

Before an Expert Consenting Panel

under: the Fast-track Approvals Act 2024

in the matter of: applications for resource consents, notices of requirement, wildlife approvals and archaeological authorities by the New Zealand Transport Agency Waka Kotahi to develop a section of a road (being SH1) and associated infrastructure between Te Hana and State Highway 15 (Port Marsden Highway).

applicant: **New Zealand Transport Agency**

Requiring Authority and Applicant

Legal submissions on behalf of the New Zealand Transport Agency
Waka Kotahi

Dated: 2 April 2026

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LEGAL SUBMISSIONS ON BEHALF OF NEW ZEALAND

TRANSPORT AGENCY WAKA KOTAHI

Introduction

- 1 These submissions support the application lodged by the New Zealand Transport Agency Waka Kotahi (NZTA)¹ for resource consents, notices of requirement (NORs), wildlife approvals and archaeological authorities (collectively, the *Approvals* or *Application*) pursuant to the Fast-track Approvals Act 2024 (FTAA).²
- 2 The Application relates to the construction, operation and maintenance of a four-lane median-divided highway and associated infrastructure to provide an alternative to the existing State Highway 1 (SH1) corridor over the Brynderwyn Hills between Pukekaroro and Waipu (*the Project*). The Project has received a determination from the Minister to proceed as the first “*specified stage*” of the “*Alternatives to Brynderwyn Hills Project*”, a listed project under Schedule 2 of the FTAA.
- 3 These submissions are intended to assist the Panel convenor to undertake her statutory functions, and the Panel in their consideration of the Application. They provide an overview of the relevant statutory framework and the key matters the Panel will need to consider.³
- 4 In preparing the Application, NZTA has sought to ensure its scope and contents are proportional to the complexity of the Project, the approvals sought, and the nature and scale of the Project’s impacts.⁴ Consequently, the Application documentation reflects the intent and purpose of the FTAA, and it has been carefully tested to ensure it provides the Panel with the necessary information.
- 5 Overall, we submit the Panel can be comfortable granting the Approvals subject to the conditions as proposed by NZTA. The Project meets the purpose of the FTAA and comfortably satisfies the relevant statutory tests. NZTA’s proposed conditions will ensure any adverse impacts of the Project will be appropriately managed. The Project’s regional and national benefits are substantial and they significantly outweigh any residual adverse impacts.

¹ NZTA is the statutory body responsible for operating the state highway network. Land Transport Management Act 2003 (LTMA), s95(1)(h).

² NZTA is a Requiring Authority under s167 of the Resource Management Act 1991 (RMA). NZTA is an authorised person who may lodge applications for the Project under the fast-track consenting process.

³ Consistent with the Fast-Track Approvals Act 2024: Panel Conveners’ Practice and Procedure Guidance, paragraph 4.1(b).

⁴ Consistent with the Fast-Track Approvals Act 2024: Panel Conveners’ Practice and Procedure Guidance, paragraph 4.1(c).

Contents

- 6 These submissions:
- 6.1 Provide an overview of the Project and the approvals sought;
 - 6.2 Summarise NZTA's approach to the Project;
 - 6.3 Provide an overview of the statutory decision-making framework applying to the Application; and
 - 6.4 Provide an overview of the legal framework for the conditions proposed by NZTA.

PART 1: OVERVIEW OF THE PROJECT AND APPROVALS SOUGHT

Project overview

- 7 The Application documentation includes a detailed description of the Project, which is not repeated here.⁵ In summary:
- 7.1 The Project involves the construction, operation and maintenance of a four-lane, median-divided highway and associated infrastructure from Pukekararo to Waipu, across the Brynderwyn Hills.
 - 7.2 The Project is a stage of the Schedule 2 FTAA-listed Alternative to the Brynderwyn Hills project, a critical component of the three Roads of National Significance (*RoNS*) that together provide a strategic state highway connection between Auckland and Northland, otherwise known as the 'Northland Corridor' Project. The Northland Corridor is an approximately 100km-long corridor starting at Ara Tūhono – Pūhoi to Warkworth in the south and extending north towards Whangārei. It comprises three RoNS:
 - (a) Warkworth to Te Hana (which has been consented and designated and is currently in procurement);
 - (b) Te Hana to Port Marsden Highway (including the Alternative to the Brynderwyn Hills, which is a listed project in the FTAA and of which this Project is a critical part); and
 - (c) Port Marsden Highway to Whangārei (which is a listed project in the FTAA).
 - 7.3 As explained further below, NZTA has developed the Project in accordance with relevant national and regional transport policy and planning instruments, including the Government Policy Statement on land transport 2024 (*GPS 2024*), the National Land Transport Programme (*NLTP*), the Northland Regional Land Transport Plan (*NRLTP*) and the National Transport Asset Management Plan (*NTAMP*). These instruments recognise the importance of the Project in

⁵ Application, Volume A Part C.

improving safety, strengthening corridor resilience, reducing travel times, improving freight efficiency, and supporting Northland's economic productivity.

- 7.4 The Brynderwyn Hills section of the existing SH1 corridor between Auckland and Whangārei (ie the Project Area) presents a significant resilience risk, with regular short and long-term closures associated with severe weather events. The Project responds to these long-standing and worsening safety, resilience and reliability issues. The current issues on this part of the state highway network undermine its ability to function as a critical lifeline utility.⁶ The risks of those issues were highlighted in 2023, when SH1 through the Brynderwyn Hills was closed for a total of 73 days following extensive damage caused by Cyclone Gabrielle and other major weather events in early 2023. Following those events, NZTA spent \$100 million on repair and resilience works on SH1 in the Brynderwyn Hills. Those works have a predicted life span of 7-10 years, meaning speed is of the essence in delivering the Project.
- 7.5 The Project will deliver a permanent resolution to these issues. It will provide a high-quality, resilient, safe and efficient corridor, support economic growth, improve connectivity and strengthen network resilience.
- 8 An indicative road design and alignment for the Project (*Indicative Alignment*) have been developed for consenting purposes, to enable an assessment of the Project's potential effects on the environment and the development of an 'effects envelope' (as discussed below). The final design of the Project will be completed closer to construction and may be different from the Indicative Alignment. For this reason, NZTA seeks Approvals that provide flexibility for the final Project design. The NZTA's proposed conditions will ensure any effects of the final design remain within the effects envelope as consented. This 'flexible' consenting approach has been successfully used by NZTA in earlier upgrades of the SH1 corridor between Auckland and Te Hana, through the Pūhoi to Warkworth (*P2W*) and Warkworth to Te Hana projects.
- 9 As detailed in the Application,⁷ the need for a more resilient route across the Brynderwyn Hills is well established and has widespread support. The Northland Regional Council, Kaipara District Council (*KDC*) and Whangārei District Council (*WDC*) support the Project, acknowledging it will promote the growth vision for, and provide significant benefits to, the region, economy and people.
- 10 NZTA has engaged with relevant hapū, Te Uri o Hau, Patuharakeke and Te Parawhau, throughout optioneering and prior to lodgement, and this engagement will extend through and beyond the Approvals process. Consultation with hapū, the Department of Conservation and affected parties and stakeholders has influenced the

⁶ As recognised in the Civil Defence Emergency Management Act 2003, Schedule 1, Part B.

