BEFORE AN EXPERT PANEL

IN THE MATTER	of the Fast-track Approvals Act 2024
AND	
IN THE MATTER	of an application by the Ministry of Business, Innovation and Employment for the Northland Shipyard and Dry Dock Project at Marsden Point, Whangārei

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APPLICANT OVERVIEW OF STATUTORY FRAMEWORK AND APPROVALS SOUGHT

THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT

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1. INTRODUCTION AND SCOPE OF OVERVIEW

1.1. The Ministry of Business, Innovation and Employment ("MBIE") has applied for approvals for a Shipyard and Dry Dock facility at Marsden Point, Whangārei, adjacent to Northport (the "Project" and the "Application") under the Fast-track Approvals Act 2024 ("FTAA"). The Project is a listed project under Schedule 2 of the FTAA.[1] The approvals sought comprise various resource consents under the Resource Management Act 1991 ("RMA") and a wildlife approval under the Wildlife Act 1953 ("Wildlife Act").

1.2. This overview is provided by MBIE in its capacity as the authorised person for the Project. It summarises the statutory framework relevant to the approvals sought and sets out MBIE's position on how the Application addresses that framework.

1.3. A comprehensive assessment of the Project is contained within the Substantive Application Report, prepared by independent expert planners at Reyburn & Bryant, drawing on specialist reports from a wide range of technical experts. The Substantive Application Report and technical assessments have been prepared to address the FTAA requirements. The Substantive Application Report has not identified any adverse impacts that are sufficiently significant to outweigh the Project's regional or national benefits.

1.4. This overview draws together relevant material from the Application and publicly available decisions and should be read alongside the Substantive Application Report and supporting technical assessments.

1.5. In this overview, MBIE:

(a) sets out MBIE's overall position;

(b) introduces MBIE, the approvals sought, and the Project;

(c) addresses the applicable FTAA statutory framework;

(d) evaluates the Project in the context of the statutory framework; and

(e) sets out a conclusion.

1 MBIE is the authorised person listed in Schedule 2. The Project's Schedule 2 listing was amended under s 117A of the FTAA, pursuant to Fast-track Approvals (Buller Plateaux Continuation and Other Projects) Order 2026. This is further addressed in section 6 of this overview.

2. MBIE'S OVERALL POSITION

2.1. MBIE's position is that the Project satisfies the applicable provisions of the FTAA, including the relevant sections of the RMA and Wildlife Act that are referred to in the FTAA.

2.2. Independent economic consultants, Market Economics, conclude that the Project will provide a range of significant national, regional, and local benefits, which are outlined below.

2.3. The Project is founded on rigorous expert assessment and incorporates comprehensive management measures to address potential adverse impacts, including measures shaped by engagement with stakeholders. The adverse impacts of the Project are appropriately managed through careful design and the detailed proposed conditions of consent and management plans that have been submitted with the Application.

2.4. The purpose of the FTAA will be promoted by granting the Application. Overall, MBIE considers that the Application demonstrates - and that the Panel can conclude - that all approvals sought should be granted, subject to appropriate conditions.

3. MBIE

3.1. MBIE is the Government's lead business-facing agency. The agency's contribution to improving the well-being of New Zealanders is summarised in its purpose: to grow New Zealand for all. As the lead microeconomic agency, MBIE shapes and manages many of the underlying systems that contribute to national economic success.

3.2. MBIE is committed to understanding and sustainably managing the environmental effects of its operations and investment. For the Project, MBIE has invested significant time, resources, and consultant expertise into feasibility analysis, design, and impacts analysis. The Application is the result of that extensive effort, assessment and testing, and has been developed not only from a technical (impacts) point of view, but also to efficiently utilise the coastal resource to deliver a sustainable outcome for the region and nation.

4. THE PROJECT

Project site

4.1. The proposal is to construct an approximately 9.7ha reclamation immediately abutting the western extent of the existing Northport facility to provide for a marine maintenance operations facility.

4.2. The Project site and surrounding environment are described in detail in the Application, including technical assessments by independent experts.

Project summary

4.3. Key features of the Project are:[2]

(a) an approximately 9.7ha reclamation;

(b) a “cutout” in the reclamation where a dry dock (or potentially a ship lift) will be located and which will enable vessels to be docked;

(c) a piled wharf structure extending west from the northern extent of the reclamation to enable vessels to berth before or after utilising the dry dock (or ship lift) or to enable works that do not require haul out to be undertaken;

(d) space on the reclamation for vessels to be transferred to hardstand from the floating dry dock (or ship lift);

(e) buildings to accommodate necessary ancillary plant, material and activities;

(f) sufficient space for access to and around the facility;

(g) capital and maintenance dredging to facilitate access to the facility and berthing and manoeuvring;

(h) a rockwall and adjacent public access abutting the southeastern portion of the reclamation;

(i) stormwater management via Northport’s existing pond treatment system (for standard stormwater); or via the Whangārei District Council (“WDC”) wastewater/trade waste network or other licensed disposal facility (for higher risk operational runoff); and

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2 Refer [4] of the Substantive Application Report for additional detail.

(j) land-based car parking facilities.

4.4. The Project integrates with existing and consented Northport facilities. Representatives of MBIE and Northport Limited ("Northport") have been engaging collaboratively on the Project. Northport supports the Application, and MBIE and Northport have entered into a private agreement regarding consenting and cooperation in relation to the Project.

Project benefits

4.5. The Project will deliver a range of significant local, regional, and national benefits, including:[3]

(a) ***Regional and national economic benefits:***

(i) construction and operation[4] of the Project are estimated to support:

1) $1.05bn of discounted value added across New Zealand, of which approximately $555m accrues to Northland;

2) 20,802 job years nationally, 14,069 (or 68%) of which are in Northland;

3) $552m of discounted household income nationally, with $312m in Northland;

(ii) construction of the Project is estimated to support 1,703 jobs per year across a three-year build;

(iii) operation of the Project for 35 years is estimated to support an average of 448 jobs per year, of which around 259 are direct positions.

(b) ***Other national economic benefits:***

(i) avoided offshore transit and vessel-unavailability costs are estimated to have a present value of $80m to $124m.

(ii) the Project's incremental net operating surplus has an estimated present value of a further $109m, reflecting additional maintenance activity undertaken in New Zealand rather than overseas facilities.

(iii) A range of non-monetised benefits, including: defence maritime capability and strategic resilience, reduced carbon emissions, labour-market benefits

[3] See the Economic Impact Assessment by Market Economics, being Appendix 10 to the Substantive Application Report.

[4] Based on three years of construction and 35 years of operation of the Project.

where the Project draws on otherwise underutilised labour, avoided or deferred expenditure on repairing or replacing existing domestic capability, and resilience and "option value".[5]

4.6. The Project will also deliver a range of other social and public benefits, including:[6]

(a) ***National transport and supply chain resilience:*** The Project will be able to service a wide range of vessels, including larger vessels which the nation's two existing permanent dry docks (built in the nineteenth century) are too small to accommodate. Currently, those larger vessels, including Cook Strait ferries and the Royal New Zealand Navy's two largest vessels, must travel to overseas dry dock for servicing. The Project will therefore reduce reliance on overseas dry-dock availability, booking priorities and logistics arrangements. Domestic servicing will avoid transit-related vessel unavailability and strengthen control over the maintenance and return-to-service of freight, ferry and other nationally important vessels, thereby reinforcing an important enabling component of New Zealand's transport and supply-chain resilience.

(b) ***Maritime strategic capability:*** The Project will strengthen New Zealand's maritime strategic capability by expanding the domestic infrastructure available to maintain and support suitable strategically important vessels. It will broaden the options available to the Crown and vessel operators for maintenance planning, lifecycle stewardship, and future fleet support.

(c) ***Broader maritime sector capability:*** The Project will address a maintenance constraint affecting New Zealand's maritime sector by providing a stronger domestic base for marine engineering, specialist maintenance, supplier development, coastal shipping and other maritime activity. By enabling more complex vessel work to be undertaken in New Zealand, it will deepen the domestic knowledge, capability and supplier base associated with New Zealand.

(d) ***Regional workforce, skills, and supplier capability***: The Project will establish a substantial long-term industrial and capability anchor in Northland / Te Tai Tokerau, supporting skilled employment, specialist engineering capability, supplier and subcontractor development, and credible training and

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5 "Option value" refers to the benefit in having or maintaining the option to use an asset, including the value of having domestic capability against disruption to offshore sites or in an emergency.

6 See the Regional and National Public-Interest Benefits Assessment by MBIE, being Appendix 36 to the Substantive Application Report.

apprenticeship pathways. These benefits will strengthen the region's industrial base and retain transferable technical capability within New Zealand.

(e) ***Environmental, climate and biosecurity capability***: Where domestic servicing replaces offshore dry docking or heavy maintenance, the Project will reduce fuel use and associated greenhouse-gas emissions. It will also bring relevant hull cleaning, coating, residue handling, waste-management and biosecurity-sensitive maintenance activity within New Zealand's regulatory and environmental-management systems, improving domestic visibility, coordination and oversight.

5. APPROVALS SOUGHT

5.1. MBIE is seeking all necessary approvals to construct, operate, and maintain the Project, including:

(a) the following **resource consents**[7] for the construction, operation, and maintenance of the Project:

(i) coastal permit – reclamation and structures (construction and use);

(ii) coastal permit – capital dredging;

(iii) coastal permit – maintenance dredging;

(iv) discharge consent – stormwater;

(v) discharge consent – air discharges from ship maintenance activities;

(vi) land use consent – for ship maintenance and related activities on the new reclamation, car parking, and earthworks, amongst other matters; and

(b) **wildlife approval** for the capture, handling, and relocation of little penguin / kororā[8], and associated activities, should this be required during construction.

7 FTAA, s42(4)(a). Overall, the resource consents required have an activity status of non-complying. Implications of a non-complying activity status under the FTAA are addressed at section 7 below.

