

Before the Panel

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*under:* the Fast-track Approvals Act 2024

*in the matter of:* an application for resource consents, approvals and a notice of requirement to alter a designation, to construct a four-lane, median divided highway to replace existing State Highway 2 corridor between Te Puna and Ōmokoroa, known as 'Takitimu North Link - Stage 2'

*applicant:* **NZ Transport Agency Waka Kotahi**  
*Requiring Authority and Applicant*

Closing legal submissions on behalf of NZ Transport Agency Waka Kotahi

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Dated: 16 February 2026

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## **CLOSING LEGAL SUBMISSIONS ON BEHALF OF THE NZ TRANSPORT AGENCY WAKA KOTAHI**

### **INTRODUCTION**

- 1 These submissions have been prepared on behalf of the New Zealand Transport Agency Waka Kotahi (*NZTA*)<sup>1</sup> in relation to its application for a suite of approvals under the Fast Track Approvals Act 2024 (*FTAA* or *Act*) for the construction, operation and maintenance of the Takitimu North Link Stage 2 Project (*the Project*) (*Application*).
- 2 These submissions are intended to assist the Panel in making its decision and determining appropriate conditions to be imposed on the approvals sought in the *Application*. As such, these submissions focus on the outstanding matters on which the Panel will be required to make a determination, and the statutory framework within which that determination is to be made.
- 3 Specifically, these submissions address:
  - 3.1 NZTA's statutory obligations as a Crown-entity;
  - 3.2 Requirements for appropriate conditions;
  - 3.3 NZTA's approach to ensuring the safe operation of the state highway network;
  - 3.4 Issues raised by Pirirākau and Ngāti Taka hapū;
  - 3.5 NZTA's updates to conditions following further engagement with administering agencies and hapū; and
  - 3.6 Issues remaining for the Panel's consideration, specifically:
    - (a) No condition 1;
    - (b) Provision of draft management plans as part of the *Application*;
    - (c) Deemed certification;
    - (d) Management of effects on streams;
    - (e) Maintenance requirements for wetlands;
    - (f) Obligations relating to bat and lizard management; and

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

- (g) Wildlife approval and archaeological authority conditions.

- 4 NZTA's proposed suite of conditions for the various approvals sought for the Project is attached as **Appendix A** to these submissions (*Proposed Conditions*).

**PART 1: NZTA'S POSITION IS THAT THE CONDITIONS ARE APPROPRIATE**

- 5 The Project has significant benefits, meets the purpose of the Act and, in our submission, the Proposed Conditions are appropriate.
- 6 There is agreement between NZTA, hapū and administering agencies on the Project's benefits and on most of the Project's potential adverse effects and proposed mitigation. Since lodgement of the Application, the parties' focus has largely been on the few areas of potential adverse effects that are not agreed (in particular in relation to ecology), and whether NZTA's proposed conditions are "enough" to manage those effects. NZTA has proposed a suite of outcomes-based conditions, requiring ecological effects to be mitigated on a 'like for like' basis, with monitoring to ensure those outcomes are met. The various administering agencies generally seek a higher quantum of mitigation and more prescriptive conditions.
- 7 This focus on adverse effects and desire for more prescriptive conditions is not unusual. In fact, it has often been NZTA's experience in consenting state highway projects. However, for this Project, the first of NZTA's projects to be considered under the FTAA, we respectfully submit the Panel is required to look at the remaining areas of dispute in the context of the "bigger picture".
- 8 In summary, we submit that the "bigger picture" is:
  - 8.1 The Project meets the purpose of the Act.
  - 8.2 The benefits of the Project are substantial and are not in dispute. The Project is a critical upgrade to State Highway 2 between Te Puna and Ōmokoroa. It is expected to reduce deaths and serious injuries, improve network resilience and reliability, support economic and population growth, and is essential to unlocking planned subregional growth and development in the Western Bay of Plenty. It has widespread support. It is notable that none of the comments received on the Application opposed the Project or sought that it be declined.
  - 8.3 As is inevitable with large scale infrastructure, the Project will result in some adverse effects.
  - 8.4 NZTA's proposed mitigation is more than what is necessary to mitigate the effects of the Project. Any residual adverse

effects are minor and, in many instances, the effects are positive.