⁷ Application, Volume A sections A8.1 and A8.3.

optioneering for the Project. Business and freight advocacy groups support the Project and there is also general support amongst the community, who acknowledge the benefits that the new road will bring.

- 11 NZTA anticipates the Project can be constructed in approximately six years, following initial enabling works and will be delivered over five earthworks seasons, with four earthworks zones progressed concurrently and completed within a similar timeframe.

Project objective

- 12 NZTA's objective for the Project is:

To deliver an efficient and reliable connection between Whangārei and Auckland that provides safe access for people and businesses and supports economic growth.

- 13 Key co-benefits are: improved corridor resilience, improved safety outcomes, and enabling regional growth through better access to key markets.⁸

Approvals sought

- 14 NZTA seeks all approvals necessary to construct, operate and maintain the Project under the FTAA, namely: resource consents, designations, wildlife approvals and archaeological authorities. Each of these approvals is outlined in detail in the Application documentation.⁹

- 15 The two new designations¹⁰ are collectively referred to as the 'Proposed Designation' in these legal submissions.

PART 2: FTAA FRAMEWORK

- 16 At the outset, we emphasise the nature of the requiring authority and applicant in this case, the NZTA, and its statutory functions and obligations.
- 17 NZTA is distinct from private or ad hoc developers. NZTA is a longstanding Crown entity with statutory obligations under the LTMA, including obligations to contribute to an effective, efficient, and safe land transport system in the public interest¹¹ and to demonstrate social and environmental responsibility in carrying out its functions.¹² NZTA is also a public authority driven by normal administrative law obligations, including the requirement to act reasonably.
- 18 NZTA will be responsible for construction and operation of the Project, and will have an ongoing interest in ensuring that

⁸ Application, Volume A section C3.

⁹ Application, Volume A section A6, Volumes B-D.

¹⁰ One in the Kaipara District, the other in the Whangārei District.

¹¹ LTMA, s95(1)(a).

¹² LTMA, s95; Crown Entities Act 2004, s14.

environmental impacts of the Project and any other concerns are properly addressed, both during construction and once the infrastructure is operational. NZTA has decades of experience in delivering major, complex projects, engaging with a broad range of stakeholders, and managing significant construction and earthworks activities in a wide variety of New Zealand's natural and physical environments.

- 19 Over those many decades, NZTA has earned a strong reputation as a responsible and trusted constructor and operator of nationally significant infrastructure and, as an Agency of the Crown, recognises the importance of maintaining its reputation. NZTA takes its statutory obligations and responsibilities very seriously. It has a vested interest in doing things well and doing them right.

NZTA's approach to the Project

- 20 NZTA has developed the Application, Indicative Alignment and suite of proposed conditions for the Project in a careful and pragmatic manner. It has done so mindful of its statutory obligations and the need to be both fiscally and environmentally responsible within the context of the LTMA, GPS 2024 and FTAA.

- 21 The Legislature enacted the FTAA for a reason. The FTAA is not the RMA. It was not intended to simply replicate the RMA, albeit with faster timeframes and more limited appeal grounds. On the contrary, the FTAA represents a deliberate departure from the traditional consenting regime, prioritising the delivery of significant infrastructure (like the Project) and recognising the substantial benefits that such infrastructure brings to New Zealand and New Zealanders.

- 22 The Act is expressly designed to streamline approvals, reduce unnecessary procedural barriers, and enable more agile and responsive decision-making. It recognises that the status quo has often resulted in lengthy, complex, and costly processes and condition requirements that can cause great expense to and hinder the timely delivery of needed infrastructure.

- 23 For NZTA's projects, the costs of consenting and delivering infrastructure are ultimately borne by the taxpayer. As a Crown entity, NZTA must be fiscally responsible.

- 24 NZTA's statutory objective is to "*undertake its functions in a way that contributes to an effective, efficient, and safe land transport system in the public interest*".¹³ Its functions, as relevant to the Project, include:

24.1 Contributing to an effective, efficient, and safe land transport system in the public interest;¹⁴

24.2 Managing the state highway system, including planning, funding, design, supervision, construction, and maintenance

¹³ LTMA, s94.

¹⁴ LTMA, s95(1)(a).

and operations, in accordance with the LTMA and the Government Roding Powers Act 1989;¹⁵

24.3 Overseeing the planning, operation, implementation, and delivery of public transport;¹⁶ and

24.4 Managing funding of the land transport system.¹⁷

- 25 In addition to enacting the FTAA, which helps to facilitate NZTA's projects (as infrastructure with significant regional and national benefits), the Government also made changes to the GPS 2024. Those changes prioritised infrastructure and resilience with a focus on delivering "value for money" (one of the GPS 2024's four strategic priorities). This strategic priority requires NZTA to improve value for money from transport investment including through "a focus on whole-of-life costs to maximise long-run value".¹⁸ NZTA must "give effect to" the GPS 2024 when performing its land transport planning and funding functions.¹⁹
- 26 NZTA's approach to the Project, including its proposed suite of conditions, has been prepared with the priorities of the GPS 2024 and the FTAA's clear policy directives in mind.
- 27 The need for the Project and its substantial benefits is obvious to any New Zealander who has witnessed, let alone experienced, the impacts of the Brynderwyn Hills road closures and the increasing frequency and severity of extreme weather events in the Northland region. NZTA wishes to meet that need and deliver those benefits in an efficient, environmentally conscious and fiscally responsible way.
- 28 Achieving all of those outcomes requires careful deliberation and balancing of often competing considerations.
- 29 In preparing the Application, NZTA has carefully considered the Project, its various components and its potential environmental impacts, and has endeavoured to find the right balance between efficiently delivering the resilient infrastructure asset New Zealand needs and addressing complex, multifaceted mitigation requirements within the context of the FTAA.
- 30 As an example, NZTA is carefully considering whether to bridge the Piroa Stream, or to include an embankment in that location. NZTA understands some parties would prefer the Piroa Stream to be bridged. However, the implications of bridging would be considerable:

¹⁵ LTMA, s95(1)(h).

