3) (land exchange); sch 11, cl 7(2) or 8(2) (access arrangements) and cl 20 (mining permit).

⁴⁷ FTAA, s 85(5). This term is broadly defined as meaning any matter "*considered by the panel in complying with section 81(2) that weighs against granting the approval*".

⁴⁸ FTAA, s 85(4).

document directs that a particular adverse effect must be avoided, an application cannot be declined on the basis of a failure to adhere to such a direction. Rather, in order for such a proposal to be lawfully declined the adverse impacts (which might include the effect directed by a relevant document to be avoided) must be sufficiently significant to be out of proportion to the Project's regional / national benefits.

8.5 Again, as noted above, this 'proportionality' consideration means that:

- (a) the more significant the regional or national benefits of a proposal, the more significant the adverse impacts would need to be before the proposal could be declined; and
- (b) adverse effects that merely outweigh or are greater than the regional or national benefits do not trigger the discretion to decline; adverse effects must be "*sufficiently significant to be out of proportion to*" those benefits.

8.6 Lastly, under the RMA it is possible for a proposed designation to be refused by a decision-maker on the basis that the requiring authority has not adequately considered alternative sites, routes, and methods for undertaking the work (as was the case for the earlier Basin Bridge Proposal). By contrast, section 85 of the FTAA does not specify 'inadequate consideration of alternatives' as a ground on which a designation (or any other approval) can be declined.

PART C: APPLICATION OF THE FRAMEWORK TO THE PROJECT

9. INTRODUCTION

9.1 Part A of the application documents details the approvals sought by NZTA for the Project under the FTAA. As noted above, in broad terms they are an alteration to an existing designation, resource consents, wildlife approvals, and archaeological authorities.

9.2 The submissions below first address the following general matters that go to the Panel's evaluation for all types of approval:

- (a) the central role of the FTAA's purpose in the Panel's decision-making;
- (b) the Project's significant regional and national benefits, which go to the heart of the FTAA's purpose (and which in turn must be given most weight by the Panel); and

- (c) why the Project's adverse effects, which will be carefully managed through numerous proposed conditions, are not nearly of such a scale to bring into play the Panel's power to decline approvals. That is, it is not credible to suggest that the Project's adverse effects are sufficiently significant to be out of proportion to the Project's very substantial regional or national benefits, even after taking into account the Panel's power to impose conditions.

9.3 The submissions then note additional decision-making criteria relevant to each type of approval.

Facilitating delivery

9.4 As a general point, it is important for the Panel to consider all implications of the FTAA's purpose – facilitating the delivery of projects such as this – for its decision-making. The implications include in respect of:

- (a) the approvals sought by NZTA; the application generally seeks the approvals needed to facilitate delivery once funding becomes available; and
- (b) conditions; as discussed further below, conditions that avoid unnecessary administrative steps, avoid unreasonable compliance costs, and provide for appropriate flexibility will maximise the prospects of the Project being delivered when funding is available.

Significant regional and national benefits

9.5 The Project has considerable benefits, as detailed in the application documents. As noted above, by improving how SH1 through Wellington functions, the Project will:

- (a) help many thousands of people each day to access their desired destinations faster, including important facilities and places such as the Airport, Wellington Regional Hospital, and the city centre;
- (b) make trip times considerably more reliable, freeing up even more time for people to spend on more productive or enjoyable activities (than spending time in private vehicles or buses);
- (c) realise total gross monetised benefits conservatively valued at \$3.46 billion across the 60-year analysis period, including transport benefits valued at over \$1.9 billion, with the related productivity gains providing

significant benefits for the economic development of Wellington City and the surrounding region (ie additional agglomeration benefits estimated at almost \$1.5 billion over a 60-year period);

- (d) provide improved links for active modes, including through the new Mount Victoria tunnel and along Ruahine Street and Wellington Road;
- (e) improve resilience of Wellington's transport network to natural hazards and other disruption;
- (f) provide positive outcomes for Mana Whenua;
- (g) enable additional housing along the corridor and in suburbs that will be better linked to the city; and
- (h) deliver many other benefits, including enabling better and safer access to key community facilities, better connecting Pukeahu Park with the Basin and Canal Reserves (which has regionally and nationally significant placemaking benefits), providing new stormwater treatment infrastructure along the route where practicable (leading to cleaner water discharging to the Wellington Harbour), providing for the retention and relocation/repositioning of a number of heritage buildings, and so on.

9.6 The FTAA's very purpose is to facilitate the delivery of infrastructure proposals such as this, and that purpose must be given the greatest weight in the Panel's decision on all the approvals sought.

Potential tolling

9.7 The Government has indicated that tolls, imposed for a period of time, will be considered as a potential funding source for all Roads of National Significance projects (**RoNS**).⁴⁹ Tolling decisions are a separate operational matter decided upon by the Minister of Transport under the Land Transport Management Act 2003.

9.8 Tolling is therefore of limited (if any) relevance to the Panel's consideration of this Project, insofar as:

⁴⁹ On 13 November 2025, the Government introduced the Land Transport (Revenue) Amendment Bill to Parliament, which amends tolling and road transport funding provisions to support delivery of the RoNS programme.

- (a) this application seeks approvals to make significant, lasting, physical improvements to SH1 through Wellington, regardless of whether tolling is implemented; and
- (b) the decision on whether to impose a toll is not one for the Panel (or indeed NZTA) to make.

9.9 The Expert Panel considering the State Highway 1 North Canterbury – Woodend Bypass project noted the following in its decision:⁵⁰

"Regarding concerns about the potential for the Bypass to become a toll road and the cost of the Project, we respectfully note those are matters for the Government to consider and are not relevant to our assessment."

9.10 That said, whether a toll is imposed for this Project (and the rate(s) of any toll) could affect the behaviour of users of the transport network and therefore influence the extent of the benefits and adverse effects of the Project. Accordingly, for completeness, relevant experts have assessed the likely implications of a toll being imposed.⁵¹

9.11 They conclude that the Project's transport effects – and related economic, noise, and air quality outcomes – will be broadly similar in either a tolled or untolled scenario. While the Project's overall transport benefits will be slightly reduced in a tolled scenario, in either case the Project will deliver infrastructure that will be of significant benefit to Wellingtonians for many decades to come.

No adverse effects of significance

Introduction

9.12 Considered against the Project's significant benefits for Wellington, the wider region, and New Zealand, and taking into account the detailed suite of conditions proposed by NZTA, the Project's adverse effects are not significant (and are certainly not so significant as to be out of proportion to those benefits).

9.13 As noted above, the Project is situated in an urban environment that is already highly developed and densely occupied. Urbanisation has already

⁵⁰ Final Decision, dated 29 July 2026 at [435].

⁵¹ See, for example, Technical Reports #3 (economics), #5 (transport), #6 (noise and vibration), and #18 (air quality).

had an impact on natural values in the environment, which in some respects will be improved under the Project (such as due to the treatment of stormwater run-off).

- 9.14 The key categories of adverse effects, in terms of both construction effects and operational effects, are addressed below.