8 FTAA, s42(4)(h).

6. PRELIMINARY MATTERS

Schedule 2 listing amendment

6.1. The Project is listed in Schedule 2 of the FTAA.

6.2. On enactment of the FTAA, the Project's Schedule 2 project description was *"[d]evelop and operate a marine maintenance operations facility, including an approximately 250 metre floating drydock and associated dredging and reclamation".*

6.3. On 26 June 2026, by Order in Council, the reference to *"…250 metre floating drydock…"* was replaced with *"…250-metre drydock facility".* This change was made to avoid any potential scope issues relating to the final Project design proposal.[9] As outlined in the Application material, the proposed vessel extraction system for the project is a floating drydock or a shiplift mechanism. The Application material, including expert effects assessments, address both options. A final decision on whether a floating drydock or shiplift will be constructed will be made at the detailed design stage. The June 2026 Schedule 2 project description amendments provide for both options.

Eligibility

6.4. MBIE is eligible to apply for all approvals sought[10] and the Project does not involve any ineligible activities.[11]

"Existing resource consents" and "competing applications"

6.5. Two procedural steps applicable to substantive applications under the FTAA are:

(a) the s30 "existing resource consents" provisions; and

(b) the ss 47-47B "competing applications" provisions.

6.6. MBIE and Northport have engaged collaboratively to ensure the existing resource consents and competing applications provisions do not inhibit the processing of the Application. As outlined, MBIE and Northport have entered into a private agreement regarding the Project, covering these and other matters.

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9 FTAA s46(2)(b) requirement that a substantive application "relates solely to a listed project".

10 FTAA, s42(3).

11 FTAA, s43(1)(c). FTAA, s5 provides the meaning of "ineligible activity". The Panel must decline an approval if it is for an ineligible activity, per FTAA s85(1)(a). As outlined below, including because no customary marine title areas or protected customary rights areas have yet been granted under the Marine and Coastal Area (Takutai Moana) Act 2011 over the Project area (refer section 10 of this overview), the Project is not rendered ineligible under s5(1)(b) or (c) of the FTAA.

6.7. For the reasons outlined below, MBIE's position as applicant is that neither the existing resource consents (s30) nor the competing applications (ss47-47B) provisions of the FTAA prevent the lodgement of, or the appointment of an expert panel to determine, the Application for the Project.

Existing resource consents

6.8. Under FTAA s30, an "existing resource consent" means, in summary:

(a) a resource consent held by another person;

(b) to undertake an activity under RMA ss12-15 (use of the coastal marine area; use of beds of lakes and rivers; use of water; discharges) using a natural resource;

(c) that, until its expiry, would prevent a new resource consent granted as a result of the Fast-track substantive application from being fully exercised.

6.9. If the existing resource consent provisions of the FTAA are engaged, the existing resource consent holder must be informed that they may lodge an application to "reconsent" the activity.[12]

6.10. A prospective FTAA applicant cannot lodge their substantive application until they receive notice from the regional council that either:[13]

(a) there are no existing resource consents; or

(b) there are existing resource consents, and either:

(i) the existing consent holder does not propose to lodge a replacement resource consent application; or

(ii) it is less than three months before the expiry of the existing resource consent, and a reconsenting application has not been made.

6.11. Further, under s47, the EPA must, on receipt of a substantive application, independently assess and make a recommendation to the Minister for Infrastructure on whether there are any existing resource consents not identified in the substantive application. The Minister for Infrastructure must make a decision on that recommendation.[14] If the

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12 FTAA, s30(4).
13 FTAA, s30(6).
14 FTAA, s47A(4).

Minister decides there are unidentified existing resource consents, the EPA must return the application.[15]

6.12. Northport holds resource consents for activities in areas within Whangārei Harbour, including in some instances activities overlapping with the Project area. In particular, MBIE understands that Northport holds:

(a) A 2009 capital dredging consent ("2009 Dredging Consent") which authorises capital dredging to a depth of 13m below chart datum for a turning basin north and west of the existing Northport facility and the placement of dredged material in the area to be reclaimed as part of Northport's Berth 3 Extension Project or deposited on land at Marsden Point owned by Northport or Northland Port Corporation (NZ) Ltd. MBIE further understands that the 2009 Dredging Consent recently expired, however may still be "live" by operation of s124 of the RMA, pending Northland Regional Council's ("NRC") decision on a replacement resource consent application lodged by Northport in 2024 ("Northport Replacement Application").

(b) 2025 capital and maintenance dredging consents associated with a reclamation and port expansion to the east of Northport's existing port facilities for its Vision for Growth project ("VFG" and "VFG Dredging Consents"). The VFG Dredging Consents authorise capital and maintenance dredging north and west of the existing Northport facility, largely overlapping with the dredge area consented under the 2009 Dredging Consent. These consents authorise dredging to a depth of 14.5m below chart datum in the western area of the turning basin and dredging to a depth of 16m below chart datum in other areas; and the deposition of dredged material in the reclamation associated with Northport's VFG or on land at Marsden Point owned by Northport or Marsden Maritime Holdings Limited or deposited in any other authorised location.

6.13. As recorded in NRC's s30 notification letter to MBIE (refer Appendix 5 of the Substantive Application Report), Northport has provided notice to NRC that it does not intend to lodge any replacement resource consents for the VFG Dredging Consents.[16] As described below with respect to competing applications, the Application has been prepared to avoid overlapping the 2009 Dredging Consent (to the extent that resource

[15] FTAA, s47A(5).
[16] FTAA, s30(5)(a).

consent remains “live”). Accordingly, MBIE’s position is that there is nothing preventing lodgement of the Application, or requiring the return of Application under s47A(5).

Competing applications

6.14. Under s47B(1)(a)(i) of the FTAA, an expert panel can only be set up to consider a substantive application for a project after any “competing application” is finally determined.

6.15. For the reasons outlined below, MBIE considers that the “competing application” FTAA provisions[17] are not engaged and there is no competing application issue with respect to the Project.

6.16. The Application seeks resource consents for dredging in, and use of dredged material extracted from, two areas, as broadly illustrated in the dredging plan and cross sections at Appendix 6 – Project Plans:

(a) A **western turning basin** to enable a safe area for navigation of vessels using the Shipyard and Drydock. The western turning basin excludes the consented dredge volume (i.e. three-dimensional spatial extent; or area and depth) in the 2009 Dredging Consent/Northport Replacement Application, but includes the VFG consented dredge volume to the extent there is overlap. Because the 2009 Dredging Consent/Northport Replacement Application enables dredging to 13m below chart datum, MBIE’s Application seeks only to dredge the western turning basin at depths between 13m and 14.5m below chart datum.

(b) A **secondary dredge area** to ensure that there is sufficient consented dredge volume to provide the total fill material needed for all the reclamation proposed or consented by both MBIE and Northport. The secondary dredge area achieves the shortfall in dredged material anticipated to be required by Northport and MBIE for their respective reclamations. The secondary dredge area excludes the volume subject to the 2009 Dredging Consent/Northport Replacement Application, but includes the VFG consented dredge volume to the extent there is overlap. Accordingly, MBIE’s Application seeks to dredge the secondary dredge area at depths between 13m to 18m below chart datum only.

6.17. Given that MBIE is seeking resource consents to dredge the western turning basin and the secondary dredge area in volumes excluding volumes subject to the Northport

[17] FTAA, s47 and 47A-B.

Replacement Application, the Application does not overlap (in a three-dimensional sense) with the Northport Replacement Application and does not prevent the Northport Replacement Application being *"fully exercised (if at all)"*. Therefore, MBIE's position is that the "competing applications" provisions are not triggered.

6.18. MBIE has engaged extensively with Northport with respect to the competing application provisions of the FTAA.

Pre-lodgement engagement

6.19. Section 29 of the FTAA sets out pre-lodgement engagement requirements for listed projects. Relevantly, it requires that before lodging a substantive application for a listed project the authorised person must *consult* the groups identified in s11(1)(a)[18] of the FTAA and *notify* in writing the parties identified in s11(1)(b),[19] giving them 20 working days to respond.[20]

6.20. MBIE considers that it has satisfied the pre-lodgement consultation and notification requirements in the FTAA. This engagement is detailed in the Application materials[21] and is summarised below:

(a) MBIE has engaged with multiple persons. A range of engagement has occurred, including through site visits, briefing meetings, online webinars, and hui with additional persons, ensuring information was accessible and opportunities for feedback were provided. On 10 August 2026, Patuharakeke Te Iwi Trust Board provided MBIE with an Interim Draft Cultural Impact Assessment ("CIA"), with instructions that it contains sensitive information, and its publication would cause serious offence to tikanga Māori. MBIE therefore has not included the Interim Draft CIA with the Application material submitted to the EPA. MBIE is continuing engagement with Patuharakeke and other iwi/hapū.

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18 Relevantly for the Project, s11(a) lists relevant applicant groups with applications for customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011.

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

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

21 Refer Substantive Application Report at [2.7] and Appendix 3: Section 29 Consultation Parties and Appendix 4: Consultation Record.

(b) The Substantive Application Report identifies the parties that MBIE was required to – and did – consult with and notify pre-lodgement:[22]

(i) MBIE *consulted* with relevant applicant groups with applications for customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011 ("MACA Applicant Groups").[23] All MACA Applicant Groups have been contacted directly on several occasions, including initial correspondence in seeking engagement and a further email attaching a recorded webinar to provide an additional opportunity to understand the Project.

Further, hui were held with several MACA Applicant Groups (including representatives from Patuharakeke, Te Parawhau, and Ngātiwai) throughout June and July 2026. These hui: provided an overview of the Project; explained the FTAA process and the proposed engagement approach; discussed cultural values and potential project impacts; and sought feedback on the Project.

A recurring theme was the need for adequate resourcing to review the significant volume of technical information. In response, MBIE has provided ongoing access to a SharePoint folder containing draft technical reports, offered executive-level summaries, and established funding support to enable the preparation of Cultural Impact Assessments and the engagement of specialist advisers. As outlined, following this engagement, Patuharakeke Te Iwi Trust Board has provided MBIE with an Interim Draft Cultural Impact Assessment.

(ii) MBIE *notified* in writing the following parties, and allowed them at least 20 working days to respond:[24]

1) Relevant local authorities – WDC and NRC. Both councils have also been engaged through direct meetings with the Mayor of the Whangārei District and senior council staff, who have expressed positive support

22 See Substantive Application Report at [2.7]; Appendix 3: Section 29 Consultation Parties; and Appendix 4: Consultation Record. For completeness, because consultation had not started before the second commencement date, the transitional exception in FTAA cl 11 of Part 2, Sch 1 does not apply. Consequently, pursuant to cl 8 of Part 2, Sch 1, the amended FTAA applies in full, and MBIE was only required to notify those parties referred to in s29(1)(aa) (being those referred to in s11(1)(b).