¹⁶ LTMA, s95(1)(i).

¹⁷ LTMA, s95(1)(j).

¹⁸ GPS 2024, page 23.

¹⁹ LTMA, s70(1).

- 30.1 Using a bridge rather than embankment would mean an additional 1 million cubic metres of spoil would need to be located somewhere else within 'Zone 2' of the Proposed Designation, causing significant, detrimental impacts on perennial streams that would need to be mitigated.
- 30.2 Due to the topography in the Brynderwyn Hills area, a new bridge structure would be high and therefore long-span, meaning it would essentially be a viaduct rather than a bridge.
- 30.3 There is a fault line in this area which creates safety challenges for both construction and operation of a bridge in this location. Because of this fault, the cost of a bridge would be in the order of an additional \$200-\$250 million dollars (above the embankment solution) to ensure the bridge option is safe.
- 30.4 A bridge would mean the completion of the Project would likely be delayed due to the size of the structure and construction methodology needed, resulting in potential further costs and delaying delivery of the Project's substantial benefits.
- 31 The P2W project provides an example of NZTA's 'balanced' approach to infrastructure delivery and mitigation in action. That project was one of the first RoNS, and was consented through a Board of Inquiry process in 2013. NZTA adopted a pragmatic, delivery-focussed strategy, designed to minimise complexity and ensure conditions were simple, flexible and necessary to manage effects. By all accounts NZTA's strategy was successful, with positive feedback from the P2W contractor on the simplicity and workability of the condition suite. As well as delivering flexibility and clarity for the contractor, the conditions also resulted in successful effects mitigation, with the P2W receiving the 'Award for Environmental Excellence' from the International Erosion Control Association (October 2020) and the 'Silver Certification for Sustainability' (highest sustainability rating at that time) from the Greenroads Sustainable Transport Council (August 2023).²⁰ Ultimately the delivery of the Project has had huge regional and national transport and economic benefits (eg safety, efficiency and resilience).
- 32 In the decade since P2W was consented, NZTA's experience is that major projects have become increasingly difficult and expensive to consent and construct. A key driver of cost (due to the scale of the work force involved in the construction process) is construction delay or time extensions. The longer a project takes to construct, the greater the cost. Conditions requiring extensive monitoring and/or adaptive management create considerable programme extension and risk. Adverse weather events also cause considerable delay and cost increases, which is of particular concern in the Northland context – the longer construction takes, the greater the risk of adverse weather events.

²⁰ Making the P2W project one of only three Greenroads Projects outside of North America to receive such recognition since 2010 as at 2023.

33 We respectfully submit that the Panel should consider the Application within the FTAA context and be mindful of NZTA's objectives and approach.

Statutory decision-making framework

34 The FTAA sets out the legal framework applying to approvals for a listed project such as this Project.²¹ Pursuant to this framework, the Panel has two tasks. It must:

34.1 Decide whether it must or should decline the Application; and

34.2 If the Application is not declined, determine what conditions should be applied to each approval.

35 We address the legal framework relevant to the first task here. The legal framework relevant to conditions is addressed later in these submissions.

Scope to decline approvals under the FTAA

36 The Panel's scope to decline the Application is limited under the FTAA.²²

37 We submit that none of the mandatory or discretionary matters allowing the Panel to decline the Application are engaged in this case. Specifically:

The Project is not an ineligible activity

37.1 NZTA has undertaken a comprehensive process including checking Gazette notices, titles and historic titles to confirm that the Project will not otherwise occur on land that would result in the Project being an 'ineligible activity'. A summary of this process is contained in the Application.²³

The Project is not inconsistent with relevant Treaty settlements

37.2 When making its decision, the Panel must also consider whether granting the approvals would comply with section 7 FTAA. Section 7 requires that all persons performing and exercising functions, powers, and duties under the FTAA must act in a manner that is consistent with obligations arising under existing Treaty settlements.²⁴

(a) The Application summarises the Treaty settlements relevant to this Project.²⁵ There is one Treaty settlement and one settlement deed that apply to the Proposed Designation:

²¹ In particular, FTAA, ss81, 83 and 85, Schedule 5, cl17 and cl24, Schedule 7, cl5 and Schedule 8, cl4.

²² FTAA, s85.

²³ Application, Volume A section A5.1.

²⁴ As defined in FTAA, s4.

²⁵ Application, Volume A section D7 and Appendix E.

- (b) Te Uri o Hau Claims Settlement Act 2002; and
- (c) Te Uri o Hau Deed of Settlement.

37.3 The Te Uri o Hau Claims Settlement Act 2002 provides for the vestment of 10 properties as cultural redress in the post-settlement governance entity, two of which are located close to the Proposed Designation.²⁶ The Treaty settlement and underlying statutory acknowledgements do not contain principles or provisions that are specifically relevant to the Project Area. They do not contain any specific obligations on NZTA.

37.4 While not directly relevant to the Project or NZTA, the settlements do contain a number of high-level principles intended to provide a framework for partnership between the Crown and its Treaty settlement partners. To support this approach, NZTA has developed a relationship of collaboration, engagement and cultural involvement in monitoring and heritage protection with hapū, as described in the Application material.²⁷

37.5 We therefore submit that the Project satisfies the requirements of section 7 of the FTAA.

Any adverse residual impacts are not significant and are significantly outweighed by the Project's benefits

37.6 Finally, the Panel has a discretion to decline an approval if it forms the view that the adverse impact(s) of the Project "are sufficiently significant to be out of proportion to the project's regional or national benefits". As confirmed in a recent FTAA decision, this test means that the Panel may grant an approval even if residual impacts remain.²⁸

37.7 The Project's potential adverse environmental impacts will be appropriately managed (as per the proposed conditions discussed below) so that they are acceptable, post-mitigation. In many cases, impacts will be positive. In some cases, residual adverse impacts will remain. In all situations, there can be no credible argument that the Project's adverse impacts will be so significant as to be out of proportion to the Project's substantial regional and national benefits. Rather, the converse is demonstrably the case.

Relevant considerations and weighting

38 In making its decision, the Panel must "take into account" the purpose of the FTAA, as well as the specified matters under the RMA, Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA) and Wildlife Act 1953 (Wildlife Act) pursuant to FTAA, section 81(3).

²⁶ Pukekaroro Scenic Reserve (southern Brynderwyn Hills) and Pukeareinga Scenic Reserve (at the top of the Maungatorotoro Scenic Reserve).

²⁷ Application, Volume A section D4 and Appendix E.