Transport and traffic

- 9.15 The Project will significantly improve SH1 through Wellington, which is used by tens of thousands of vehicles daily, as well as attract traffic from local roads, provide opportunities for enhanced public transport, and improve connections for active modes. The improved infrastructure and associated benefits will endure for many decades into the future.
- 9.16 It is simply not possible to achieve such major, long-lasting improvements to Wellington's transport network, working within a constrained, operational, urban transport corridor, without a period of disruption to the network.
- 9.17 While significant aspects of the Project can be constructed off-line, which will help to reduce disruption, the network will certainly experience some lane closures, detours, and changes to traffic management during the construction phase. NZTA and its contractors will minimise this disruption in accordance with the measures to be set out in detailed Construction Traffic Management Plans required by the proposed conditions. Additionally, NZTA will undertake careful planning and clear communication.
- 9.18 Relatedly, as noted above, NZTA has also – together with WCC and GWRC – established the NPG as an important forum to discuss key issues relevant to NZTA's management of effects on the transport network during construction. NZTA will work collaboratively with the NPG through the construction period to ensure the network operates safely and efficiently.
- 9.19 Even with the best management measures in place, though, some disruption associated with the Project is unavoidable. Importantly, however, the expert assessment is that the adverse effects associated with this disruption are relatively insignificant when considered alongside the enduring transport benefits the Project will provide.

Noise and vibration

- 9.20 Construction activities, including tunnelling, earthworks, and demolition, will generate noise and vibration. These effects are temporary and localised, and will be managed through the proposed conditions – which impose clear outcome-based limits and associated procedures (including to communicate clearly regarding potential exceedances) that will ensure effects remain within acceptable bounds regardless of the final construction methodology adopted – and a Construction Noise and Vibration Management Plan, which will explain how the limits are generally to be met and require monitoring and various mitigation measures (including offers of temporary accommodation where necessary).
- 9.21 Once operational, the Project will have limited traffic noise effects, with levels generally remaining similar to those without the Project. NZTA's effects management approach focusses primarily on mitigating the effects of noise increases associated with the Project itself, rather than seeking an overall solution to the pre-existing traffic noise environment.
- 9.22 A low noise road surface (**LN5**) will be used for Ruahine Street and may be extended across the Project area following detailed design. The noise assessment has assumed that LN5 will only be used at Ruahine Street; if its use proves practicable across the Project then the assessed effects will be further reduced.

Dust management and air quality

- 9.23 Construction activities have the potential to generate dust, particularly during earthworks and demolition. The proposed conditions require implementation of dust management measures to ensure that any effects on neighbouring properties and the wider environment are minimal.
- 9.24 The operational air quality effects of the Project are assessed as negligible. While the Project will result in some redistribution of traffic, its overall effect on air quality will be neutral to slightly positive, as reduced congestion leads to lower per-vehicle emissions along the corridor. As such, no specific mitigation measures or conditions are necessary in respect of operational air quality.

Resilience, geotechnical, groundwater, and ground settlement

- 9.25 The Project will deliver high-quality upgrades to SH1, built to modern standards, that will supplement aging infrastructure (including the 95-year-old Mount Victoria Tunnel) and provide additional redundancy in the network. The Project will thus bring about important enhancements in the resilience of Wellington's transport network, which notoriously traverses various hazard zones.
- 9.26 Conversely, tunnelling and deep excavations have the potential to affect groundwater levels and cause ground settlement which could, if not managed carefully, damage buildings. The geotechnical and groundwater evidence confirms that, with appropriate construction methodologies, these effects can be managed to acceptable levels. As a belt-and-braces measure, the proposed conditions impose strict settlement limits and require comprehensive monitoring, with contingency measures to be implemented if trigger levels are approached. This is a tried-and-true approach, having been endorsed in previous RMA cases involving tunnels (relating to the Waterview Tunnel and City Rail Link projects in Auckland).

Erosion and sediment control, stormwater and water quality

- 9.27 Existing stormwater networks that service the Project area discharge to Te Whanganui-a-Tara / Wellington Harbour (either Lambton Harbour or Evans Bay). There are a number of culverted awa⁵² within those networks in the vicinity of the Project area, including Kumutoto awa, Waikoukou awa, Waimapihi awa, Moturoa awa, Waitangi awa and Waipapa awa.
- 9.28 The Project will improve stormwater treatment relative to the existing situation, with new treatment devices proposed along the corridor. This will result in cleaner water discharging to Wellington Harbour – a positive environmental outcome that represents a material improvement over the existing situation, in which untreated stormwater run-off from the state highway currently enters the receiving environment. This outcome reflects (among other factors) the strong focus brought to this issue by NZTA's Mana Whenua partners as the Project design has developed.
- 9.29 During construction, best-practice erosion and sediment control measures (including an overall Erosion and Sediment Plan and Site-specific Sediment

⁵² The application documents use the expression 'culverted awa', on the advice of Mana Whenua, noting that under RMA the term "river" does not include artificial watercourses and references to "water" do not include water in any form while in a pipe.

Control Plans) will be implemented to minimise the discharge of sediments and contaminants to the stormwater network (and ultimately to Te Whanganui-a-Tara). With those measures in place, the potential effects from sediment discharges are expected to be low.

Contaminated land

- 9.30 Consistent with its developed urban location, contaminated land is present in parts of the Project alignment, primarily associated with activities and industries involving the storage and use of hazardous substances (HAIL land). Two HAIL sites (the Gazley Mitsubishi land and Kilbirnie Park) fall within areas that will be disturbed by earthworks; while other non-HAIL and other potentially contaminated land / buildings (such as asbestos-containing buildings that will be demolished) are also present.
- 9.31 The effects of the Project relating to contaminated land are limited even before mitigation, but will be reduced to negligible with implementation of best practice mitigation measures, which include:
- (a) preparation and implementation of a Contaminated Site Management Plan for the Gazley Mitsubishi HAIL site, and for Kilbirnie Park if dewatering is required at that site;
 - (b) adoption of a Long-Term Site Management Plan for the HAIL sites if residual contamination remains post-construction;
 - (c) use of a protocol to cover any unexpected discoveries of contamination in the form of historical coal tar; and
 - (d) procedures to assess and manage asbestos and lead in soils following demolition, and other contaminants in soils.

Heritage

- 9.32 The Project will result in some changes to the built heritage environment, particularly around the Basin Reserve and Paterson Street. However, key heritage features such as the Basin Reserve, Pukeahu Park and the Home of Compassion Crèche have been carefully considered in the design, and the Project will enhance certain heritage values by extending Pukeahu Park and improving the physical connection between the Park, the Basin Reserve, and the associated Canal Reserve. The Crèche will be relocated to a new location within Pukeahu Park (which is nearer to its original

location) or another location agreed with relevant parties. This relocation will be carefully managed through a Heritage Construction Management Plan, as required by the proposed conditions.

- 9.33 The Project also provides for the retention of buildings with recognised heritage values on Paterson Street / Austin Street, which could otherwise be demolished under the current provisions of the Wellington City District Plan. These buildings must be removed for the construction of the new Mount Victoria Tunnel. This includes Ettrick Cottage at 19 Paterson Street, which will be relocated to a new site on reformed Paterson Street (unless sold earlier by its owner), 140 Austin Street, which will similarly be relocated to a new site on Paterson Street, and Laureston House at 7 Paterson Street, which will be repositioned within the boundaries of its original site. For many years, the long-term outlook for these properties has been uncertain; the Project will address this. As with the Crèche, these buildings will be relocated in accordance with a Heritage Construction Management Plan.
- 9.34 In summary, the Project is likely to result in an improvement to the heritage values of the city in some respects. The residual heritage effects are assessed as low to moderate and are disproportionately outweighed by the significant benefits of the Project.