23 Under ss 29(1)(a) and 11 of the FTAA.

24 Under s29(1)(aa) of the FTAA following the 2025 amendments.

and a focus on understanding the Project's planning and environmental implications.

2) Relevant iwi authorities, hapū, and Treaty settlement entities,[25] including iwi authorities and groups that represent hapū that are parties to relevant Mana Whakahono ā Rohe or joint management agreements, and tangata whenua of any area within the project area that is a taiāpure-local fishery, a mātaitai reserve, or an area that is subject to bylaws or regulations made under Part 9 of the Fisheries Act 1996.

3) Relevant administering agencies – Minister for the Environment and DOC on behalf of the Director-General of Conservation. Engagement with DOC has focused on regulatory and ecological matters, particularly potential interactions with DOC-administered land and wildlife management requirements.

6.21. MBIE has engaged in good faith with the relevant local authorities, administering agencies, iwi/hapū groups, adjacent property owners, and other stakeholders, including Northport, Channel Infrastructure NZ Limited ("Channel Infrastructure"), NorthTugz, Marsden Cove Canals, and various residents' association groups regarding the Project. The Project design has been informed by this engagement and, where appropriate to do so, proposed conditions and draft technical assessments and management plans have been updated based on comments received. Engagement is continuing and MBIE is committed to meaningful dialogue throughout the process.

6.22. Active engagement with iwi/hapū groups remains ongoing, with a view to further elucidating management of cultural impacts (including through proposed conditions).

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

7.1. The FTAA prescribes a bespoke statutory framework for the consideration of substantive applications for listed projects.[26]

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25 MBIE identified the relevant iwi authorities, hapū, and Treaty settlement entities for notification through a combination of local knowledge, engagement with Councils, and information obtained from Te Puni Kōkiri.

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

7.2. In *Ngāti Kuku Hapū Trust v Environmental Protection Agency*,[27] which was a judicial review in respect of initial processing steps of the substantive FTAA application for the Stella Passage project, the High Court commented:[28]

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

7.3. A useful explanation of the decision-making framework is provided in the Expert Panel's decision on the *Waihi North* application ("*Waihi North Decision*").[29] There, the Expert Panel emphasised that the FTAA establishes a materially different decision-making framework from that ordinarily applicable under the RMA and other legislation:

(a) Approval under the FTAA does not depend on a project necessarily being consentable outside of the FTAA.[30] The Panel in the *Maitahi Village* application ("*Maitahi Decision"*)[31] noted that the FTAA is intended to enable approvals to be granted even where projects would otherwise be prohibited or inconsistent with RMA National Direction.[32]

(b) The FTAA generally requires decision-makers only to "take into account" specified statutory provisions and planning instruments, while expressly disapplying s 104D of the RMA and its requirement that non-complying activities not be contrary to relevant objectives and policies.[33]

(c) The FTAA places substantial emphasis on the purpose of the FTAA and the regional and national benefits of projects, with those benefits to be given "the greatest weight" under the statutory framework. In doing so, the FTAA requires a broad evaluative assessment involving the weighing of potentially incommensurable considerations – for example, economic benefits on the one hand and environmental or cultural effects on the other – without imposing the type of "bottom line" constraints associated with the orthodox RMA framework following *Environmental Defence Society v The New Zealand King Salmon*

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27 [2025] NZHC 2453.
28 At [66].
29 *Waihi North Decision*, 18 December 2025.
30 *Waihi North Decision*, Part M, at [9].
31 *Maitahi Decision*, 18 September 2025.
32 At [51].
33 *Waihi North Decision*, Part M, at [10].

Company Limited.[34] The FTAA is designed to ensure that projects delivering significant benefits are not declined where those benefits outweigh identified issues.[35]

(d) Planning objectives and policies do not play as critical a role in relation to resource consent applications (particularly for non-complying activities) as they would under the RMA; and where activities (or effects) are not consistent with provisions in the planning instruments, there is greater focus on the significance of the effects at issue than would be permissible under the RMA.[36]

(e) Even where aspects of a proposal may not be fully consistent with all planning instruments, approval may nevertheless be appropriate where adverse effects are appropriately avoided, remedied, mitigated, offset or compensated, and where those effects are not out of proportion to the project's regional or national benefits.[37]

Decision-making on resource consent applications

7.4. In accordance with s 81 and cls 17-22 of Schedule 5 to the FTAA, the Panel must decide whether to grant or decline the resource consents sought. If it grants approval, it may impose conditions.[38]

Matters for assessment (cl 17(1) of Sch 5)

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

(a) the purpose of the FTAA; and

(b) the provisions of Parts 2, 3, 6, and 8 to 10 of the RMA that direct decision making on an application for a resource consent (excluding s104D); and

(c) the relevant provisions of any other legislation that directs decision making under the RMA.

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34 [2014] NZSC 38. *Waihi North Decision*, Part M, at [12](a)-(b).
35 See the *Maitahi Decision* at [51].
36 *Waihi North Decision*, Part M, at [12](c)-(d).
37 *Waihi North Decision*, Part M, at [13].
38 FTAA, cl 18 of Sch 5. Any resource consent granted under the FTAA has full force and effect for its duration, and according to its terms and conditions, as if it were granted under the RMA, unless otherwise specified under the FTAA (FTAA, cl31(3) of Sch 5).

7.6. Several FTAA Expert Panel decisions, including the *Waihi North Decision*, and on the *Bledisloe North Wharf and Fergusson North Berth Extension* application[39] (the "*Bledisloe Decision*") and the *Kings Quarry Expansion – Stage 2* application ("*Kings Quarry Decision*") have confirmed that the requirement in cl 17 of Schedule 5 to the FTAA to "*take into account*" requires decision-makers to directly consider and give genuine weight to the identified matters, rather than paying mere "lip service" to them.[40]

7.7. In doing so, the Panel in the *Bledisloe Decision* applied the approach of the Supreme Court in *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency*.[41] Although that decision concerned a requirement to "have regard to", the Panel considered that an equivalent obligation arises under cl 17 of Schedule 5 to the FTAA. That finding is consistent with decisions under the RMA regarding an obligation to "consider" a factor concerned in making a decision; being to weigh it along with other factors and to give it appropriate weight in the circumstances.[42]

7.8. Importantly, cl 17(1) of Schedule 5 to the FTAA expressly requires the Panel to give the greatest weight to sub-clause (a) (the purpose of the FTAA) when considering a resource consent application and setting conditions. Requiring a decision-maker to give greatest weight to a "prime" consideration (i.e. imposing a "hierarchy" or "two-tiered" framework of considerations) is different to the equivalent section in the RMA (s104). However, such an approach is not entirely novel. Section 34(1) of the Housing Accords and Special Housing Areas Act 2013 ("HASHAA") required decision makers to have regard to a list of matters, giving greater to lesser weight to them in the order listed.

7.9. In the *Bledisloe Decision* and the FTAA Expert Panel's decision on the *Milldale – Stages 4C and 10 to 13* application (the "*Milldale Decision*"),[43] the Panels considered the approach under the HASHAA, as interpreted by the Court of Appeal in *Enterprise Miramar Peninsula Inc v Wellington City Council*[44] *("Enterprise Miramar"),* to be instructive.[45] Those Panel decisions held that, based on the guidance from *Enterprise Miramar:* criterion (a) – the purpose of the FTAA – is to be afforded the greatest weight, and, by implication, criteria (b) and (c) are to be given equal statutory weight;[46] and that

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39 *Bledisloe Decision*, 21 August 2025.
40 At [119]; Part G: Approvals relating to the Resource Management Act at [4]; and at [112], respectively.
41 [2024] NZSC 26 at [169] and [224].
42 *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC); referred to in *Trustees of the Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2024] NZCA 134 at [15].
43 *Milldale Decision*, 3 October 2025.
44 [2018] NZCA 541.
45 *Bledisloe Decision* at [120]; *Milldale Decision* at [60].
46 *Bledisloe Decision* at [121]; *Milldale Decision* at [60].

each matter in (a) to (c) must be considered individually before the panel steps back to conduct an overall weighting, giving greatest weight to the purpose of the FTAA.

7.10. In the *Maitahi Decision*, the Expert Panel did not consider that HASHAA and *Enterprise Miramar* were particularly helpful, with the Panel noting that those provisions arose in a different statutory scheme with different wording.[47] The Panel nevertheless confirmed that the purpose of the FTAA must be afforded the greatest weight, noting that this does not mean it will always outweigh other considerations.[48]

7.11. Despite the differing approaches taken by FTAA Panels to the relevance of HASHAA and *Enterprise Miramar*, the published Panel decisions summarised above indicate that the outcome is broadly consistent. Clause 17 of Schedule 5 provides that the purpose of the FTAA must be given the greatest weight in the overall weighting exercise. The Panel in the *Waihi Decision* stated that this could be best effected/demonstrated by:[49]

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

7.12. The Panels in the *Bledisloe Decision* and the *Milldale Decision* emphasised that the purpose of the FTAA does not alter the approach to the assessment of environmental impacts insofar as environmental impacts do not become less than minor simply because a project advances the FTAA's purpose.[50] Instead, cl 17(1) of Schedule 5 to the FTAA prescribes the weight that must be applied to those impacts – relative to the purpose of the FTAA and other considerations – in the overall decision.

The purpose of the FTAA (cl 17(1)(a))

7.13. The purpose of the FTAA is:[51]

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

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47 At [69].
48 At [70].
49 Part G: Approvals relating to the Resource Management Act at [4].
50 *Bledisloe Decision* at [55] and *Milldale Decision* at [60.3] referring to *Enterprise Miramar.*
51 FTAA, s3.

7.14. To "facilitate" the delivery of projects with the requisite benefits is a strong directive. It marks a clear departure from the more nuanced and balanced approach in s 5 of the RMA.[52] The purpose of the FTAA is directed to actively *facilitating* project delivery. The Panel in the *Maitahi Decision* acknowledged the FTAA reflects a clear legislative intent to expedite approvals for projects addressing infrastructure deficits, housing shortages, and energy needs.[53]

7.15. The meaning of the term "facilitate" as it appears in the FTAA's purpose was addressed in the *Ryan's Road Industrial Development Decision*. That Expert Panel referred to the following comments in the draft decision to decline approvals for *Taranaki VTM*:[54]

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

<u>Meaning of "significant regional or national benefit"</u>

7.16. The FTAA does not define what constitutes a significant regional or national benefit. The criteria in s22(2)(a) of the FTAA for the Minister to determine whether a referral application is for a project that would have significant regional or national benefits are relevant and provide useful guidance. This approach has been endorsed by most Panel decisions under the FTAA to date.[55]

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

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

54 *Ryan's Road Industrial Development Decision*, 7 May 2026 at [83]; citing *Taranaki VTM Draft Decision*, 4 February 2026 at [69].