²⁸ Decision for the *Drury Metropolitan Centre - Consolidated Stages 1 and 2 Project*, dated 7 November 2025, paragraphs 156-157.

Those matters are fully covered within the Application materials, for the Panel's consideration.²⁹

- 39 The statutory direction to "*take into account*" means there is an obligation to consider the particular factor in making a decision, to weigh it with other relevant factors and to give it whatever weight is appropriate in all the circumstances.³⁰
- 40 For the purposes of the Panel's evaluation, and its weighing of the various relevant considerations, the FTAA specifically directs the Panel to give the "*greatest weight*" to the purpose of the FTAA, being:³¹

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

- 41 The Expert Panel that issued the first decision on an FTAA application (by Ports of Auckland for the Bledisloe North Wharf and Fergusson North Berth Extension) considered the "*greatest weight*" test and provided the following guidance:³²

121 [...]:

a. While the greatest weight is to be placed on the purpose of the FTAA, we must be careful not to rely solely on that purpose at the expense of due consideration of the other matters listed in (b) to (c) / (d): Enterprise Miramar [41].

b. The clauses require us to consider the matters listed in sub-clauses (a) to (c) / (d) on an individual basis, prior to standing back and conducting an overall weighting in accordance with the specified direction: Enterprise Miramar [52] – [53].

c. The purpose of the FTAA is not logically relevant to the assessments otherwise required under the RMA, WA53 or HNZPTA. For example, assessments of environmental effects (RMA), or matters relating to protected wildlife (WA53), or historical and archaeological value (HNZPTA). None of those matters become irrelevant, insignificant, or less than minor simply because of the purpose of the FTAA. What changes is the weight to be placed on them - they may be outweighed by the purpose of facilitating the delivery of infrastructure and development projects with significant regional or national benefit, or they may not: Enterprise Miramar [55].

- 42 The Court of Appeal case to which the Ports of Auckland Expert Panel refers (*Enterprise Miramar*) considered similar wording to the FTAA test, in the context of the Housing Accords and Special

²⁹ These considerations are addressed in detail in Volumes B-D of the Application.

³⁰ *Trustees of the Moititi Rohe Moana Trust v Bay of Plenty Regional Council* [2024] NZCA 134 at [15].

³¹ FTAA, s3 and Schedule 5, cls 17 and 24, Schedule 7, cl5 and Schedule 8, cl4.

³² *Bledisloe North Wharf and Fergusson North Berth Extension*, FTAA Panel Decision, 21 August 2025, paragraphs 120-121. That guidance is consistent with subsequent decisions by FTAA panels.

Housing Areas Act 2013 (*HASHAA*). That Act listed various matters to be had regard to (a phrase which the High Court has confirmed as synonymous with “*take into account*”³³) in considering resource consent applications, including the purpose of *HASHAA*, and required “*giving weight to them (greater or lesser) in the order listed*”.³⁴ The purpose was the first listed matter. The Court of Appeal held that an assessment of the listed factors must be undertaken prior to the exercise of weighing them through an overall balancing exercise in accordance with the prescribed hierarchy.³⁵

- 43 Applying that approach to the FTAA decision-making framework, the Panel must take into account the purpose of the FTAA and the various matters in the RMA, HNZPTA, Wildlife Act³⁶ and then weigh those factors in an overall balancing exercise which gives the greatest weight to the purpose of the Act. This approach is consistent with that advanced by the Ports of Auckland Expert Panel.
- 44 We submit that the balancing exercise the Panel must undertake within the FTAA decision-making framework is straightforward in this case. The Project will both achieve the purpose of the FTAA and satisfy the requirements of all other relevant matters. In particular, potentially conflicting policy directions in relevant national policy statements can be reconciled in accordance with the specific direction provided by the National Policy Statement for Infrastructure (*NPS-I*) (as discussed below).
- 45 Even if parties invited to comment on the Application argue that other matters are not satisfied, the significant national and regional benefits of the Project weigh powerfully in favour of granting the Approvals.

The Project will achieve the purpose of the Act

- 46 The Project meets the purpose of the FTAA. The Project:³⁷
- 46.1 Is a listed Project under the FTAA, eligible for use of the Act’s process by virtue of being infrastructure with significant national and regional benefits (the state highway network) and strong alignment with the FTAA’s purpose.³⁸

³³ *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991, [2015] NZRMA 375 at [63] and *Taranaki-Whanganui Conservation Board v Environmental Protection Authority* [2019] NZRMA 64 (HC) at [158]-[159].

³⁴ *HASHAA*, s34(1).

³⁵ *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541 at [52]-[53].

³⁶ FTAA, s81.

³⁷ *The Bledisloe North Wharf and Fergusson North Berth Extension*, FTAA Panel Decision, 21 August 2025, paragraph 285, supports the following factors as relevant to demonstrating a project’s regional and national significance.

³⁸ FTAA, Schedule 2.

46.2 Supports the priorities of the current GPS 2024 being:³⁹

- (a) Economic growth and productivity;⁴⁰
- (b) Increased maintenance and resilience;⁴¹ and
- (c) Safety and value for money.⁴²

46.3 Is a critical component of the Northland Corridor, identified as a RoNS in the GPS 2024.⁴³ The RoNS listed in the GPS 2024 comprise New Zealand's most essential corridors that require significant development and investment. Once completed, the RoNS will support economic growth and productivity, reduce congestion, improve safety, support housing development and provide a more resilient roading network.⁴⁴

46.4 Supports the objectives of the NLTP, which notes that the Project is a "*top priority*" and will reduce travel times, boost freight capacity and support economic development.⁴⁵

46.5 Is a critical part of the Northland Corridor Project, which is recognised as a vital connection between Northland and the rest of the country for freight, communities and tourism in the NRLTP.⁴⁶ The Project aligns with the transport priorities identified in the NRLTP (which are related to safety, connectivity, resilience and route security).⁴⁷ It will provide strategic resilience to routes accessing Marsden Point, an area of critical national importance for its oil storage capability.

46.6 Meets the central direction of the NTAMP, as the Project will provide an alternative route to the existing SH1 through the Brynderwyn Hills, connecting Auckland to Northland, improving the safety, efficiency and resilience of this significant transport network.

³⁹ Application, Volume A section A8.3.1.

⁴⁰ GPS 2024, pages 9-10.

⁴¹ GPS 2024, pages 17-18.

⁴² GPS 2024, pages 19-23.

⁴³ GPS 2024, page 11.

⁴⁴ GPS 2024, page 11.

⁴⁵ NLTP, page 36.

⁴⁶ NRLTP, pages 45-46.