Archaeology

- 9.35 The Project works are unlikely to traverse directly any major archaeological sites, although there are some pre-1900 buildings around the Mount Victoria tunnel and Sussex Street which will be demolished, as well as in-ground archaeology, including some brick drains, that could be affected. In addition, there are some pre-1900 buildings that will be relocated/repositioned as part of the Project (as referred to above). These effects are assessed as being not significant, and manageable with appropriate management plans. As noted in Technical Report #9 – Archaeological effects, none of the buildings to be demolished are rare site types.
- 9.36 All archaeological effects will be managed through the proposed archaeological authority conditions and associated management plan, and the works also offer opportunities for on-site interpretation about the area's growth and history.

Ecology

- 9.37 Notwithstanding the heavily modified urban environment the Project traverses, potential effects on terrestrial, wetland, freshwater and marine ecology values have been carefully assessed and will be managed through the application of the effects management hierarchy. Effects will appropriately be avoided or mitigated / minimised, with conditions proposed to reflect the relevant expert recommendations. The loss of higher-value terrestrial vegetation and small pasture-dominated wetlands and residual effects on kororā will be addressed through offset and compensation measures, as discussed below.
- 9.38 Construction will require removal of vegetation around the tunnel portals and reserves, including regenerating broadleaf forest, mixed indigenous-exotic forest and scrub, and indigenous specimen trees. NZTA proposes ecological offsets for removed high-value vegetation, protected lizards will be salvaged and relocated in accordance with a required Lizard Management Plan (**LMP**),⁵³ and potential effects on avifauna will be carefully managed including through an Avifauna Management Plan.⁵⁴ This approach is well aligned with the National Policy Statement for Indigenous Biodiversity 2023.
- 9.39 Construction will also require the removal of or otherwise affect low value wetland areas in the Wellington Town Belt along Ruahine Street. There is a clear 'functional need' for the Project to affect those wetland areas, in terms of the National Policy Statement for Freshwater Management 2020.⁵⁵ NZTA proposes compensation to address this residual effect; having considered the creation or restoration of wetlands within or in the vicinity of the Project designation, the proposed compensation approach involves the restoration of terrestrial gully habitat at Mātai Moana Reserve. This approach has been developed in consultation with WCC, GWRC and Mana Whenua, and will enable biodiversity gains in close proximity to the Project.
- 9.40 The Project will replace the stormwater outfall in the southwest corner of Evans Bay, which requires the permanent or temporary removal of at least four kororā / little penguin nesting areas, and a small area of associated habitat. Effects on kororā will be mitigated through standard construction

⁵³ As discussed below, the LMP is included with this application, with the intention being it will be approved as final by the Panel and attach to the wildlife approval.

⁵⁴ To be drafted following this FTAA consenting process and provided to certification by WCC through the Outline Plan process.

⁵⁵ Refer in particular to clause 3.22 of the NPS-FM.

measures, including relocation, as set out in the Kororā Management Plan (**KMP**).⁵⁶ Residual habitat loss effects will be compensated, through the creation of replacement nest boxes and habitat enhancement (planting and fencing) on WCC land adjacent to the impacted area.

- 9.41 In the unlikely event that any of the preferred offsetting and compensation actions cannot be progressed (noting all have been discussed with the councils, the Department of Conservation and Mana Whenua), actions resulting in equivalent outcomes will be implemented.
- 9.42 Overall, potential ecological effects of construction are appropriately managed and, in some respects, the end result will be improved ecological outcomes.

Wellington Town Belt

- 9.43 The Project unavoidably affects some land in the Wellington Town Belt (**Town Belt**), which is an important area for Wellingtonians due to its historical and cultural importance, recreational uses, and ecological and other natural values. The Town Belt is subject to its own legislation, the Wellington Town Belt Act 2016 (**WTBA**).
- 9.44 In developing the Project, NZTA has carefully considered many alternatives including those with less impact on the Town Belt. The Project's indicative design has been robustly informed by advice from Mana Whenua and relevant subject-matter experts regarding potential effects on the Town Belt.
- 9.45 The key aspects of the Project affecting Town Belt land are the new Mount Victoria Tunnel, which passes through / beneath the Town Belt, and the widening of Ruahine Street, where the Project encroaches into the grassy area and other vegetation (including wetlands) on the western side rather than requiring removal of a large number of houses along the eastern side; similar issues were considered by the LGWM partnership (involving WCC and GWRC), which arrived at a similar preferred outcome.
- 9.46 The underground aspects of the second Mount Victoria tunnel have no material impact on the Town Belt. The other parts of the Town Belt impacted by the Project are, largely speaking, currently not readily accessible, usable, or of high value; north of Goa St, the relevant area separates Ruahine Street from carparking within Hataitai Park, and is

⁵⁶ As discussed below, the KMP is included with this application, with the intention being it will be approved as final by the expert consenting panel and attach to the wildlife approval.

practically inaccessible. To the south of Goa Street, a grassy strip that forms part of a wider dog exercise area is affected, together with Badminton Hall (discussed below). Other affected land (such as around the eastern portal) is not in high use, apart from the Hataitai Kindergarten (also discussed below), although there are some limited areas impacted with known ecological values (eg some indigenous vegetation around the tunnel portal).

- 9.47 Nonetheless, experts have assessed the Project's adverse effects on the environmental values in the Town Belt and those effects have been carefully addressed. In particular, the terrestrial ecology offset proposal deliberately focusses on the Town Belt and will see the restoration of up to 7ha of exotic forest. As discussed below, salvaged protected lizards will also be relocated to the Town Belt, with complementary habitat restoration to be carried out.
- 9.48 On the other hand, the Project will deliver significant benefits to the Town Belt and Wellingtonians' use of it. Currently access to and from Hataitai Park is highly compromised; vehicular access is dangerous and safe access by active modes is effectively limited to the bridge at the northern end of Ruahine Street. The Project will reinstate that northern access and provide a safe, grade-separated access point for all modes via a new bridge to the south of Goa Street, as well as improve connections for all modes to and from Ruahine Street.
- 9.49 To the extent that the Crown's take of Town Belt land for the Project is otherwise relevant to the FTAA process, the WTBA and PWA provide a mechanism for that to occur and require full compensation (in land and/or money) to be provided to WCC, including additional compensation as the Project is a "*critical infrastructure project*" for the purposes of the PWA.⁵⁷ NZTA has been conducting a thorough process with WCC and Mana Whenua to evaluate potential compensation options as required by the WTBA and PWA.
- 9.50 Where NZTA seeks to undertake temporary activities in the Town Belt without taking an interest in land under the PWA – which is the case for the proposed ecological enhancement planting – it will seek authorisation for

⁵⁷ PWA, s 39AAB defines a "*critical infrastructure project*" as a project listed in Schedule 2A. The Project is listed in that Schedule.

those activities from WCC under the WTBA. Again, discussions with WCC are progressing positively on those matters.