55 For example, see *Bledisloe Decision* at [285]; *Maitahi Decision* at [429]; *Milldale Decision* at [186]; *Tekapo Decision* at [339]; *Drury Metropolitan Centre Decision* at [271]; *Waihi North Decision* at [841]; *Kings Quarry Decision* at [154].

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

(a) has been identified as a priority project in a central government, local government, or sector plan or strategy (for example, in a general policy statement or spatial strategy), or a central government infrastructure priority list;

(b) will deliver new regionally or nationally significant infrastructure or enable the continued functioning of existing regionally or nationally significant infrastructure;

(c) will deliver significant economic benefits;

(d) will support climate change mitigation, including the reduction or removal of greenhouse gas emissions;

(e) will address significant environmental issues; and

(f) is consistent with local or regional planning documents, including spatial strategies.

7.18. The Expert Panel in the *Maitahi Decision* noted that the question of whether regional or national benefits are "significant" is a question of fact in the circumstances, describing it as "*essentially a forensic exercise*".[56] The Panel cited the Shorter Oxford Dictionary definition of "significant" as meaning "*full of meaning or import*" and "*important, notable*", and was satisfied to apply the following working definition: "*sufficiently great or important to be worthy of attention; noteworthy*".[57]

7.19. In the *Waihi North* decision, the Expert Panel noted that "significant" is a word of indeterminate meaning. While it can denote something "game-changing", it can also mean simply "worthy of note". In the context of delivering "significant economic benefits" from activities such as mining or increasing housing supply, the Panel considered it unlikely that any single project would produce game-changing effects, particularly at a national or even regional level. Accordingly, "significance" is not to be assessed by reference to whether a project will appreciably change GDP or government tax revenue; rather, it is an indication of scale.[58]

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56 *Maitahi Decision*, at [515].
57 At [516].
58 *Waihi North Decision*, Part F, at [842]-[843].

7.20. A number of Expert Panels have closely scrutinised how economic benefits (including disbenefits) should be quantified as part of its project's significant regional or national benefits. The Expert Panel for *Waihi North* stated that:[59]

> *...where economic benefits are relied on by an applicant, any economic disbenefits should be allowed for, particularly if the benefits and disbenefits are of the kind that have market values against which they can be measured in money terms. But … we do not accept that adverse environmental impacts must be monetised and factored directly into the assessment of economic benefit.*

7.21. Building on this, the Expert Panel for *Pound Road Industrial Development* ("Pound Road Decision") noted that the FTAA does not require a full monetised cost-benefit analysis. Citing *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board*,[60] it commented that ascribing a monetary cost to environmental, social and cultural costs in all circumstances is unnecessary; and sometimes a qualitative analysis of environmental, social and cultural benefits and costs is lawful. It stated that economic disbenefits should be recognised where material and capable of monetary assessment, but environmental and other non-market effects need not be monetised.[61] The Expert Panel considered the correct approach was to first consider economic benefits, then consider disbenefits and weigh the same, as part of its assessment of the extent of the regional benefits (as it were in that case) and its proportionality assessment (addressed below).[62]

7.22. Notwithstanding, regardless of economic benefit, it has been recognised that cultural, social, and environmental outcomes can satisfy the regional (or national) significance threshold, with significance being a matter of scale.[63] Notably, despite having low-moderate confidence as to whether the project had significant economic benefits, the Expert Panel for *Sunfield* considered that the project's benefits were "*collectively regionally and nationally significant*" when considering the contribution it would make to increased housing supply in light of the principles of the NPS-UD, the broader concept of a well-functioning environment, contributions to climate change mitigation and adaption, resilience and recovery from natural hazards, and other environmental and sustainability outcomes.[64]

59 *Waihi North* decision, Part F, at [784].
60 [2021] NZSC 127.
61 *Pound Road Decision*, 1 May 2026 at [647] and [666].
62 At [666].
63 *Rangitoopuni Decision*, 26 November 2025 at [280] and [317].
64 *Sunfield Decision*, 10 March 2026 at [531]-[540].

“Extent” of benefits

7.23. Under s81(4), when taking into account the purpose of the FTAA, the Panel must consider the extent of the project’s benefits. “Extent” is not defined in the FTAA. The Panel in the *Maitahi Decision* adopted the dictionary definition of “extent” as including “*assessment*”, “*assessed value*”, or “*degree, size, magnitude, dimensions or breadth of the thing being measured*”.[65] The Panel noted that not all benefits lend themselves to precise financial or monetary quantification. In some cases, expressing value in absolute terms may not be possible. However, the broader context (whether regional or national) will influence how such benefits are understood and assessed.

RMA decision-making framework (FTAA cl 17(1)(b))

7.24. As outlined above, the FTAA imports decision-making provisions from the RMA, with modifications.[66] Clause 17(1)(b) requires the Panel to take into account the provisions of Parts 2, 3, 6, and 8-10 of the RMA *to the extent they direct decision-making for resource consents.*[67]

7.25. MBIE addresses key RMA provisions below, which the Panel must take into account.

RMA ss104 and 104B (consideration and decisions on resource consent applications)

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

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

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

(a) any actual and potential effects on the environment;[68]

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

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

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

68 Section 104(1)(a).

(b) any measure proposed or agreed to for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effect;[69]

(c) the relevant statutory documents;[70] and

(d) any other matter the Panel considers relevant and reasonably necessary to determine the application.[71]

7.29. In having regard to the statutory planning documents under s104(1)(b), the Panel must undertake *"a fair appraisal of the objectives and policies read as a whole".*[72]

7.30. Under s104(3) of the RMA, the Panel must not have regard to any effect on a person who has given written approval to the Project.

<u>The existing environment and the permitted baseline</u>

7.31. It is important to outline the relevant context for the assessment required to be undertaken by the Panel in accordance with section 104(1)(a), as it applies to the Project. That requires consideration of:

(a) first, the relevant "environment" against which the Project's effects must be assessed; and

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

7.32. The former essentially involves consideration of the "existing environment". The latter is the "permitted baseline" analysis.

a. The existing environment

7.33. The Court of Appeal decision in *Queenstown Lakes District Council v Hawthorn Estate Limited ("Hawthorn")*[73] held that the environment against which effects are to be assessed includes the future state of the environment as it might be modified by: permitted activities; and the implementation of resource consents which have been granted, where the resource consent is likely to be implemented.[74] In subsequent decisions the High Court has cautioned against *Hawthorn* being applied "like a statute"

69 Section 104(1)(ab).
70 Section 104(1)(b)(i) – (vi).
71 Section 104(1)(c).
72 *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26 at [79].
73 [2006] NZRMA 424 at [84].
74 The test in *Hawthorn* was adopted by both Panels in the *Bledisloe Decision* and the *Maitahi Decision*.

and encouraged a "real world" and "non-artificial" approach to assessing the relevant environment which appropriately recognises the context of each proposal.[75]

b. The permitted baseline

7.34. The concept of the permitted baseline is set out in s104(2) of the RMA and allows a consent authority to disregard certain effects of a proposed activity where a national environmental standard or plan permits an activity with that effect.[76]

Section 104 and Part 2

7.35. The relationship between s104 and Part 2 of the RMA, given the "subject to Part 2" wording in s104, has been considered in several decisions. The Court of Appeal's decision in *R J Davidson Family Trust v Marlborough District Council* "(*Davidson")*[77] confirmed that recourse to Part 2 is permissible – and in some cases necessary – in the context of decisions on resource consents.[78]

7.36. The Panel in the *Maitahi Decision* held that cl 17(1)(b) of Schedule 5 to the FTAA requires decision-makers to take into account whether the Project meets specified provisions of Part 2 of the RMA:[79]

(a) Section 5, which sets out the purpose of the RMA as promoting the sustainable management of natural and physical resources;

(b) Section 6, which requires recognition and provision for the matters of national importance listed in s 6(a)-(h); and

(c) Section 7, which sets out additional considerations to be taken into account under s 7(a)-(j).

7.37. The FTAA precludes the Panel from considering s 8 of the RMA.[80]

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75 See for example *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZRMA 239 (HC) and *Royal Forest and Bird Protection Society of New Zealand Incorporated v Buller District Council* [2013] NZRMA 275 (HC). See also *Save Kapiti Inc v New Zealand Transport Agency* [2013] NZHC 2104 at [70]. Similarly, a real world approach was adopted by the Panel in the *Tekapo Decision* as to what comprised the existing environment for the purposes of assessing that application. See the Panel's comment at [91].

76 As the Court of Appeal commented in *Hawthorn Queenstown Lakes District Council v Hawthorn Estate Limited* [2006] NZRMA 424 at [65], the purpose of the permitted baseline is "*to isolate, and make irrelevant, effects of activities on the environment that are permitted by a district plan…".*

77 [2018] NZCA 316.

78 [2018] NZCA 316. See in particular [47] and [51].

79 At [866] and [868].

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

RMA ss105 and 107 (applications for discharge permits)

7.38. Sections 105 and 107 of the RMA are relevant to discharges:

(a) Section 105 requires that the Panel must have regard to:

(i) the nature of the discharge and the sensitivity of the receiving environment; and

(ii) the applicant's reasons for the proposed choice; and

(iii) any possible alternative methods of discharge, including discharge into any other receiving environment.

(b) Section 107 provides that, except in limited circumstances,[81] the Panel shall not grant a discharge permit if, after reasonable mixing, the discharge is likely to give rise to any of the following effects in the receiving waters:

(i) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:

(ii) any conspicuous change in the colour or visual clarity:

(iii) any emission of objectionable odour:

(iv) the rendering of fresh water unsuitable for consumption by farm animals:

(v) any significant adverse effects on aquatic life.