⁴⁷ NRLTP, page 25.

- 47 The benefits of the Project are described in the Application materials.⁴⁸ To summarise, the Project will deliver a transport corridor that achieves:
- 47.1 *Greater resilience and reliability* – The Project will deliver an alternative route to the existing Brynderwyn Hills section of SH1, providing resilience and improving access during extreme weather. Recent closures highlight the corridor’s vulnerability and the significant and costly impacts its closure has.⁴⁹ The Project is expected to reduce the frequency and duration of weather-related closures by approximately 80%.
 - 47.2 *Improved safety outcomes* – The Project is expected to result in a predicted reduction of approximately 80% in deaths and serious injuries.
 - 47.3 *Higher efficiency* – The Project is forecast to reduce travel times by approximately 3-6 minutes (23%–30%) compared with the future do-minimum scenario providing efficiency gains for the region. It will also improve travel time reliability by providing safer overtaking opportunities and reducing delays caused by interactions between slow-moving (often heavy) vehicles and faster traffic.
 - 47.4 *Increased economic output* – The corridor improvements will support higher levels of output (GDP) and employment. At the Corridor level this benefit is estimated to be worth in the billions and is predicted to lead to approximately 1500 additional jobs (both construction and permanent roles). This figure does not include the economic impact arising from the construction or maintenance of the project, so the overall monetary impact is likely to be higher. Other economic opportunities, such as increased development of higher value land-use, will also be supported by the Project outcomes.

Other matters the Panel must take into account

- 48 Secondary to the purpose of the FTAA, when considering the Application the Panel must also “*take into account*” (as relevant):
- 48.1 Parts 2, 3, 6 and 8 to 10 of the RMA (excluding section 104D and section 170) that “*direct decision making on an application*”;⁵⁰
 - 48.2 The purpose of the Wildlife Act and the effects of the Project on protected wildlife that are to be covered by the approval (in this case, native lizards, frogs and invertebrates);⁵¹ and

⁴⁸ Application, Volume A section C5.

⁴⁹ In 2023, the existing SH1 through Brynderwyn Hills was closed for a total of 73 days following the extensive damage caused by Cyclone Gabrielle and major weather events in early 2023 at an estimated cost of over \$1M per day.

⁵⁰ FTAA, s81 and Schedule 5, cl17(1) and 24(1).

⁵¹ FTAA, s81 and Schedule 7, cl5.

48.3 The matters in section 59(1)(a) and section 47(1)(a)(ii) and (5) of the HNZPTA.⁵²

Relevance of RMA national direction in the FTAA decision-making framework

49 As part of the Panel’s requirement to take into account the relevant RMA provisions that direct decision-making,⁵³ the Panel must consider relevant national direction. However, as set out above at paragraphs 38-45, the Panel:

49.1 Must give greater weight to the purpose of the FTAA; and

49.2 Cannot decline approvals unless the mandatory or discretionary (“*out of proportion*”) decline tests in section 85 are triggered.

50 Importantly, the FTAA makes it explicit that inconsistency with national direction cannot be the sole basis for concluding that adverse impacts are “*out of proportion*” to benefits and declining an approval.⁵⁴ Consistent with this legal framework, previous FTAA decisions have recognised that consistency with the National Policy Statement for Freshwater Management 2020 (*NPS-FM*) is not a precondition to approval under the FTAA.⁵⁵ Overall, we submit the FTAA framework means that national direction has less weight in FTAA decision-making, than it does under the RMA.

51 The relevant national policy statements for this Project are identified in the Application as the:⁵⁶

51.1 NPS-I;

51.2 NPS-FM;

51.3 National Policy Statement for Indigenous Biodiversity 2023 (*NPS-IB*); and

51.4 National Policy Statement for Highly Productive Land 2022 (*NPS-HPL*).

Reconciling national direction – the NPS-I, the NPS-FM and the NPS-IB

52 The Supreme Court’s decision in *Port Otago*⁵⁷ provides helpful guidance on how to approach an apparent conflict between two

⁵² FTAA, Schedule 8, cl4.

⁵³ FTAA, Schedule 5, cl17(1) and cl24(1).

⁵⁴ FTAA, s85(3).

⁵⁵ *Homestead Bay* FTAA Panel Decision, 18 February 2026, paragraph 170; *Drury Metropolitan Centre Stages 1 and 2* FTAA Panel Decision, paragraphs 310-311.

⁵⁶ Application, Volume B section C2; Appendix C.

⁵⁷ *Port Otago Limited v Environmental Defence Society Incorporated* [2023] NZSC 112 (*Port Otago*).

directive policies, where one is enabling and the other is protective. The Court said that “*all relevant factors would have to be considered in a structured analysis, designed to decide which of the directive policies should prevail, or the extent to which a policy should prevail, in the particular case*”.⁵⁸ However, in our submission, the analysis undertaken of the relevant policies in the *Port Otago* decision is not directly relevant to the Application as there is no direct conflict between policies in the current case. Rather:

52.1 The NPS-I provides specific direction on how it should be reconciled with the NPS-FM and NPS-IB;⁵⁹ and

52.2 The NPS-I enabling policies also align with the purpose of the FTAA.

53 In our submission, policies in the NPS-I (which is enabling) should be reconciled with the policies in the NPS-FM or NPS-IB (which are protective) as follows:

53.1 The NPS-FM and NPS-IB address management of effects on natural inland wetlands and rivers and significant indigenous vegetation and significant habitats of indigenous fauna respectively.

53.2 Policy 9 NPS-I (*Managing the effects of new infrastructure and major upgrades*) specifically addresses how the environmental effects of infrastructure should be managed. It provides:

(1) Decision-makers must enable new infrastructure or major upgrades of existing infrastructure activities in all environments.

(2) Where infrastructure activities are proposed to locate in or are likely to have adverse effects on environments and values provided for in section 6 of the Act, the provisions of this policy must be read alongside other relevant national direction, regional policy statements and regional and district plans.

(3) Where (2) does not apply, the adverse effects of new infrastructure and major upgrades must be, where practicable, avoided, remedied or mitigated.

53.3 Importantly, Policy 9(1) NPS-I *requires* decision-makers to *enable* new infrastructure and major upgrades in *all environments*.

53.4 Relevant to freshwater and indigenous biodiversity, Policy 9(2) NPS-I is only engaged in locations that have the values identified in section 6(c) of the RMA, that is, areas which

⁵⁸ *Port Otago*, at [84].