Urban form, landscape and visual amenity

- 9.51 The Project will introduce new infrastructure elements into an already highly urbanised environment. The proposed design has been developed with input from urban design and landscape design professionals (as well as review as part of the development of the effects assessment by the urban design and landscape specialist) to ensure that new structures are integrated into their surroundings as far as practicable.
- 9.52 In some respects, the Project will deliver positive urban form and landscape effects, for example, by providing for the extension of Pukeahu Park and landscape treatments that will connect Pukeahu Park with the Basin and Canal Reserves.
- 9.53 The Project will nonetheless have some high adverse effects, particularly during and immediately post-construction. However, landscape mitigation, including planting and design treatments, will soften the visual impact of new infrastructure over time, such that any adverse effects will generally be low to moderate. The only exception is on Sussex Street, which is assessed to have residual high adverse effects on urban form due to the potential to result in residual land with low development potential. This effect will be addressed as far as practicable through the urban design and landscape conditions (and in any event is not sufficiently significant to be out of proportion with the Project's benefits).

Social and recreation effects

- 9.54 The Project has been developed to deliver significant public and societal benefits, to be enjoyed primarily by people and communities living in Wellington (as well as visitors to the city). It will improve access to key destinations including Wellington's Central Business District, the Airport, and Wellington Regional Hospital, while delivering more reliable travel times and reducing traffic on the local road network.
- 9.55 Beyond these transport benefits, the Project will generate employment opportunities during construction. The reconfiguration of roads, footpaths and active mode routes along the Project will strengthen connections between residents and the social, historical, and cultural infrastructure that surrounds the corridor.

- 9.56 The Project will, however, have various adverse social effects. While these are of a much smaller scale than the Project's public benefits, several valued community facilities will be directly affected. They are currently situated on public land within the Town Belt (namely Hataitai Kindergarten on Taurima Street and the Badminton Wellington Centre on Ruahine Street) and at Kilbirnie Park (namely the clubrooms used by Eastern Suburbs Cricket Club and Marist Association Football Club).
- 9.57 Full monetary compensation will be payable under the PWA for all property interests acquired by the Crown for the Project, including to WCC and its lessees in respect of these facilities; indeed, additional compensation is payable by the Crown for this Project, under Part 2A of the PWA, because the Project is specifically identified as a "*critical infrastructure project*" in the PWA. Any PWA compensation payable to the community organisations will no doubt be applied towards recreational / social aims and therefore go some way to mitigating the relevant adverse effects of the Project.
- 9.58 The preferred outcome of all parties, however, is to ensure that the facilities are reinstated in a timely way so there is minimal disruption. This will rely on alternative locations being secured, and NZTA is grateful for the good progress it has been making in this regard through its discussions with Hataitai Kindergarten and with the sports clubs (supported by WCC).
- 9.59 For the sports clubs:
- (a) At Kilbirnie Park, NZTA is working with WCC and the clubs to explore whether other space can be found so that the cricket / football clubrooms can be reinstated (partially funded by PWA compensation payable by the Crown). An alternative option could be for the clubs to share in other existing facilities at the Park, namely the Toitū Pōneke Community & Sports Centre (known as The Hub); in 2023 WCC completed a masterplan for Kilbirnie Park⁵⁸ which noted the potential that "*SH1 expansion means [the clubrooms] will need an alternative location if/when*", highlighted existing issues regarding the fragmentation of facilities around the Park, and discussed the possibility of amalgamating facilities together within The Hub.

⁵⁸ https://hdp-au-prod-app-wecc-letstalk-files.s3.ap-southeast-2.amazonaws.com/7717/2232/4501/f8fc33dd7ac174d4fabfcff14fc4e4d_Kilbirnie_Park_Masterplan_Report_100_Rev_D.pdf

- (b) In respect of the Badminton Wellington Centre (currently within the Town Belt on Ruahine Street), again NZTA has been working with WCC to find alternative public land where a new facility could be built (partially funded by PWA compensation). WCC has established a cross-Council working group and has identified and is evaluating a long-list of potential sites to develop a short-list for further discussion and evaluation.

9.60 NZTA is grateful to WCC and the operators of the sports facilities for their constructive engagement and the good progress made to date.

Conclusion

9.61 The absence of any significant adverse effects, let alone any that are out of proportion to the Project's benefits, means that the Panel has no legal basis on which to refuse any of the approvals sought by NZTA.

The Project's cost and benefit-cost ratio are of limited relevance to the Panel's evaluation

Introduction

9.62 NZTA has engaged thoroughly with specific stakeholders and the wider public regarding the Project, and the feedback has been valuable and instrumental in shaping the indicative design and proposed mitigation, as described in the application (including in Technical Report #4 (Design Assessment)).

9.63 In that context, feedback from a number of members of the public focused on whether the Project should proceed given its associated capital costs and its benefit-cost ratio (**BCR**), which calculates to around 1.3.⁵⁹

9.64 While it is understandable for people to take a keen interest in how government funds are applied, it is important to be clear at the outset of this process that these matters are of limited relevance to the Panel's task under the FTAA (as is the case under the RMA). This is explained below.

Capital costs are not relevant adverse impacts

9.65 First, the capital costs of a proposal are not "*adverse impacts*" as referred to in section 85(3) of the FTAA. That term refers to a proposal's environmental, cultural, social and other effects on the environment, not to

⁵⁹ Details of costs and benefits are contained in Technical Report #3 (Economics Assessment).

costs incurred by an applicant in designing, constructing and maintaining the Project (which largely make up the 'cost' aspect considered in the BCR). The statutory language in section 85 focuses on the benefits of the proposal, to be weighed against the adverse impacts, and contains no mention of financial cost or foregone benefits of other possible activities.

- 9.66 In no other application under the FTAA has it been found (or asserted, as far as counsel are aware) that financial costs to a private developer should be considered as an adverse impact for the purposes of section 85(3). There is no fair legal basis for applying a different standard to NZTA and this Project.
- 9.67 Rather, 'costs' to a developer are generally considered as providing economic benefits (e.g. through the economic stimulus resulting from construction spending). A number of expert panels under the FTAA have noted and given weight to economic benefits of this kind, including the Panels in respect of:
- (a) the 'Taranaki VTM' iron sands mining proposal;⁶⁰
 - (b) the Waihi North goldmining proposal;⁶¹ and
 - (c) the Arataki housing development.⁶²

Relevance of BCRs in consenting processes under the RMA and FTAA

- 9.68 NZTA calculates BCRs for its projects, in line with Treasury guidance, to inform its decisions on investing public funds. That is, the BCR is primarily a project-ranking and investment-prioritisation tool designed to assist NZTA in comparing competing potential investments.
- 9.69 As has been found in case law under the RMA, a project's BCR is not a mandatory information requirement⁶³ and does not carry any particular weight in consenting decisions or function (for example) as a complete

⁶⁰ The proposal's benefits acknowledged by the Panel in that case included the creation of new jobs and associated regional GDP increases over the 20-year mining period; see, for example, paragraphs [359]-[422] of the draft decision here: https://www.fasttrack.govt.nz/_data/assets/pdf_file/0010/20053/FINAL-Draft-decision-4-February-2026.pdf.