Alternatives

7.39. The statutory framework addresses consideration of alternatives in specific contexts:

(a) The FTAA substantive application information requirements[82] do not require an assessment of alternatives where it is likely an activity will result in any significant adverse effect.[83] In contrast, cl 6(1)(a) of Sch 4 to the RMA, which does not apply to the Project, requires an AEE to include a description of any possible alternative locations or methods for undertaking the activity *"if it is likely that the activity will result in any significant adverse effect on the environment".*

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

82 FTAA, cl 6 of Sch 5.

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

(b) Including because there is no equivalent under the FTAA to cl 6(1)(a) of Sch 4 to the RMA (outlined above), MBIE's position is that there is no general requirement for the Panel to consider alternatives, including alternative sites, under s 104(1)(c) of the RMA (other matters) or otherwise.

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

RMA ss 108 and 108AA (conditions of consent)

7.41. The FTAA imports the relevant Parts of the RMA with respect to setting conditions.[84] This includes s 108 (conditions of resource consents) and s 108AA (requirements for conditions of resource consents) of the RMA.

7.42. In summary, s 108 provides a general discretion to impose consent conditions: consents may be granted on any condition the Panel considers appropriate,[85] except as expressly provided in s 108 itself and in s 108AA. Section 108AA establishes limits on the wide power conferred by s 108, requiring at least one of the following tests to be met before a condition can be included in a resource consent:

(a) the applicant agrees to the condition;[86] or

(b) the condition is directly connected to an adverse effect of the activity; and/or an "applicable" district or regional rule, or a national environmental standard;[87] or

(c) the condition relates to administrative matters that are essential for the efficient implementation of the consent.[88]

7.43. In addition to the limitations set out in ss 108AA and 108 of the RMA, the case law provides further restrictions on the Panel's powers to impose conditions. In *Cookie*

84 FTAA, cl 18 of Sch 5. The RMA provisions apply with all necessary modifications.
85 Including those kinds of conditions set out in s 108(2).
86 Section 108AA(1)(a). This requirement legislates the principle in *Augier v Secretary of State for the Environment* (1978) 38 P & CR 219(QBD) that an applicant who volunteers a condition is bound by it (see *Lindis Catchment Group Inc v Otago Regional Council* [2020] NZEnvC 130 at [63]).
87 Section 108AA(1)(b)(i)-(ii).
88 Section 108(1)(c).

Munchers Charitable Trust v Christchurch City Council[89] the Environment Court expressed key requirements for lawful conditions as follows:[90]

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

7.44. Several other general factors go to the appropriateness and/or lawfulness of a condition, noting that many of these principles were endorsed by the Panels in the *Bledisloe Decision,*[91] the *Maitahi Decision,*[92] and the *Milldale Decision*:[93]

(a) whether it is sufficiently certain;[94]

(b) whether it delegates or reserves too much discretion to a certifier/approver and is therefore invalid;[95]

(c) whether it would effectively nullify/negate the consent;[96]

(d) whether it relies on compliance by third parties and/or third-party consent (being outside the control of the applicant) and is therefore unenforceable and invalid;[97] and

(e) proportionality of the conditioned response (including in terms of cost) in the context of the benefits achieved can be considered in determining the appropriateness of conditions.[98]

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

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

91 At [305].

92 At [683]-[684].

93 At [192].

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

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

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

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

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

7.45. Section 83 of the FTAA provides a further important limitation on the Panel's discretion to impose conditions: the Panel must not set conditions that are more onerous than necessary to address the reason for which it is set.[99]

Resource consent lapse and duration

7.46. The Panel's decision may specify a date on which the approval lapses, which must be no less than two years after the approval commences.[100] MBIE seeks a 15-year lapse period.

7.47. Clause 17(7) of Schedule 5 to the FTAA applies s 123 of the RMA with respect to the duration of consents, meaning the RMA consent duration provisions apply, relevantly:[101]

(a) for reclamations, the default consent duration is unlimited, unless otherwise specified in the consent;

(b) for land use consents, the default consent duration is unlimited, unless otherwise specified in the consent; and

(c) for other resource consents, including coastal permits, the maximum consent duration is 35 years.

Decision-making on wildlife approval applications

7.48. In accordance with s 81 and cl 5-6 of Schedule 7 to the FTAA, the Panel must decide whether to grant or decline the wildlife approval.

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

(a) the purpose of the FTAA; and

(b) the purpose of the Wildlife Act[102] and the project's effects on the protected wildlife covered by the approval; and

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

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

101 FTAA, cl 17(7) of Sch 5.

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

(c) information and requirements relating to the protected wildlife covered by the approval (including in the New Zealand Threat Classification System or any relevant international conservation agreement).

7.50. With respect to the requirement to "take into account", the purpose of the FTAA and the requirement to give the purpose of the FTAA the "greatest weight", the same considerations as outlined above apply to the interpretation of cl 5 of Schedule 7. This was reiterated in the *Bledisloe Decision*.[103]

7.51. If it grants the wildlife approval, the Panel may impose any conditions it considers necessary to manage the effects of the activity on protected wildlife.[104] In setting conditions the Panel must:[105]

(a) consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife covered by the approval;

(b) where more than minor residual impacts on protected wildlife cannot be avoided, minimised, or remedied, ensure that they are offset or compensated for where possible and appropriate; and

(c) take into account the New Zealand Threat Classification System or any relevant international conservation agreement that may apply in respect of the protected wildlife covered by the approval.

7.52. As outlined above, the Panel must not set conditions that are more onerous than necessary to address the reason for which it is set.[106]

7.53. A wildlife approval granted under the FTAA has force and effect for its duration, and according to its terms and conditions, as a lawful authority for the purposes of the Wildlife Act and is treated as if it were granted under that Act.[107]

Wildlife approval lapse and duration

7.54. The FTAA is silent as to duration and lapse period for wildlife approvals. Accordingly, there is scope for wildlife approvals to be granted without specified duration or lapse periods – as was the case in the *Bledisloe Decision*.[108] However, some Expert Panels

103 At [127].
104 FTAA, cl 6(1) of Sch 7.
105 FTAA, cl 6(2) of Sch 7.
106 FTAA, s83.
107 FTAA, cl 7(1) of Sch 7.
108 The *Bledisloe Decision* and associated conditions of the wildlife approval granted are silent as to lapse and duration of the wildlife approval.

have elected to set specific durations. In the *Waihi North Decision,* the wildlife approval was granted for a 30-year term, with the approval's commencement date coinciding with the decision issue date.[109] In the *Homestead Bay Decision*, the wildlife approval was granted for a 15-year term from the date of approval.[110]

The Panel's ability to decline an approval

7.55. The FTAA includes a specific limitation on a panel's ability to decline an approval. A panel may decline an approval only in accordance with s 85.[111] Section 85 sets out circumstances where approvals *must* be declined, and circumstances where approvals *may* be declined.

(a) Under s 85(1)-(2), a panel *must* decline an approval if:[112]

(i) the approval is for an ineligible activity;

(ii) it considers that granting the approval would breach s 7 (obligation relating to Treaty settlements and recognised customary rights).

(b) Under s 85(3), a panel *may* decline an approval if the panel forms the view that:

(i) there are one or more adverse impacts[113] in relation to the approval sought; and

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

- any conditions that the panel may set in relation to those adverse impacts; and

- any conditions or modifications that the applicant may agree to or propose to manage those adverse impacts.

7.56. Section 85(4) limits the discretion provided in s 85(3), by providing that a panel may not form the view that an adverse impact meets the threshold above solely on the basis that it is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider.[114]

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109 Condition 4.1 of the wildlife approval conditions, Appendix G to the *Waihi North Decision*.
110 Condition 5 of the wildlife approval conditions, Appendix A to the *Homestead Bay Decision*.
111 FTAA, s81(2)(f).
112 The list below includes those parts of s 85(1)-(2) potentially applicable to the Application.
113 Adverse impact means any matter considered by a panel in complying with s82(2) that weighs against granting the approval (FTAA, s85(5)).
114 FTAA, s81(4).

"Adverse impact"

7.57. "Adverse impact", as it appears in s 85(3) and (4), is defined broadly as "*any matter identified through the s 81(2) assessment that weighs against granting the approval*".[115] The Expert Panel in the *Pound Road Decision* considered that given the broad definition of "adverse impact", the assessment under s 85(3) therefore requires a holistic and evaluative judgment rather than a formulaic or purely quantitative comparison.[116] That said, in the *Aryburn Screen Hub Decision*, the Expert Panel found there was no meaningful distinction to be made between "adverse impacts" (under the FTAA) and "adverse effects" (under the RMA).[117]

The 'proportionality assessment' under s 85(3)

7.58. A panel's discretion to decline an approval under s 85(3) has been referred to in decisions under the FTAA as the "proportionality assessment". In *Waihi North*, the Expert Panel identified the following key points in relation to the proportionality assessment under s 85(3):[118]

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

(b) If adverse impacts have already been monetised and incorporated into the assessment of benefits, there would be little utility in undertaking the separate weighing or balancing exercise required by s 85(3), reinforcing that the provision contemplates a distinct evaluative judgment rather than a purely numerical or cost-benefit calculation.