⁵⁹ *Port Otago*, at [75]-[82] provides guidance on how any conflicts between National Policy Statements should be addressed.

have *significant* indigenous vegetation and *significant* habitats of indigenous fauna. For this Project, those locations are:

- (a) In relation to freshwater, Wetland 24 and Wetlands 8 and 16 (if impacted by the final alignment).
- (b) In relation to indigenous biodiversity, the Significant Natural Area (SNA) made up of the indigenous vegetation in the Brynderwyn Hills.

53.5 In those locations, Policy 9(1) must be read alongside the NPS-FM (particularly Policy 6 and Clause 3.22 in relation to natural inland wetlands) and NPS-IB (particularly Policy 7 and Clauses 3.10 and 3.11 in relation to SNAs).

53.6 In our submission, for the three wetlands and one SNA listed in paragraph 53.4, NZTA is proposing mitigation that generally aligns with the effects management hierarchy and therefore the relevant NPS-FM and NPS-IB clauses.⁶⁰ NZTA's approach is therefore consistent with all relevant national direction and there is no conflict to reconcile.

53.7 In all other locations that are not significant indigenous vegetation or significant habitat for indigenous fauna (as per RMA s6(c) and Policy 9(2) of the NPS-I), Policy 9(3) NPS-I requires adverse effects to be avoided, remedied or mitigated where practicable. This direction requires a lesser level of effects management than would otherwise apply under the NPS-FM (eg Clause 3.22 for other wetlands and Clause 3.24 for streams) or NPS-IB (eg Clause 3.16 for areas outside SNAs).

53.8 Given the explicitly different approach directed in Policy 9(3) compared to Policy 9(2), in our submission, it is clear that the NPS-I effects management direction is intended to take precedence over the NPS-FM and NPS-IB in lower value environments. Within the Application, NZTA's proposed freshwater and indigenous biodiversity mitigation in those other environments aligns with the policy direction in Policy 9(3) NPS-I.⁶¹ NZTA's approach is therefore consistent with the NPS-I and NPS-FM/NPS-IB when read together.

54 In any event, as noted above, the FTAA legal framework does not require consistency with RMA national direction. The key question for the Panel is whether any residual impacts of the Project, as a nationally and regionally significant infrastructure project, are so significant that they would be "*out of proportion*" to the Project's substantial benefits. We submit they are clearly not – the benefits

⁶⁰ Application, Volume B sections C2.1.2, C2.1.4 and Appendix C.

⁶¹ Application, Volume B sections C2.1.1, C2.1.2, C2.1.4 and Appendix C.

of the Project are hugely significant, and any residual freshwater and indigenous biodiversity effects are demonstrably outweighed.

Statutory decision-making considerations

- 55 The above matters in relation to the RMA, the Wildlife Act and the HNZPTA (to the extent they are relevant) are addressed in detail in the Application. We do not repeat that content here, but instead summarise the key conclusions.
- 56 The Panel will be aware that the FTAA uses the language of “*impacts*” whereas the RMA and HNZPTA use “*effects*” language. The *Maitahi Village* decision discussed the two terms, and found that while the difference was “*presumably deliberate*”, in the absence of statutory guidance, adverse RMA “*effects*” will be treated as equivalent to adverse FTAA “*impacts*”.⁶² We submit that adverse impacts under the FTAA and adverse effects under the RMA and HNZPTA in this case can be treated by the Panel as equivalent.
- 57 No permitted baseline has been applied in assessing the Project’s impacts. However, where relevant, the assessments note the types of activities that are permitted and therefore anticipated by the relevant planning documents and considered to have minimal impacts (for example, Volume B of the Application addresses the numerous permitted activity rules with which the Project is compliant).

Context for the Project’s effects

- 58 Sections 104(1) and 171(1) of the RMA require the Panel to “*have regard to*” any actual and potential effects on the environment of allowing the Project.
- 59 For the purposes of the Panel’s assessment, the environment against which the effects of the Project are to be assessed includes the current and future environment.⁶³
- 60 Identifying the relevant environment calls for a “*real world*” approach, without “*artificial assumptions, creating an artificial future environment*”.⁶⁴

⁶² *Maitahi Village*, FTAA Panel Decision, 18 September 2025, paragraphs 91 and 830.

⁶³ See *Queenstown-Lakes District Council v Hawthorn Estate Ltd* CA45/05, 12 June 2006 at [84]. The existing environment includes the environment as it exists now, and the reasonably foreseeable future state of the environment as it might be modified by the implementation of resource consents which have been granted, where it appears likely that those resource consents will be implemented. This approach to the ‘environment’ has been applied by the Courts both with respect to resource consents (as in RMA, s104(1)), and to designations (as in RMA, s171(1) – see approach in *City Rail Link Ltd v Auckland Council* [2017] NZEnvC 204 at [43]).

⁶⁴ *Royal Forest and Bird Protection Society of New Zealand Inc v Buller District Council* [2013] NZHC 1324, [2013] NZRMA 275 at [43]-[44]; *Queenstown Central Ltd v Queenstown Lakes District Council* [2013] NZHC 815, [2013] NZRMA 239 (HC) at [85].

- 61 The relevant environment for the purposes of the Application is described in Volume A of the Application.
- 62 The Project is located within a rural environment, varying between pastoral land, commercial forestry and stretches of native and exotic vegetation, and crossing the Brynderwyn Hills.
- 63 SH1 is the primary route of travel in the area, with the local road network providing connection to State Highway 16 and access across the Proposed Designation. As noted above, SH1 in the Project Area lacks resilience, leading to frequent closures. The existing alignment does not meet national standards for safety and its lack of resilience is an impediment to Northland's economic growth. These issues are expected to further deteriorate in the future environment.
- 64 Overall, the Project provides net positive environmental impacts and the Project's overall regional and national benefits will be significant.
- 65 Project impacts that do require management (such as erosion sediment control and construction traffic) are generally of a nature that is well-understood and anticipated in an environment of regional growth and development. Most are temporary in nature, and all can be effectively managed using familiar, tried and true measures, tested over numerous large-scale rural roading projects.
- 66 The Project's environmental impacts have been comprehensively assessed by a team of experienced experts.⁶⁵ In completing these assessments, NZTA has asked its experts to undertake their assessments in light of the FTAA and to consider whether departures from industry guidelines or practice are appropriate. Assessments of impacts are included in the Application, with more detail provided in the appended technical reports.

Consistency with other relevant statutory requirements

- 67 The Application comprehensively assesses the Project against relevant statutory requirements, concluding that the Project amply satisfies them.⁶⁶ In summary, the Project:
- 67.1 Satisfies the requirements of section 171(1) RMA (as required by Schedule 5 FTAA);⁶⁷
- 67.2 Has been developed to ensure consistency with the relevant higher order instruments and planning instruments as far as practicable;⁶⁸

⁶⁵ As summarised in Volume B Part C of the Application.