⁶¹ The benefits of this proposal were found to include economic benefits in the form of direct, indirect and induced employment; see, for example, paragraphs [776]-[848] of the decision: https://www.fasttrack.govt.nz/_data/assets/pdf_file/0020/20279/Decision-Text-18-December-2025.pdf.

⁶² The contribution to local GDP, jobs, and wage growth were found to be economic benefits of the project (see, for example, paragraphs [243]-[248] of the decision:

https://www.fasttrack.govt.nz/_data/assets/pdf_file/0019/21466/FTAA-2506-1083-Arataki-Decision-of-the-Expert-Panel.pdf. The additional housing the project would provide to the region, which was consistent with the National Policy Statement on Urban Development 2020 was also found to be an economic benefit.

⁶³ *Queenstown Airport Corporation Limited v Queenstown Lakes District Council and Air New Zealand Limited* HC Invercargill [2013] NZHC 2347 [12 September 2013] (*Queenstown Airport*) at [132]-[135].

proxy for whether an activity is an "*efficient use*" of resources, in terms of section 7(b) of the RMA. This includes because:

- (a) BCR calculations are not comprehensive and present a relatively conservative picture. In this case, the expert analysis by David Norman demonstrates that the Project's BCR does not reflect the true scale of its benefits.⁶⁴
 - (b) A project's viability, in terms of the return on investment expected by a developer, is not the concern of environmental decision-makers.⁶⁵
 - (c) The focus of a decision-maker must be on assessing the environmental effects (positive and adverse) of the proposal before it, rather than considering whether there might be some hypothetical other proposal – for which approvals are not being sought – with greater benefits and/or a higher BCR (or lower adverse effects). In recognition of this, in the resource consent context, the requirement to consider alternatives is primarily confined to where there are significant adverse effects.⁶⁶ A consent applicant is not required to demonstrate that its site is "*the best*" site, rather, consideration of alternative sites is only part of the evaluation of the merits of an application under section 104.⁶⁷
- 9.70 The Peka Peka to North Ōtaki Expressway is one example of a proposal that was approved under the RMA with a relatively low BCR (of 0.5 to 0.8) (although its monetised benefits have since been observed to be significantly greater than those calculated at the time of consenting⁶⁸).
- 9.71 Under the FTAA, which is intended to be more enabling of large-scale infrastructure proposals than the RMA, it is also the case that the BCR is not a mandatory requirement and does not serve as a proxy for the overall merits of a proposal. Expert Panels under the FTAA have also rejected arguments from commenters that a cost-benefit analysis ascribing monetary

⁶⁴ See Technical Report 3 (Economic Assessment). While not specific to the BCR calculation, Mr Norman's assessment identifies numerous conservative assumptions that are likely to understate the Project's monetised and unmonetised benefits, including that standard transport benefits are assumed to flat-line after 2053, in terms of additional jobs arising from the Project, exclusion of safety benefits on local roads, the limited scope of resilience benefits assessed, and agglomeration benefits being modelled by reference to workers within a one-kilometre radius only.

⁶⁵ *Queenstown Airport* at [133].

⁶⁶ In addition, under s 105(1)(c), if an application is for a discharge permit or coastal permit a consent authority must have regard to any possible alternative methods of discharge, including discharge into any other receiving environment.

⁶⁷ *Meridian Energy Ltd v Central Otago District Council* [2011] 1 NZLR 482 (HC), at [148(e)].

⁶⁸ Observed benefits are set out in [this report](#) prepared by Infometrics for Infrastructure New Zealand.

values to environmental, social and cultural costs is needed under the FTAA.⁶⁹

- 9.72 Moreover, as discussed above, the panel considering the State Highway 1 North Canterbury – Woodend Bypass project noted that the cost of that project to Government was not relevant to its assessment.⁷⁰
- 9.73 In any event, sections 81(4) and 85(3) of the FTAA also require the Panel to consider the extent of the Project's **regional** benefits (noting that a BCR is a measure of the costs and benefits of a proposal to New Zealand as a whole).
- 9.74 In short, the Project represents a major windfall, in economic terms, for the Wellington region. The transport and other benefits will largely be enjoyed by people living and working in Wellington, as well as visitors to the region. Conversely, the capital costs of delivering the Project will be distributed nationally. Put another way, a BCR calculated on a regional basis would be very high.
- 9.75 Mr Norman also explains that the Project is significant for both the Wellington region and the nation as a whole, including because the Project corridor where access will be improved accounts for approximately 41% of the Wellington Region's entire GDP and 4.6% of New Zealand's total annual GDP.
- 9.76 In conclusion on this point, there can be no dispute whatsoever about the importance of the Project for Wellington (and the country as a whole), or that the benefits of the Project to Wellington far outweigh its adverse environmental effects.

10. ADDITIONAL CRITERIA RELEVANT TO THE RMA APPROVALS BEING SOUGHT

Notice of requirement to alter designation – additional criteria

- 10.1 NZTA's application under the FTAA incorporates a notice of requirement to alter an existing designation. Under clause 24(1) of Schedule 5, when considering a NoR, the Panel must take into account the provisions of

⁶⁹ See, for example, the decisions in respect of the Waihi North Project at [784] (https://www.fasttrack.govt.nz/_data/assets/pdf_file/0020/20279/Decision-Text-18-December-2025.pdf) and the Taranaki VTM application at [91]-[92] (https://www.fasttrack.govt.nz/_data/assets/pdf_file/0010/20053/FINAL-Draft-decision-4-February-2026.pdf).

⁷⁰ At [435]; https://www.fasttrack.govt.nz/_data/assets/pdf_file/0020/31637/Woodend-Bypass-Decision.pdf.

Part 8 of the RMA that direct decision-making (except section 170), as part of an overall balancing exercise giving the greatest weight to the purpose of the FTAA.

10.2 Within Part 8 of the RMA, sections 168 to 179 set out the process for a requiring authority giving notice of its requirement for a designation, and for the consideration of that notice. By virtue of section 181(2), those provisions apply to a NoR to alter an existing designation, with necessary modifications, as if it were a requirement for a new designation.

10.3 In particular, section 171(1) of the RMA frames the Panel's consideration. It provides that, when considering the NoR and any submissions, subject to Part 2 of the RMA, the effects on the environment of allowing the requirement (or alteration to), must be considered having particular regard to:

- (a) any relevant provisions of a national policy statement, the New Zealand Coastal Policy Statement, a regional policy statement or proposed regional policy statement, an infrastructure design solution,⁷¹ and a plan or proposed plan;
- (b) if the requiring authority does not have an interest in the land sufficient for undertaking the work:
 - (i) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work; and
 - (ii) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and
- (c) any other matter considered reasonably necessary in order to make a recommendation on the requirement.

10.4 Key aspects of these provisions are addressed in turn below.

Consideration of alternatives

10.5 As noted above, NZTA was found not to have considered alternatives adequately in devising the earlier Basin Bridge Proposal. Since that time,

⁷¹ The s 171 RMA reference to "infrastructure design solution", and an accompanying definition, were introduced to the RMA in 2025. They refer to potential future regulations developed by Taumata Arowai and made under the Water Services Act 2021 regarding the design of stormwater or wastewater networks and are not relevant to the Project.

including during the LGWM programme and development of the current Project, NZTA has been careful to ensure that it has thoroughly considered alternatives and ensured that its decision-making has been well informed.