7.59. The *Taranaki VTM* Expert Panel in its Draft Decision discussed what it means when s 85(3)(b) references adverse impacts that are "out of proportion" to the benefits of a project. It found a test based on whether the identified adverse impacts (after mitigation by any consent conditions or modifications) are larger, worse, or more important than the benefit to be useful.[119]

7.60. The *Arbyurn Screen Hub* Expert Panel did not agree with the test applied by the *Taranaki VTM* Expert Panel. It considered that test failed to put sufficient weight on the words "out of proportion". It was instead of the view that *"[a] finding that adverse impacts are out of*

115 FTAA s 85(5)).
116 *Pound Road Decision* dated at 1 May 2026 at [109].
117 *Ayrburn Screen Hub Decision,* 13 May 2026 at [122].
118 *Waihi North Decision*, Part E, at [786].
119 *Taranaki VTM Expert Panel Draft Decision*, 4 February 2026, at [247].

proportion to the benefits of a project suggests to us that there is a ***material difference*** *between the two, not just that adverse impacts are marginally greater than the benefits."*[120]

7.61. In the *Haldon Solar Decision*, the Expert Panel noted with respect to the s 85(3) proportionality assessment that there is no formula or mathematical calculation that can assist, and in the end, it is a matter of judgment, informed by the relevant provisions of the FTAA and the information supplied.[121]

Section 85(4) qualification to the proportionality assessment

7.62. As referred above, s 85(4) provides that a panel may not form the view that an adverse impact meets the threshold for decline solely on the basis that it is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider.[122]

7.63. The *Taranaki VTM Draft Decision* notes that s 85(4) does not preclude a panel from having regard to inconsistency with or breach of a relevant legislative provision or document; rather, such inconsistency or breach cannot be the sole basis for concluding that an adverse impact is disproportionate.[123] Similarly, the *Waihi Decision* observes that s 85(4) means that non-compliance with, for example, avoidance policies that would ordinarily preclude approval under the RMA is not, in itself, fatal to an application.[124]

Treaty settlements

7.64. Section 7 of the FTAA provides that:

> *(1) All persons performing and exercising functions, powers, and duties under this Act must act in a manner that is consistent with—*
>
> > (a) *the obligations arising under existing Treaty settlements…*
>
> *(2) To avoid doubt, subsection (1) does not apply to a court or a person exercising a judicial power or performing a judicial function or duty.*[125]

120 At [115]. Emphasis added.
121 *Haldon Solar Decision*, 10 August 2026 at [127].
122 FTAA, s81(4).
123 *Taranaki VTM Draft Decision,* at [241].
124 *Waihi North Decision*, Part C, at [10]. See also the *Downtown Carpark Redevelopment – Te Pūmanawa o Tamaki Decision* at [548] to the same effect.
125 Other s7 provisions relating to customary rights recognised under the MACA Act and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 are not relevant in the context of the Project, including given that no such rights have yet been recognised under the MACA Act.

7.65. The Panel in the *Bledisloe Decision* identified the uncertainty regarding the application of s 7(1) in light of s 7(2).[126] While acknowledging that the exercise of a "judicial function" may exclude the application of s 7(1) from a panel's decision-making functions, the Panel noted that ss 82(3) and 84(1) expressly require consideration of s 7 in decision-making under the FTAA. Given the ambiguity, the Panel proceeded to consider s 7(1) within that statutory context. However, it stated that if s 7(1) ultimately did not apply, its consideration of the relevant matters would not have led to a different outcome.

7.66. The Substantive Application Report addresses existing Treaty settlements relevant to the Project.[127]

8. APPLICATION OF THE STATUTORY FRAMEWORK – RESOURCE CONSENTS

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

8.2. In summary, as detailed in the Application and in this overview:

(a) The Project will have significant regional and national benefits and is entirely consistent with the purpose of the FTAA.

(b) The Project satisfies all applicable provisions of the RMA, including ss 104 and 104B, and Part 2:

(i) the Project is consistent with the RMA planning framework, including the Whangārei District Plan, the Northland Regional Plan and the Northland Regional Policy Statement; the National Policy Statement for Infrastructure ("NPS-I"), the New Zealand Coastal Policy Statement ("NZCPS"), the National Policy Statement for Indigenous Biodiversity ("NPS-IB"), the National Policy Statement for Natural Hazards ("NPS-NH"), the National Environmental Standards for Air Quality ("NES-AQ").

(ii) all adverse effects can be appropriately managed.

(c) The Panel is not required to decline the approvals under s 85 of the FTAA. MBIE's position is that, with respect to the Panel's discretion to decline the approval under s 85, the adverse impacts of the Project are not sufficiently significant to be out of

126 At [110].
127 Substantive Application Report at [3.2.7].

proportion to the Project's regional and national benefits. Overall, MBIE considers that the Project's positive effects demonstrably outweigh its adverse effects.[128]

8.3. Below, MBIE addresses certain key matters regarding the Panel's consideration of the Application.

The purpose of the FTAA

8.4. The purpose of the FTAA is set out in paragraph 7.13 of this overview. As outlined, when considering MBIE's resource consent application, the Panel must give **greatest weight** to the purpose of the FTAA in the ultimate weighing exercise.[129]

8.5. An assessment of the Project against the purpose of the FTAA is set out in the Substantive Application Report.[130] MBIE considers that the Project is strongly aligned with the purpose of the FTAA, being an infrastructure/development project with demonstrably significant regional and national benefits.

RMA decision-making framework

Potential impacts

<u>*Introduction*</u>

8.6. MBIE's careful Project design is supported by the independent assessments of the effects: the Project will deliver significant local, regional, and national benefits, with local adverse impacts that will be appropriately managed. Where adverse impacts cannot be avoided, they have been carefully managed, including through the design of the Project and through proposed conditions (and in accordance with the effects management hierarchy as appropriate).

8.7. Conservative approaches have been adopted with respect to the modelling and assessment of impacts by independent experts, as described in the Substantive Application Report. MBIE considers that the Application material, including the robust and conservative approach adopted with respect to the assessment of effects, should

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

129 FTAA, cl 17(1) of Sch 5.

130 Section 5.8.3.

give the Panel confidence that the construction, operation and maintenance of the Project will occur in a manner that appropriately manages adverse effects.

Existing environment

8.8. The Substantive Application Report describes the existing environment in detail, and that detail is not repeated here.[131] In summary, the Project is located in a heavily modified coastal environment, immediately adjacent to existing lawfully established or consented regionally significant port and energy infrastructure, in an area where reclamation, dredging, wharves, navigation activity, industrial activity and coastal structures already form part of the receiving environment. Notwithstanding, the Application material also acknowledges that the site and surrounding CMA also have important environmental, social, and cultural values. Important environmental and social values include those relating to marine ecology, avifauna, natural character, coastal processes, water quality, and public use of the CMA.

8.9. For the Project:

(a) The existing environment also includes several consented but unimplemented projects, including by Northport and Channel Infrastructure.

(b) The potential for additional dwellings or other sensitive activities in the surrounding area is limited and should be considered in a realistic way when assessing potential effects. MBIE considers that – in accordance with the applicable case law – speculative hypothetical future sensitive activities do not form part of the existing environment for the Project (i.e. they should not be considered part of the environment against which effects of the Project are assessed).

The permitted baseline

8.10. As outlined in the Substantive Application Report,[132] the relevant regional and district planning documents provide for a range of permitted activities at the Project site, reflective of its zoning. This demonstrates that the planning framework does not purport to classify the Project site as pristine or deserving of absolute protection. To the contrary, it is clear the plans contemplate a degree of change in the environment, given the range of activities provided for.

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[131] At [3] and [6.2].

[132] At [5.3] and Appendix 35 to the Substantive Application Report.

8.11. Notwithstanding, a conservative approach has been adopted that does not discount effects permitted under the relevant plans.

Effects (RMA s 104(1)(a))

8.12. The Project has been shaped and assessed by numerous technical specialists. The assessment reports form part of the substantive application and are each addressed within the Substantive Application Report. Below is a summary of key conclusions reached by experts:[133]

(a) **Coastal processes**:[134] Mr Reinen-Hamill's assessment confirms that the Project dredging and reclamation will cause localised changes to waves, currents, sediment movement and seabed conditions. The coastal process modelling confirms that those changes will not materially affect the functioning of the lower harbour, harbour entrance, Mair Bank, ebb-tide delta or open coast. The overall long-term coastal process effects are assessed as minor.

(b) **Ecology (marine)**:[135] Dr Kelly has assessed the Project's effects on marine ecology at three scales: Marsden Bay; the One Tree Point to Marsden Bay Significant Ecological Area; and the outer harbour and entrance zone. At these scales, potential effects on intertidal sediment habitats and macrofauna and subtidal habitat and benthic macrofauna range between high and very high. Other potential effects assessed (on fish and reef habitats, and of chemical stressors and toxicants) are either low, very low, or positive at these scales. Dr Kelly has recommended a range of effects management measures which have been incorporated into the Project, including real-time monitoring of dredge plumes and ecological responses to dredging, and monitoring ecological recovery after dredging. Several key recommendations are incorporated in the draft Environmental Monitoring and Management Plan.[136]

(c) **Ecology (avifauna)**:[137] Dr Bull has assessed the Project's effects on avifauna. Dr Bull identifies that key species potentially affected are northern New Zealand dotterel and kororā. For northern New Zealand dotterel, potential effects of construction and operation of the Project are moderate, due to the proportion of the local population utilising the reclamation area which will be subject to permanent feeding habitat loss and temporary disturbance during the construction

133 The below is not a comprehensive summary of all project impacts.
134 Refer Appendix 13 to the Substantive Application Report.
135 Refer Appendix 15 of the Substantive Application Report.
136 Appendix 9H of the Substantive Application Report.
137 Appendix 16 to the Substantive Application Report.

phase. Further, if various consented but unimplemented projects in the Marsden Bay area are developed, potential cumulative effects on northern New Zealand dotterel will be moderate. For kororā, potential effects of construction and operation of the Project are low to very low, however if various consented but unimplemented projects in the Marsden Bay area are developed, potential cumulative effects will be moderate. A draft Avifauna Management Plan has been prepared, and[138] a conservative approach has been taken whereby a Kororā Management Plan[139] has been prepared to ensure that should birds be found during the construction phase, the necessary measures are taken to avoid potential injuries or mortalities.

(d) **Marine mammals**: Underwater noise associated with the Project has been assessed by Dr Pine,[140] which has informed the assessment on the Project's effects on marine mammals by Dr Clement.[141]

(i) Dr Pine has recommended, and the Project includes, noise abatement in the form of confined bubble curtains during percussive piling to reduce potential risks for marine mammals (and penguins and fish), namely physiological or behavioural disturbances from underwater noise. Dr Pine's assessment is that concurrent dredging and impact piling (including cumulatively with other consented projects in the area) will not materially produce cumulative noise effects. Underwater acoustic effects are expected to be confined to the Whangārei Harbour, and not extend into Bream Bay.

(ii) Dr Clement's assessment is that the principal potential effect on marine mammals is underwater noise from construction, particularly impact piling. Subject to the proposed Marine Mammal Management Plan (MMMP), source noise reduction, soft-start / ramp-up procedures, marine mammal observation, shutdown requirements, daylight piling controls and acoustic validation, permanent or temporary marine mammal hearing injury effects are expected to be avoided. Effects are expected to relate primarily to short-term behavioural disturbance, masking and temporary avoidance of parts of the harbour during piling periods.

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138 Appendix 9C to the Substantive Application Report.
139 Appendix 9D to the Substantive Application Report.
140 Appendix 18 to the Substantive Application Report.
141 Appendix 17 to the Substantive Application Report.