⁶⁶ Namely the RMA, Wildlife Act and HNZPTA, as required under s81(3) FTAA.

⁶⁷ As required by RMA, s171(1)(b) and (c) and FTAA, Schedule 5, cl24.

⁶⁸ FTAA, Schedule 5, cl5(2).

- 67.3 Meets the purpose of the Wildlife Act and will manage effects associated with the handling, salvage transfer / relocation of native lizards, Hochstetter's frogs and invertebrates (and incidental kill) through the proposed wildlife approval conditions (including requirements for management plans);⁶⁹ and
- 67.4 Satisfies the requirements of the HNZPTA and will manage and regulate the Project's potential effects on archaeology through the proposed archaeological authority conditions (including a requirement for an archaeological management plan).⁷⁰

PART 3: CONDITIONS

Summary

- 68 NZTA has proposed a robust suite of conditions and a comprehensive mitigation package for the Project. The proposed conditions are in Volumes B, C and D of the Application documentation⁷¹ (*Proposed Conditions*).
- 69 The Proposed Conditions have been prepared to meet the requirements of the FTAA, and therefore are different from conditions that have been imposed on other, recent NZTA projects considered and/or prepared under the RMA, Wildlife Act or HNZPTA. As noted above, NZTA has carefully considered its approach to mitigation, seeking to appropriately balance the efficient and cost-effective delivery of significant and resilient infrastructure with the potential for adverse environmental impacts.
- 70 As set out above, when considering an application, including conditions proposed as part of that application, the Panel must take into account and give the greatest weight to the purpose of the FTAA.⁷² The Panel also must not set conditions that are more onerous than necessary to address the reason for which those conditions are set.⁷³
- 71 NZTA's view, supported by its technical experts and assessments, is that the mitigation package provided through the Proposed Conditions responds appropriately to the Project's impacts. We submit that the level of mitigation offered by NZTA is more than adequate to satisfy the FTAA tests, particularly in light of the

⁶⁹ FTAA, Schedule 7, cl5.

⁷⁰ HNZPTA, ss59(1)(a), 47(1)(a)(ii) and (5) and FTAA, Schedule 8, cl4.

⁷¹ The Proposed Condition sets are contained and described in the Application at Volume B Part E and Appendix E (proposed resource consent and NOR conditions), Volume C section 15 and Appendix D (proposed wildlife authority conditions) and Volume D section 11 and Appendix C (proposed archaeological authority conditions).

⁷² FTAA, s81, Schedule 5, cl17 and cl24, Schedule 7, cl5 and Schedule 8, cl4.

⁷³ FTAA, s83.

Project's significant regional and national benefits, the directions of the NPS-I and the GPS 2024 and the purpose of the FTAA.

- 72 To assist the Panel in considering the Proposed Conditions, in this section we:
- 72.1 Provide a summary of the key legal principles governing the imposition of conditions; and
- 72.2 Address core components of the Proposed Conditions:
- (a) Flexible consenting approach;
 - (b) No waiver of the Outline Plan requirement;
 - (c) Management plans; and
 - (d) Lapse and Duration.

Legal principles

- 73 The approvals sought in the Application may be granted subject to conditions.⁷⁴
- 74 The Panel may impose any condition on a resource consent that it considers "*appropriate*";⁷⁵ provided those conditions are "*directly connected to... an adverse effect of the activity on the environment*" or "*an applicable district or regional rule*".⁷⁶
- 75 Case law also establishes that conditions must be for a resource management purpose (not an ulterior one), fairly and reasonably relate to the approved development, and be reasonable.⁷⁷ Conditions must also be certain, enforceable, not delegate decision-making powers, and not rely on third parties.⁷⁸ NZTA has carefully considered and will continue to consider these legal principles in the development of the Proposed Conditions. We submit the legal

⁷⁴ FTAA, s81(2)(e). For resource consents, see FTAA, Schedule 5, cl18. For designations, see FTAA, Schedule 5, cl25. For wildlife approvals, see FTAA, Schedule 7, cl6. For archaeological authorities, see FTAA, Schedule 8, cl5(1).

⁷⁵ FTAA, Schedule 5, cl18. RMA, s108.

⁷⁶ RMA, s108AA(1)(b), pursuant to FTAA, Schedule 5, cl18 and cl25. Although s108AA does not expressly apply to designations, we submit that same requirements for conditions should similarly apply.

⁷⁷ *Newbury District Council v Secretary of State for the Environment* [1980] 1 All ER 731; adopted by the Supreme Court in *Waitakere City Council v Estate Homes Limited* [2007] 2 NZLR 149; (2007) 13 ELRNZ 33; [2007] NZRMA 137 (SC) at [20] and [61], [64]-[66]; and cited more recently by the High Court in *Ngai Te Hapu Incorporated v Bay of Plenty Regional Council* [2018] NZHC 1710 at [45].

⁷⁸ These requirements have been considered throughout case law, for example, see *McKay v North Shore City Council* EnvC W146/1995; [1995] ELHNZ 382 (where the proposed conditions sought to impose restrictions on third parties, which the Planning Tribunal deemed to be ultra vires and unenforceable); *Mount Field Limited v Queenstown Lakes District Council* [2012] NZEnvC 262 at [77] (where the Court noted conditions must be certain and could not delegate the making of substantive decisions), citing *Royal Forest and Bird Protection Soc v Gisborne District Council* (W26/2009) at [88]. These requirements have also been recognised in the Environment Court Practice Note 2023, at paragraph 10.4(e).

requirements for conditions established in RMA caselaw are applicable to all approvals granted under the FTAA.⁷⁹

- 76 In the FTAA context, the general legal principles above are subject to the requirement that any conditions set by the Panel must also be “*no more onerous than necessary to address the reason for which those conditions are set.*”⁸⁰ The Panel must also, when considering conditions, take into account and give the “*greatest weight*” to the purpose of the FTAA.⁸¹
- 77 Under the FTAA, approval may only be declined if the Panel considers the Project’s adverse impacts “*are sufficiently significant to be out of proportion to the project’s regional or national benefits.*”⁸² We submit that any residual effects fall short of that threshold.⁸³
- 78 Further, NZTA does not support inclusion of administrative conditions or conditions that replicate statutory requirements in the RMA or other legislation. These kinds of conditions are not necessary to manage effects and are not for a clear resource management purpose.