10.6 The legal principles applicable to the consideration of alternatives required by section 171(1)(b) of the RMA have been considered in numerous cases under the RMA and summarised by the Environment Court as follows:⁷²

- (a) The focus of the exercise is on the process, not the outcome; the key consideration is whether the requiring authority has made sufficient investigations of alternatives proposed, rather than acting arbitrarily, or giving only cursory consideration to alternatives. Adequate consideration does not mean exhaustive or meticulous consideration.
- (b) The question is not whether the best route, site or method has been chosen, nor whether there are more appropriate routes, sites or methods. That there may be routes sites or methods which may be considered by some (including submitters) to be more suitable is irrelevant.
- (c) Relatedly, the RMA does not entrust to the decision-maker (here, the Panel) the policy function of deciding the most suitable route; the executive responsibility for that choice lies with the requiring authority.

10.7 Section 171(1)(b) was amended in August 2025⁷³ to remove a requirement to consider alternatives where it was likely that the work would have a significant adverse effect on the environment; now the need to consider alternatives arises if the requiring authority *"does not have an interest in the land sufficient for undertaking the work"*. This amendment demonstrates an intent by Parliament to reduce the emphasis on significant adverse effects on the environment and, rather, place a greater emphasis on effects on private property.⁷⁴ In respect of the Project, the vast majority of the Project works will be taking place on land already owned by NZTA, but NZTA has nonetheless comprehensively assessed alternatives as relevant to the entire Project, including taking into account environmental considerations.

⁷² *Director-General of Conservation v Taranaki Regional Council* [2019] NZEnvC 203 at [96].

⁷³ By s 57 of the Resource Management (Consenting and Other System Changes) Amendment Act 2025 (Amendment Act).

⁷⁴ While a requiring authority must still 'describe' possible alternative locations or methods for undertaking the activity where has an interest in the land sufficient for undertaking the work, and the work is likely to result in any significant adverse effect on the environment (section 168(3B)(c)), this is a lesser standard than the requirement to give 'adequate consideration'.

10.8 The relevant alternatives processes conducted over time that have informed development of the Project's design are detailed in Technical Report #1 (Alternatives) and, in terms of finer-grained design refinements, Technical Report #4 (Design Assessment). However, in summary, the processes involved:

- (a) identifying a broad range of alternative route corridors to be assessed, both to the north and south of the existing tunnels;
- (b) implementing consistent and replicable Multi-Criteria Analysis (**MCA**) processes with inputs from Mana Whenua, stakeholders and technical specialists;
- (c) narrowing down a 'long list' of alternative corridors to a 'short list', informed by the MCA, and considering a range of sub-options;
- (d) identifying a preferred route corridor and iteratively developing the Project's design within that corridor, involving further analysis using increasingly comprehensive information; and
- (e) in doing so, systematically assessing effects on landowners, effects on the environment more generally, key RMA considerations and relevant statutory planning instruments, alignment with the Project objective, and strategic considerations such as integration with planned urban land use.

10.9 NZTA's consideration of alternatives for this Project has therefore been robust (and certainly "*adequate*", in terms of the legal test), with the choices made as a result of those considerations being well-informed (as well as sensible and reasonable).

Reasonable necessity for achieving the project objectives

10.10 Section 171(1)(b)(ii) requires consideration of whether the Project and (in this case) the alteration to existing designation NZTA-1 is 'reasonably necessary' for achieving NZTA's objective(s) for the Project.

10.11 As noted above, the Project's objective is "*To provide more efficient and reliable access on SH1 from north of the Terrace Tunnel to Wellington Airport and Wellington Hospital to support regional economic growth*". NZTA has explained that: "*The outcome sought [through this objective] is to support regional economic growth and productivity by improving access through reduced travel times (efficient) and improved journey time reliability*".

(reliable) for all traffic on SH1 through Wellington city centre. The investment is targeting SH1 in both directions between the north of the Terrace Tunnel and Wellington International Airport, and sections thereof, as this route is part of many journeys to and from the Airport, the regional hospital, and the central city."

10.12 The term 'reasonably necessary' has often been applied as falling between expedient or desirable on the one hand, and essential on the other.⁷⁵

10.13 However, section 171(1)(b)(ii) does not require, or allow for, an assessment of whether the selected form of the Project is the 'best' way of achieving the objectives. The High Court has held that⁷⁶:

(...) to elevate the threshold test to "best" site would depart from the everyday usage of the phrase "reasonably necessary" and significantly limit the capacity of requiring authorities to achieve the sustainable management purpose. If that was the intention of Parliament then I would have expected express language to that effect (...)

10.14 The Project and the associated alteration to designation NZTA-1 are reasonably necessary to provide more efficient and reliable access along the SH1 corridor through Wellington. By providing additional capacity to relieve the existing pinch-points and separating east-west state highway movements from north-south local road movements at the Basin Reserve, the Project will support people's ability to access key destinations using SH1 and thereby foster regional economic growth and productivity.

Lapse of designation

10.15 Section 184 RMA was recently amended to increase the period after which a designation lapses if it has not been given effect to from 5 years to 10 years.⁷⁷ In any event, an alteration to a designation is not subject to a lapse date, as section 181(2) prescribes the sections of the RMA relevant to an alteration of a designation and the lapse provision requirement is explicitly excluded.⁷⁸

⁷⁵ *Queenstown Airport Corp Ltd v Queenstown Lakes District Council* [2013] NZHC 2347 at [94]–[95].

⁷⁶ *Queenstown Airport Corp Ltd*, above n 75, at [96].

⁷⁷ Amended on 21 August 2025, by s 58 of the Resource Management (Consenting and Other System Changes) Amendment Act 2025.

⁷⁸ This was confirmed by the High Court in *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2022] NZHC 629, at [66].

Planning instruments and Part 2

10.16 The Project's alignment with Part 2 of the RMA and the relevant planning documents is addressed below, as it is also relevant to the applications for resource consents.

Resource consents – additional criteria

10.17 NZTA is seeking resource consents under the FTAA that would otherwise have been applied for under the RMA.

10.18 As noted above, the Project is a fundamentally sound one, in that it has very significant benefits (and is needed to improve Wellington's functionality and resilience), and has manageable adverse effects. As set out in Part B of the application, the Project draws significant support from relevant national, regional, and local planning instruments.

10.19 The adverse effects – to the extent they cannot be avoided – will be comprehensively addressed through proposed conditions and carefully developed offset/compensation measures.

10.20 In terms of Part 2:

- (a) The Project will bring about fundamental economic and other benefits, associated with upgrading urban infrastructure and enhancing access on SH1, which are directly aligned with the RMA's purpose of promoting the sustainable management of natural and physical resources and enhancing economic, social, and cultural wellbeing.
- (b) The Project has been developed in an environmentally responsible manner and has comprehensively addressed its potential adverse effects. For this reason, echoing the language of section 5 of the RMA, the Project will sustain the potential of resources for future generations; safeguard the life-supporting capacity of the environment; and avoid, remedy or mitigate any potential adverse effects.
- (c) The Project has responded appropriately to the principles in sections 6 and 7 of the RMA and has been developed in partnership with Mana Whenua, in a manner well aligned with section 8.