(e) **Landscape, visual, and natural character**: Mr Brown has assessed the Project's landscape, natural character, and amenity effects.[142] At four key locations (Marsden Bay Reserve, Albany Road Beachfront, Blacksmith Creek Reserve, and One Tree Point) effects range from moderate to high. At all other locations assessed, effects range between very low to moderate. Mr Brown observes that existing Northport and Channel Infrastructure facilities prevent effects ratings from being higher; however, the Project will result in cumulative effects with those facilities. Night-time effects will most notably impact Albany Road Beachfront, at which location Mr Brown assesses a moderate effects rating. Several recommendations by Mr Brown have been incorporated into the Project and proposed conditions, including the planting of screening pohutukawas and using neutral/recessive colours on structures.

(f) **Terrestrial noise**:[143] Ms NcNeill and Mr Fitzgerald consider that noise effects from the Project will be acceptable with the recommended mitigation measures in place. Construction noise is anticipated to be within permitted standards, provided night-time dredging is managed. Appropriate mitigation/management measures are set out in the draft Shipyard Noise Management Plan.

(g) **Discharges to air:** An air quality assessment has been prepared by Mr Cameron Brown of Pattle Delamore Partners.[144] Mr Brown considers that during Project construction there is limited potential for air discharges to cause off-site effects at the nearest residential dwellings, and with the proposed management measures and monitoring in place, there is low potential for dust nuisance effects. The potential for cumulative effects during construction is low, including based on the mitigation that Northport already undertakes. During Project operation, with the proposed management measures and monitoring, there is a low risk of nuisance or adverse effects off-site, including at the nearby dwellings; and overall air quality effects will be acceptable.

(h) **Stormwater:** A stormwater assessment has been prepared by Mr Blackburn of Hawthorn Geddes.[145] Mr Blackburn considers that, with the Project's proposed pre-treatment systems, standard stormwater runoff can be managed using the existing Northport secondary treatment (pond) system. Existing canal and spillway systems will be modified to accommodate the additional catchment. High-risk

142 Appendix 19A to the Substantive Application Report.
143 Appendix 23 to the Substantive Application Report.
144 Appendix 22 to the Substantive Application Report.
145 Appendix 21 to the Substantive Application Report.

operational runoff will be isolated and discharged to the WDC wastewater network under a trade waste approval or to a licensed disposal facility. The Project includes a range of recommendations by Mr Blackburn, for example in relation to discharge quality controls and monitoring recommendations, and the preparation and implementation of a Stormwater Management, Monitoring, and Maintenance Plan before construction and operation. With the proposed management measures, Mr Blackburn considers that potential adverse water quality and hydrology effects can be appropriately managed.

(i) **Environmental toxicology:**[146] The Project's approach to managing air and water quality is to control and prevent discharges as far as practicable, including by implementing the management measures recommended by Mr Cameron Brown and Mr Blackburn. However, an environmental toxicology assessment has been undertaken to understand potential effects of those marginal discharges which are not able to be fully captured. Mr Stewart's assessment is that, due to the comprehensive management controls proposed to maintain air quality, only extremely low concentrations of antifouling chemicals are expected to be deposited to the CMA from unencapsulated spray painting. Overall, there is a negligible ecological risk, and hence a negligible adverse effect, from paint spray drift to inter-tidal sediment. Mr Stewart considers that an ecological risk assessment is not required for antifouling chemicals in stormwater, due to proposed stormwater diversion mechanisms and air quality controls.

(j) **Cultural**: The Substantive Application Report addresses cultural effects in the context of publicly available information, iwi and hapū planning documents, and the known cultural significance of Whangārei Harbour and Marsden Point. While the Project does not extend into any mapped Sites and Areas of Significance to Tangata Whenua in the statutory planning documents, the Harbour is of cultural importance to mana whenua, including in relation to mahinga kai, coastal access, customary use, whakapapa, wāhi tapu, historic occupation and the mauri of the Harbour. As outlined earlier in this overview, active engagement with iwi/hapū groups is ongoing, including on cultural values, the Project's impacts on cultural values, and management of cultural impacts (including through proposed conditions).

[146] Appendix 28 to the Substantive Application Report.

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

8.13. The Substantive Application Report analyses the planning documents that are relevant to the Application.[147] Key planning documents are:

(a) the Whangārei District Plan;

(b) the Regional Plan;

(c) the Northland Regional Policy Statement;

(d) the NPS-I;

(e) the NZCPS;

(f) the NPS-IB.

8.14. Each of these documents contain relevant objectives, policies and/or rules, which are addressed in detail in the Substantive Application Report.

8.15. Directive enabling policy support for the Project is provided throughout the planning hierarchy, including through the infrastructure, and Regionally Significant Infrastructure, provisions in the Northland Regional Plan and the NPS-I.

8.16. The Substantive Application Report confirms that, overall, and drawing upon the Application material by MBIE's technical experts, the impacts of the Project will be managed such that the Project is aligned with all applicable planning documents, and that – particularly following the close examination and reconciliation of the provisions – the statutory framework supports the grant of the resource consents subject to the proposed conditions.[148]

8.17. MBIE considers that, overall, the Project – subject to the proposed conditions – is consistent with the objectives and policies of the applicable statutory plans and is strongly aligned with a number of key plans and planning provisions for the reasons set out in the Application material and the Substantive Application Report.

[147] At [7] and Appendix 33.
[148] At [7.8].

Part 2 RMA

8.18. The Substantive Application Report provides a detailed assessment of the Project against Part 2 of the RMA.[149] Based on that assessment, MBIE considers that reference to Part 2 simply confirms the appropriateness of the Project.[150]

Discharges (RMA ss 105 and 107)

8.19. The Application material comprehensively addresses all s 105 matters; and confirms that discharges associated with the Project will not have the effects identified in s 107.

Consideration of alternatives

8.20. As outlined above, the Application material demonstrates that:

(a) in every context where an assessment of alternatives is required (e.g. for discharges under s 105 of the RMA), alternatives have been appropriately considered;[151] and

(b) there are demonstrable justifications for the Project design, such that the requirements of the NZCPS and NPS-I with respect to "functional need" are satisfied.

Consent conditions

8.21. MBIE, together with its expert advisors, has developed proposed consent conditions that it considers will appropriately and effectively manage the Project's potential adverse effects. Those conditions reflect the statutory requirements outlined above and are considered suitable in the context of a major infrastructure project, recognising the requirement that conditions be no more onerous than necessary.[152]

Management plans

8.22. Use of management plans is accepted practice for major projects under the RMA and FTAA. Almost every project under the FTAA has involved management plans as a key component of the overall effects management framework.[153]

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149 At [7.7].
150 As noted earlier in this overview, the FTAA precludes consideration of s 8 of the RMA as part of any Part 2 assessment.
151 Appendix 21 to the Substantive Application Report.
152 FTAA, s83.
153 See, for example, the *Southland Wind Farm* decision, 2 April 2026 at [81] and section E1 of the *Waihi North* decision at [4]-[6].

8.23. With respect to management plan consent conditions, the Environment Court has stated that these are to set the "*outcomes, criteria and standards that management plans are to achieve".*[154] This principle was endorsed in the *Maitahi Decision*.[155]

8.24. The management plan conditions proposed by MBIE have been drafted in accordance with the guidance in the case law, including the following key requirements for "fit for purpose" management plan conditions:[156]

(a) A requirement for the management plan to be prepared by suitably qualified personnel.

(b) A clear objective, a stated scope, and performance management requirements.

(c) Specification of processes for council certification and for amending a certified management plan.

(d) A requirement to comply with the certified management plan.

8.25. The identification in conditions of management objectives, content requirements, and relevant objective criteria/standard in conditions is broadly consistent with the approach taken for many other projects under the FTAA.

8.26. Eight draft management plans have been provided with the Application.[157] The proposed conditions require the plans ultimately presented for certification to be in general accordance with the draft management plans now provided. The comprehensive draft management plans further evidence the robustness of the condition/management plan approach.[158]

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

155 At [698].

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

157 Being a Noise Management Plan, a Traffic Management Plan, an Air Quality Management Plan, a Marine Mammal Management Plan, a Construction Environment Management Plan, an Environmental Monitoring & Management Plan (Dredge), an Avifauna Management Plan, and a Kororā Management Plan.

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

Lapse period and duration

(a) Lapse

8.27. MBIE seeks that approvals for the Project have a **lapse period** of 15 years following any grant of approvals.

8.28. MBIE considers that the lapse periods sought will provide sufficient flexibility and certainty for what is a major and complex Project, and are appropriate given the nature and scale of the Project and the level of investment involved:

(a) The Project is of regional and national importance and of some complexity.[159]

(b) There are long lead times in consenting, designing, and constructing infrastructure of this nature. The Project is likely to involve significant pre-development works (for example design, monitoring and reporting) that must be undertaken before construction can commence, and a separate approvals process,[160] which adds to the Project's lead-in period.[161]

(c) A period of two years (the default period under the FTAA for resource consents) or five years (the general default period under the RMA for resource consents) would be an insufficient period. The default FTAA or RMA periods may be appropriate for smaller scale developments, but not for regionally and nationally significant infrastructure, with the mentioned implementation complexities. The default lapse periods would likely result in a secondary application to extend the lapse periods for the Project,[162] which would result in unnecessary cost and uncertainty.[163]

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159 See for example *Crest Energy Kaipara Ltd v Northland Regional Council* [2011] NZEnvC 26 where the Environment Court held that a 10-year lapse period (for coastal permits relating to wave energy project) was appropriate, including on the basis that the project was "very large" and of national importance.

160 For example the variations to Northport's resource consents required under s127 of the RMA (outlined below); and processes to obtain the necessary property rights for the portion of the Project within unformed legal road (outlined below).

161 See for example the Board of Inquiry's decision on the *Turitea Wind Farm* (www.mfe.govt.nz) where the Board granted a 10-year lapse period stating it was a "*realistic period to accommodate the reasons advanced by Mighty River Power*". Those reasons included the pre-construction studies to be undertaken. They also included New Zealand's demand for electricity, and the availability of the design of turbines at a favourable exchange rate.