A flexible consenting approach

- 79 As described in the Application, the final design of the Project may differ from the Indicative Alignment. The Proposed Conditions have therefore been carefully designed to ensure the effects of the Project will be appropriately managed, while providing flexibility as the Project’s design is finalised.
- 80 NZTA has therefore not proposed a traditional ‘Condition 1’ that would require the Project to be constructed and operated “*in general accordance with*” specified drawings and documents, such as those lodged as part of the Application.
- 81 The ‘no Condition 1’ approach is particularly beneficial to large linear infrastructure projects, where optimisation of the design is a standard practice during detailed design. Such optimisation allows for refinement of elements such as cut-fill balance and horizontal and vertical alignment, which can reduce both environmental effects and overall costs. For this Project, changes will occur through the detailed design phase once a contractor has been appointed. These changes will occur whether a ‘Condition 1’ is imposed or not. If a conventional ‘Condition 1’ was imposed, refinements to the Indicative Alignment through detailed design would likely necessitate alterations to designations or amendments to consent

⁷⁹ Noting the Newbury principles have been expressly applied by the Environment Court to the conditions of an archaeological authority issued under the HHZPTA. See *Ngati Pukenga ki Pakikaikutu v Heritage NZ Pouhere Taonga* [2019] NZEnvC 109 at [65].

⁸⁰ FTAA, s83.

⁸¹ FTAA, s81, Schedule 5, cl17(1) and cl24, Schedule 7, cl6 and Schedule 8, cl5.

⁸² FTAA, s85(3)(b).

⁸³ *Drury Metropolitan Centre Stages 1 and 2* FTAA Panel Decision, paragraphs 155-157.

conditions, resulting in significant additional cost and delays to procurement, construction and the realisation of the Project's many national and regional benefits.

- 82 The 'no Condition 1' approach thus supports more efficient delivery of the Project, enables technical innovations, adoption of lessons learned from other projects, and responsiveness to evolving requirements, provided that environmental outcomes remain uncompromised.
- 83 Importantly, the flexibility of the 'no Condition 1' approach does not reduce the level of environmental protection nor weaken NZTA's legal obligations. In developing the Application, the Project team has been careful to ensure:
- 83.1 The assessments of effects considered both the Indicative Alignment and potential amendments to the design that might occur within the Proposed Designation (ie 'sensitivity testing' was carried out in each of the assessments).
- 83.2 The Proposed Conditions secure the 'envelope of effects' that has been assessed and the proposed management/mitigation responds to those effects. The conditions are outcomes-based and NZTA and its experts consider they will appropriately avoid, remedy or mitigate adverse effects of the Project where required, regardless of design amendments.
- 84 This approach is a lawful and accepted approach for large scale infrastructure projects. It has been approved by decision-makers for other NZTA projects, including P2W,⁸⁴ Warkworth to Wellsford⁸⁵ Cambridge to Piarere⁸⁶ and Takitimu North Link.⁸⁷

No waiver of Outline Plan

- 85 NZTA has not sought a waiver of the requirement for an outline plan (under section 176A RMA) to be prepared for the Project. Accordingly, NZTA will submit an outline plan to WDC and KDC prior to commencing each stage of works, which will address (among other things) the "*height, shape, and bulk*" of the Project, the "*likely finished contour*" following construction of the Project, the proposed landscaping and other matters to avoid, remedy or mitigate adverse environmental effects.⁸⁸

⁸⁴ Ara Tūhono – Pūhoi to Wellsford Road of National Significance: Pūhoi to Warkworth Section.

⁸⁵ Ara Tūhono - Warkworth to Wellsford project.

⁸⁶ SH1 Cambridge to Piarere Long Term Improvements Project.

⁸⁷ Takitimu North Link Stage 2 project. Noting no Condition 1 was imposed on the designation conditions, and a 'flexible Condition 1' was imposed on the resource consent conditions requiring the project to be in 'general accordance' with the application 'subject to detailed design', and except for where the application is amended through conditions, management plans or the outline plan of works process.

⁸⁸ RMA, s176A.

86 The Proposed Conditions generally do not include matters that are required by section 176A RMA to be addressed in the outline plan. Where additional specificity is required, some of the Proposed Conditions set specific requirements to be addressed in the outline plan, and the normal process for Council review will apply.

Management Plans

87 Drafts have not been prepared or provided for management plans referred to in the designation and consent conditions. We submit that draft management plans are not required now as part of the Application because the Proposed Conditions appropriately identify the outcomes to be achieved (the 'what'). Management plans will be prepared once the final design is known to detail the actions to be taken to achieve those outcomes (the 'how').⁸⁹ Ultimately, the plans required by the designations will pass through the outline plan process.

Duration and lapse

88 As detailed in the Application,⁹⁰ construction of the Project could be completed within six years of commencement. However, the lapse and direction of consents must accommodate for a successful procurement and pre-implementation process, and delivery of enabling works prior to construction commencement. For these reasons, NZTA is seeking:

88.1 A 20-year duration for the resource consents that will authorise construction activities, to provide for procurement and pre-implementation lead in time and durations of 35 years for long-term or operational activities such as structures in watercourses, stream diversions and stormwater discharges.

88.2 A 20-year lapse period for all resource consents.⁹¹

88.3 A duration of 20 years for the archaeological authorities and the wildlife approval, to be consistent with the duration sought for the construction activity consents.⁹²

89 We submit that, in all the circumstances of the Project, the above duration and lapse periods are both reasonable and appropriate.

⁸⁹ *Summerset Villages (Lower Hutt) Limited v Hutt City Council* [2020] NZEnvC 31 at [156].

⁹⁰ Application, Volume A section C4.3.1.

⁹¹ FTAA, Schedule 5, cl26(2).

⁹² The FTAA permits a duration of up to 35 years for archaeological authorities, FTAA, Schedule 8, cl6(2). The FTAA is silent on a default time period for wildlife approvals, which is consistent with the Wildlife Act. It is submitted that this silence means the FTAA does not limit the duration of wildlife approvals, and that the Panel should not read such a limitation into the statute.

PART 4: CONCLUSIONS

- 90 Overall:
- 90.1 The Project will have significant national and regional benefits, and will achieve the purpose of the FTAA;
 - 90.2 The Project's overall adverse impacts will not be significant. The Proposed Conditions are practical, reasonable and robust and are proportionate to the effects they address; and
 - 90.3 The substantial national and regional benefits of the Project significantly outweigh any residual adverse impacts.
- 91 We therefore submit that none of the FTAA's mandatory or discretionary matters for decline of the Approvals are engaged and the Application must be approved by the Panel. Furthermore, we submit that the Panel should approve the Application subject to the Proposed Conditions, for all the reasons stated above.

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2 April 2026