10.21 Therefore, the Panel can have a high degree of confidence that the Project is consistent with Part 2 and achieves the sustainable management purpose and principles of the RMA.

11. ADDITIONAL CRITERIA RELEVANT TO THE WILDLIFE APPROVALS BEING SOUGHT

11.1 Under the FTAA, a wildlife approval means a 'lawful authority' for an act or omission that would otherwise be an offence under any various sections of the Wildlife Act, including section 63(1).⁷⁹ 'Lawful authority' is not defined in the FTAA or the Wildlife Act.⁸⁰ A wildlife approval under the FTAA has the same effect as if granted under the Wildlife Act.⁸¹

11.2 In considering an application for a wildlife approval (including conditions), the Panel must take into account:⁸²

- (a) the purpose of the FTAA (as above, this must be given the greatest weight);
- (b) the purpose of the Wildlife Act and the effects of the Project on lizards⁸³ and kororā (the relevant protected wildlife); and
- (c) information and requirements relating to that wildlife (including the New Zealand Threat Classification System or any relevant international conservation agreement).

11.3 The Wildlife Act does not contain a standalone purpose section. The long title states:

An Act to consolidate and amend the law relating to the protection and control of wild animals and birds, the regulation of game shooting seasons, and the constitution and powers of acclimatisation societies.

11.4 The Court of Appeal and Supreme Court have confirmed that the Wildlife Act has a protective purpose (although protection of wildlife is not the sole purpose of the Act).⁸⁴ What types of activity fall within the 'protective purpose' of the Act will be fact and circumstance dependent.⁸⁵ Protection is a part of the Wildlife Act's overarching purpose of regulating human interactions with wildlife. That protective purpose is not absolute; it requires

⁷⁹ Sch 7, cl 1.

⁸⁰ The Court of Appeal in *PauaMAC5 Inc v Director-General of Conservation* [2018] NZCA 348, [2019] 2 NZLR 1 at [21] referred to the lawful authorities the Director-General can grant under ss 53 and 54. Section 71, which would also provide lawful authority; is explicitly disappplied by cl 8 of Sch 7 of the FTAA.

⁸¹ S 96 FTAA.

⁸² FTAA, sch 7, cl 5.

⁸³ Specifically, certain skink and gecko species.

⁸⁴ *PauaMAC5 Inc v Director-General of Conservation* [2018] NZCA 348, [2019] 2 NZLR 1 at [42]–[43], [47], [52] and [58]; and *Shark Experience Ltd v PauaMAC5 Inc* [2019] NZSC 111, [2019] 1 NZLR 791 at [44] and [66].

⁸⁵ *PauaMAC5 Inc v Director-General of Conservation* [2018] NZCA 348, [2019] 2 NZLR 1 at [52]–[53].

consistency with protection at a species level, not solely at an individual animal level.

- 11.5 Recent legislative amendments have clarified that a section 53 Wildlife Act authority may, in certain circumstances, be granted for killing of wildlife that is incidental to carrying out an otherwise lawful activity. Those circumstances are where the overall effect of the authority would be consistent with the protection of populations of wildlife and individual wildlife. The focus is on protecting individual wildlife and the viability of populations of wildlife as far as practicable.⁸⁶
- 11.6 The protected wildlife species that are to be covered by the wildlife approval sought in this application are:
- (a) in terms of lizards, copper skink (which have been observed within the Project area and are classified as At-Risk – Declining), northern grass skink (likely present; Not Threatened), barking gecko (unlikely to be present; At-Risk – Declining), ngāhere gecko (unlikely to be present; At-Risk – Declining), glossy brown skink (possibly present; At-Risk – Declining), ornate skink (possibly present; At-Risk – Declining), and raukawa gecko (unlikely to be present; Not Threatened); and
 - (b) little penguin / kororā (confirmed to be present; At Risk – Declining).
- 11.7 None of these species are subject to international conservation agreements.
- 11.8 NZTA is proposing to relocate lizards and (on a precautionary basis) kororā from identified areas of habitat that will be affected by vegetation / habitat clearance required for the construction of the Project, to areas away from harm from construction activities.
- 11.9 Relocation will be undertaken carefully, in accordance with the methods recommended by expert ecologists and specified in the LMP and KMP. The identified lizard relocation site is within the Town Belt and will be subject to habitat enhancement measures including pest animal control, native enrichment planting, and the deposition of rocky boulders and logs. Any kororā that need to be relocated from the small area of affected habitat will benefit from the nest boxes and pest and dog control measures that are already in place at the identified site. New nest boxes and planting will be

⁸⁶ Sections 53A-53C, Wildlife Act 1953.

provided at the site of the relevant Project works (a stormwater outlet at Evans Bay) as a compensation measure. Overall, these measures will address the potential effects of Project construction activities on those species – both at an individual level, and at a species (or population) level.

11.10 These measures are all required by the conditions proposed to attach to the wildlife approval (and other conditions are proposed on the RMA approvals to manage residual adverse effects). NZTA is asking the Panel to approve the LMP and KMP in final form in its decision on the application, so that they can in turn attach in final form to the relevant wildlife authority. For completeness, the conditions proposed on the RMA approvals require the implementation of the LMP and KMP, and of the kororā compensation measures discussed above.⁸⁷

11.11 Given these proposed measures, and noting that native lizards and kororā are currently subject to predation and degraded habitat values at the Project site, the required translocation of fauna is consistent with the purpose of the Wildlife Act.

12. ADDITIONAL CRITERIA RELEVANT TO THE ARCHAEOLOGICAL AUTHORITIES BEING SOUGHT

12.1 NZTA is seeking archaeological authorities that (collectively) span the entire site where Project earthworks will be undertaken. There are a number of known and probable archaeological sites that could be adversely affected by the Project, but none are so significant that they preclude the Project being undertaken. There are about 18 sites in close proximity to the works, and it is also possible that earthworks elsewhere on the Project site will modify or destroy unrecorded archaeological sites or material.

12.2 In considering the application, the Panel must take into account:⁸⁸

- (a) The purpose of the FTAA. As above, this must be given the greatest weight.
- (b) The matters set out in section 59(1)(a) of the HNZPTA. In that respect:

⁸⁷ The kororā relocation measures are distinct from the compensation measures, but form part of the overall effects management package in respect of kororā.

⁸⁸ FTAA, sch 8, cl 4.

- (i) the historical and cultural heritage values of the archaeological sites within the Project site are described in Part C and in the supporting expert archaeological assessment;
 - (ii) the application is consistent with the purpose and principles of the HNZPTA, as the authorities will ensure the correct handling and management of any archaeological sites discovered during the proposed works, while enabling the development of the Project. The treatment of Laureston and Ettrick Cottages (on Paterson Street) and the Home of Compassion Crèche is of particular note; these high value pre-1900 buildings are proposed to be removed and then reinstated/relocated at the end of the Project works;
 - (iii) NZTA has consulted with the persons who may be directly affected by the proposed archaeological authorities, including the landowners, HNZPT, WCC, and Mana Whenua. The interests of directly affected landowners will be addressed through the land acquisition process under the PWA;
 - (iv) there is no statutory acknowledgement that relates to any known or potential archaeological site within the Project site;⁸⁹ and
 - (v) the Project will respect the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tūpuna, wāhi tapu, and other taonga of relevance to the Project site, in line with the partnership approach being taken for the Project.
- (c) The matters set out in section 47(1)(a)(ii) and (5) of the HNZPTA. In that respect:
- (i) there will be more than minor effects on archaeological sites / values, but those effects are mitigated by the standard information gathering processes, and the relocation/reinstatement of Laureston and Ettrick Cottages and the Home of Compassion Crèche and the proposed conditions of the archaeological authorities;
 - (ii) most of the identified sites are of local significance, while Laureston Cottage is of regional significance and the Home of

⁸⁹ There is a statutory acknowledgement in respect of Te Whanganui-ā-Tara (in favour of Taranaki Whānui), and the application for an archaeological authority extends to a very small area in the coast at Evans Bay.