162 See FTAA Schedule 5, clause 31(5)(a).

163 The Environment Court in *Re Meridian Energy Ltd* [2013] NZEnvC 59 stated that "*we are of the clear view that five years is too short for a project of this nature and scale*" (referring to a 33 turbine wind farm). One of the factors leading to this conclusion was the submitters' desire not to be engaged in a re-run of the resource consent procedures in the "*near future*".

(d) Construction timing will be influenced by numerous external factors which MBIE cannot influence.[164]

(e) The Project site is directly adjacent to a busy commercial port. The reclamation and dredge areas are almost entirely within the Marsden Point Port Zone ("MPPZ") in the Regional Plan for Northland (they were also zoned for port purposes under the Operative Regional Coastal Plan).[165] The stated purpose of the MPPZ is *to "enable the development and operation of existing and authorised maritime-related commercial enterprises or industrial activities"* which is consistent with what the Project entails.[166] The normal policy reasons going against extended lapse periods are therefore not as pronounced as in some cases.[167]

(f) An extended lapse period is not inconsistent with the planning framework.[168]

(g) Lapse periods of 20 years were approved by the Environment Court, by way of consent order, in 2025 for Northport's VFG project;[169] and extended lapse periods based on a "lapse-on-expiry" approach were approved by the Environment Court, by way of consent order, in 2021 for Channel Infrastructure's Whangārei Harbour deepening and realignment project.

(h) Extended lapse periods for resource consents have been approved in other FTAA decisions, such as *Lake Pūkaki Hydro Storage and Dam Resilience Works Decision* (35-year lapse period imposed);[170] and *Takitimu North Link (Stage 2)* Decision (20-year lapse period imposed).[171]

(b) Duration

8.29. With respect to duration, MBIE seeks the following:

(a) unlimited durations for all reclamation and district council consents; and

(b) 35 years (from commencement) for all other regional resource consents.

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164 See footnote **Error! Bookmark not defined.** above.
165 Refer Figure 2 of the Substantive Application Report: Project location relative to Marsden Point Port Zone.
166 Policy D.5.8.
167 See the factors outlined in *Katz v Auckland City Council* (1987) 12 NZTPA 211 (PT) at 213 which were quoted and approved by the Court of Appeal in *Body Corporate 97010 v Auckland City Council* [2000] NZRMA 529 (CA).
168 See for example *Body Corporate 970101 v Auckland City Council* [2000] NZRMA 202 (HC).
169 *Northport Limited v Northland Regional Council* [2026] NZEnvC 322 at [97] and associated conditions.
170 *Lake Pūkaki Hydro Storage and Dam Resilience Works Decision*, 3 July 2026. Refer conditions 16, 20 and 18, on pages 126, 132 and 174 respectively.
171 *Takitimu North Link – Stage 2 Decision*, 20 April 2026, at [15].

8.30. MBIE considers it is important that the duration of the regional consents (excluding for the reclamation) is 35 years. The consent durations sought are justified with reference to the planning framework[172] and the various factors outlined by the Environment Court in the leading case of *PVL Proteins*;[173] including in the context of the scale, cost and design of the Project, and its significant regional and national benefits. 35-year terms will provide long-term security of consents, providing appropriate certainty and support for the Project.

8.31. Additional reasons include the following:[174]

(a) Consent durations of 35 years will provide appropriate certainty and security of investment.[175]

(b) The potential adverse effects of the Project are well understood and are proposed to be comprehensively managed through conditions, while also providing sufficient security for the investment required for the Project.[176]

(c) NRC's ability to review consent conditions under s 128 of the RMA[177] should give the Panel comfort.

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172 Refer for example to Policy D.2.14 of the Proposed Regional Plan and RPS Policy 4.8.3 regarding resource consent duration; and the objective and policies of the NPS-I.

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

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

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

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

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

9. APPLICATION OF THE STATUTORY FRAMEWORK – WILDLIFE APPROVAL

9.1. As outlined above:

(a) MBIE is seeking several wildlife approvals to authorise things that would otherwise require wildlife permits under the Wildlife Act: the capture, handling, and relocation of little penguin / kororā, and associated activities.

(b) The Panel may grant or decline the wildlife approvals.

(c) If it grants the wildlife approvals, the Panel may impose any conditions it considers necessary to manage the effects of the activities on protected wildlife.

9.2. The Application addresses the relevant statutory framework outlined above as follows:[178]

(a) For the reasons outlined above, the Project is strongly aligned with the purpose of the FTAA.

(b) The Project, including the wildlife approvals sought, is consistent with the purpose of the Wildlife Act, which is essentially the protection of wildlife.[179] The overall effect of the Project, including proposed wildlife approval conditions, is consistent with the protection of populations of wildlife and individual wildlife. MBIE will, including by complying with the relevant management plans[180] and proposed wildlife approval conditions, take reasonable steps to manage any adverse effects of the lawful activity on individual wildlife.

(c) Overall, as detailed by Dr Bull,[181] the Project's effects on the protected wildlife covered by the wildlife approvals sought for little penguin / kororā are assessed as being low (for construction-related underwater noise disturbance),[182] very low (for potential construction effects of sediment suspension and deposition on food supply and foraging activity), and moderate (for cumulative effects associated with construction related sound disturbance); and – with the proposed compensation – effects can be appropriately addressed, in the context of the applicable statutory and planning framework, including the Wildlife Act.

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178 See FTAA, cl 5 of Sch 7.

179 Refer to the recent Wildlife Act amendments, detailed above.

180 Appendices 9C and 9D of the Substantive Application Report.

181 Appendix 16 to the Substantive Application Report.

182 Ibid at pg 64, on the basis that: pile would be installed using vibro-hammer techniques with a small percentage of the piles being hammered to for final driving in order to determine their load capacity; Bubble curtains would used as noise mitigation when piles are being hammered; and Piling is a temporary activity for a period no longer than 5 years. Per fn 43 of that report, if these assumptions are not correct, the magnitude of effect would be moderate.

(d) MBIE's proposed wildlife approval conditions will appropriately manage potential Project impacts on protected wildlife covered by the approval.

(e) The proposed 25-year wildlife approval term is appropriate, including in the context of the commencement, lapse, and durations of the other approvals forming part of the suite of approvals sought for the Project and the need for integration of Project approval timeframes. It is also broadly consistent with the durations of FTAA wildlife approvals granted for other projects, where durations have been specified (for example *Waihi North*, where approvals were granted for 30 years).[183]

(f) All FTAA information and other requirements relating to the protected wildlife covered by the approval are addressed in the Substantive Application Report[184] and technical assessments;[185] and the Project is appropriate in this context.

10. OTHER MATTERS

Variations to Northport consents

10.1. The implementation of any approvals granted for the Project will require variations under s 127 of the RMA[186] to existing implemented and unimplemented[187] resource consents held by Northport.

10.2. Aspects of Northport's existing resource consents that are likely to require variation include (without limitation)

(a) use of dredge material;

(b) public access to the fishing jetty on the west of the existing Northport reclamation;

(c) retention of the Pohutukawa trees planted on the western edge of Northport's existing port facility;

(d) sand bank and bird roost construction west of the existing Northport reclamation;

(e) shorebird monitoring and management;

(f) navigation safety and shipping management; and

(g) stormwater management.

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183 See footnote 109.
184 At [8].
185 Appendix 16 to the Substantive Application Report.
186 Or equivalent provision(s) under any replacement legislation.
187 To the extent unimplemented consents are proposed by Northport to be implemented in the future.

10.3. If approvals for the Project are granted, variations to Northport's consents will be sought by Northport separately under s 127 of the RMA. MBIE and Northport have entered into a private agreement regarding these matters. MBIE's position is that any requirement for these variations does not hinder the Panel from granting approvals for the Project.

No DOC concession required

10.4. As described in the Application, there is a Government Purpose (Wildlife Management) Reserve ("Reserve") administered by DOC nearby the Project. The Project's impacts with respect to the Reserve and the ecological values it supports have been assessed in the Application material.

10.5. The Application material confirms that:

(a) the seaward boundary of the Reserve is ambulatory[188] and moves over time with the Mean High Water Mark boundary of the relevant Reserve property parcel (i.e. the seaward boundary of the Reserve is not fixed); and

(b) the Project does not overlap with the Reserve and, as a result, no concession is needed for the Project.

10.6. MBIE has discussed the position with respect to the Reserve with DOC representatives, who have confirmed that DOC agrees with the position expressed in this overview.

Unformed legal road

10.7. As described in the Application material, a small area of the Project footprint is within an unformed legal road (a "paper road") owned by WDC. Therefore, property rights to construct and operate the Project on this land will be required from WDC, separate to any approvals under the FTAA Application.[189]

10.8. MBIE has secured written agreement in principle from WDC to use the relevant portion of unformed legal road for the Project.[190] If approvals for the Project are granted under the FTAA, MBIE intends to secure the necessary property rights for the unformed legal road land during the Project's delivery phase.

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188 See the letter from Reyburn & Bryant at Appendix 38 of the Substantive Application Report. An ambulatory property boundary is a boundary that can move over time, for example in relation to natural water boundaries – as the water shifts through natural processes, the legal property boundary moves with it.

189 This could involve a lease or licence; and/or a road stopping process under the Local Government Act 1974 or Public Works Act. There is no ability to apply for such rights/approvals under the FTAA.

190 Refer to Appendix 43 of the Substantive Application Report.

11. CONCLUSION

11.1. MBIE has invested time and resources in advancing the Project. It has engaged with key stakeholders and other parties to ensure a well-considered application is presented.

11.2. MBIE considers that:

(a) the Project satisfies the requirements of the FTAA, including the relevant sections of the RMA and the Wildlife Act that are "imported" by the FTAA;

(b) the Project is strongly aligned with the purpose of the FTAA;

(c) the Project receives strong support from the RMA planning framework and central government policy direction, including the NPS-I;

(d) the Substantive Application Report demonstrates that the Project has been carefully shaped by independent expert input, and that there are appropriate measures in place – including through proposed conditions and management plans – to ensure that any adverse impacts are appropriately managed.

(e) In the context of the statutory framework established by s 85 of the FTAA, the adverse impacts of the Project are not sufficiently significant to be out of proportion to the Project's regional and national benefits. Overall, the Project's positive effects demonstrably outweigh its adverse effects.

11.3. MBIE therefore seeks that the Panel grant all approvals sought, subject to the conditions proposed by MBIE.[191]

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[191] Or as otherwise refined through the substantive application process.