Compassion Crèche is of national significance (both of those sites will be reinstated / relocated in light of their significance); and

- (iii) as explained in Part C of the application, the Project is consistent with the principles and objectives outlined in the Heritage New Zealand Pouhere Taonga Statement of General Policy (2025).

PART D: CONDITIONS

13. INTRODUCTION

- 13.1 When considering the application, the Panel must decide whether to grant any approvals and set any conditions to be imposed on those approvals.⁹⁰ Such conditions must be no more onerous than necessary.⁹¹
- 13.2 This legal requirement is particularly significant in the current context, with New Zealand experiencing a significant infrastructure deficit in a highly constrained economic climate. Given this context, NZTA is seeking approvals for this Project so it is able to be progressed promptly when funding is available. Onerous conditions have a very real potential to lead to further delays in implementing the Project and realising its very significant benefits for Wellington and New Zealand.
- 13.3 The Panel has a broad scope to impose conditions, subject to the following requirements in the FTAA:
 - (a) the Panel may impose conditions that an applicant has proposed with its application;⁹²
 - (b) the Panel may set conditions relating to the effect of the grant of any approvals on Treaty settlements and recognised customary rights;⁹³
 - (c) relevant Ministers⁹⁴ may comment on a draft decision of the Panel and any draft conditions proposed;⁹⁵ and
 - (d) as referenced above, any conditions on approvals must be no more onerous than necessary to address the purpose for which they are set.⁹⁶

⁹⁰ FTAA, s 81(1).

⁹¹ FTAA, s 83.

⁹² For example, FTAA, sch 5, cl 12(1)(k) (resource consent).

⁹³ FTAA, s 84.

⁹⁴ The Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development.

⁹⁵ FTAA, s 72.

⁹⁶ FTAA, s 83.

- 13.4 Schedules 5 to 11 of the FTAA set out specific considerations relevant to each approval sought,⁹⁷ and in some instances require the Panel to set conditions in accordance with the legislation to which that approval relates. For example, the Panel may set conditions under Parts 6, 9 and 10 of the RMA (for resource consents)⁹⁸ and under section 17X of the Conservation Act (for concessions).⁹⁹
- 13.5 To expand on that point, the Panel has broad powers to impose conditions for resource consents under Part 6 of the RMA and these are relevant to its powers to set conditions under the FTAA. The following principles are relevant. Valid conditions must:
- (a) be for a resource management purpose and not for any ulterior purpose;
 - (b) fairly and reasonably relate to the proposal which is the subject of consent or designation (noting that section 108AA of the RMA requires a condition to be "directly connected" to an adverse effect of the activity on the environment and/or an applicable planning rule or environmental standard);
 - (c) not be so unreasonable that no reasonable decision-maker could have imposed them; and
 - (d) not involve an unlawful delegation of the decision-maker's duties.¹⁰⁰
- 13.6 Another key administrative law principle is that a condition cannot negate, frustrate, or nullify the grant of consent. This means that the Panel cannot grant consent subject to a condition that cannot be complied with.¹⁰¹
- 13.7 For other approvals, the Panel may apply bespoke conditions clauses (ie not contained in the enabling legislation) for certain types of approvals. For example, for wildlife approvals, the Panel may set conditions that it considers necessary to manage the effects of the activity on protected wildlife.¹⁰²

⁹⁷ FTAA, sch 5, cl 18 (resource consent), cl 19 (freshwater fisheries activity), cl 25 (designation); sch 6, cl 8 (concession), cl 32 (land exchange), cl 46 (conservation covenant); sch 7, cl 6 (wildlife approval); sch 8, cl 5; sch 9, cl 6 (freshwater fisheries activity approval); sch 10, cl 7 (marine consents); and sch 11, cl 9 (access arrangements) and cl 21 (mining permits).

⁹⁸ FTAA, sch 5, cl 18.

⁹⁹ FTAA, sch 6, cl 8.

¹⁰⁰ *Newbury District Council v Secretary of State for the Environment* [1980] 1 All ER 731 (HL) at [739], endorsed in the context of the RMA in *Housing NZ Ltd v Waitakere City Council* [2001] NZRMA 202 (CA) at [18].

¹⁰¹ See generally *Lytelton Port Company Limited v Canterbury Regional Council* EnvC Christchurch C8/2001, 26 January 2001 at [11], *Westfield (New Zealand) Limited v Hamilton City Council* (2004) 10 ELRNZ 254 (HC) at [53]–[55], and *Director-General of Conservation v Marlborough District Council* [2004] 3 NZLR 127 (HC) at [22]–[23].

¹⁰² FTAA, schedule 7, cl 6(1).

- 13.8 In terms of process, before granting an approval under section 81, the Panel must direct the EPA to seek comments on its draft conditions from the applicant, persons that provided comments on the application (and any report for a land exchange) and parties with statutory responsibility to enforce or monitor compliance with the relevant conditions.¹⁰³
- 13.9 Again, if a panel is minded to decline an approval, it must provide the applicant with an opportunity to propose conditions on, or modifications to, any of the approvals sought, or withdraw any parts of the application that sought those approvals.¹⁰⁴
- 13.10 NZTA has prepared extensive proposed RMA conditions, which have been provided with the application.
- 13.11 Conditions are also proposed for each of the other authorisations sought for the Project. In each case, NZTA has started with 'standard form' conditions of the sort that the relevant administering agency would normally impose and has adapted those as appropriate.
- 13.12 The Panel will need to consider the conditions proposed by NZTA, and any comments made on the conditions by the administering agencies and others involved in the process. Ultimately, the Panel – rather than the administering agency – must determine what conditions to impose.

PART E: CONCLUSION

14. CONCLUSION

- 14.1 This Project represents a very important opportunity, not to be missed, to deliver significantly beneficial upgrades to Wellington's transport network, which will also benefit the wider region (and indeed our nation given the importance of this area to New Zealand's economic activity).
- 14.2 The Project has been developed thoughtfully and carefully to achieve significant benefits while minimising adverse effects on the environment.
- 14.3 The Project satisfies all the relevant tests under the FTAA – which is tailor-made to facilitate the delivery of highly beneficial, nationally and regionally significant infrastructure like this – as well as the other relevant legislation.

¹⁰³ FTAA, s 70(1).

¹⁰⁴ FTAA, s 69(2)(b). Any draft conditions relating to Treaty settlements may be commented on by relevant Ministers under section 72.

14.4 The Panel can therefore be satisfied that the approvals sought by NZTA can be granted on the conditions it has proposed.

DATED this 14th day of August 2026



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