- 8.5 The FTAA is not a “no effects” statute. In fact, it expressly allows for residual adverse effects to remain. It also requires the Panel to place more weight on the purpose of the Act – that is, facilitating the delivery of the Project - than on any adverse effects.<sup>2</sup>
- 8.6 There is widespread agreement between NZTA, administering agencies and hapū on the Proposed Conditions. The key remaining areas of disagreement relate to differences of technical opinion in respect of ecological effects (streams, wetlands, bats and lizards) and the appropriateness and certainty of the conditions to manage those effects.
- 8.7 With respect to ecology, the Department of Conservation (*DOC*) and Bay of Plenty Regional Council (*BOPRC*) (to a lesser extent) are looking for “more”: more detail, more weight placed on “potential” values, more prescriptive condition requirements, more long-term protection, more management plans, more monitoring, more offsetting and, ultimately more mitigation. This approach ultimately leads to more onerous conditions, more complexity in implementation, more time and more cost for NZTA (and taxpayers) in its delivery of the Project.
- 8.8 In the opinion of NZTA’s experts, the “more” being requested by DOC and BOPRC is not necessary to manage the effects of the Project and will not necessarily result in better ecological outcomes. NZTA accepts that it should mitigate the effects of the Project and has proposed an extensive mitigation package, supported by its experts. However, we submit that mitigation should be necessary on the evidence and proportionate and reasonable in the context of the FTAA and the significant benefits of the Project.
- 8.9 While DOC and BOPRC’s approach may be well-intentioned, the “more” approach is entirely contrary to the purpose of the Act (which is, expressly, the most important factor in the Panel’s determination of the Project under the FTAA), and we submit, that approach is not justifiable on the basis of the evidence before the Panel.
- 8.10 NZTA’s position, as set out in its technical assessments and reinforced through engagement with relevant agencies and hapū, is that its Proposed Conditions are more than sufficient to address the actual and potential adverse effects of the Project. Any additional requirements would be more onerous

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<sup>2</sup> FTAA, Sch 5, cl17.

than necessary and inconsistent with the purpose and statutory tests of the FTAA.

- 9 We therefore respectfully request the Panel grant the Application with NZTA's Proposed Conditions.

**PART 2: NZTA IS A CROWN ENTITY WITH STATUTORY OBLIGATIONS**

- 10 At the outset, we emphasise the nature of the requiring authority and applicant in this case, NZTA, and its statutory functions and obligations.
- 11 NZTA is a Crown entity and the statutory body responsible for operating, maintaining, and developing the state highway network throughout New Zealand, pursuant to section 95(1)(h) of the Land Transport Management Act 2003 (*LTMA*). NZTA is also a Requiring Authority under section 167 of the Resource Management Act 1991 (*RMA*), and is authorised to lodge applications for major infrastructure projects under the FTAA.
- 12 As the statutory road controlling authority for the state highway network, NZTA is responsible for the construction, operation, and maintenance of large-scale transport infrastructure across the country. NZTA has decades of experience in delivering complex projects in diverse environments, engaging with a broad range of stakeholders, and managing significant construction and earthworks activities. NZTA is statutorily obligated under the LTMA to contribute to an effective, efficient, and safe land transport system in the public interest.<sup>3</sup>
- 13 NZTA is distinct from private or ad hoc developers. NZTA is a longstanding Crown entity with statutory obligations to act in the public interest and to demonstrate social and environmental responsibility in carrying out its functions.<sup>4</sup> NZTA is responsible for both the construction and the operation of the Project. It has an ongoing interest in ensuring that environmental effects and any other concerns are properly addressed, both during construction and once the infrastructure is operational. NZTA recognises the importance of maintaining its reputation as a responsible and trusted constructor and operator of nationally significant infrastructure. NZTA takes its statutory obligations and responsibilities very seriously.
- 14 To ensure it is able to meet its statutory obligations, NZTA is empowered, through the Government Rounding Powers Act 1989 (*GRPA*) to do all things necessary to construct and maintain in good repair any state highway.<sup>5</sup> This includes managing access, putting in

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<sup>3</sup> LTMA, s95(1)(a).

<sup>4</sup> LTMA, s95; Crown Entities Act 2004, s14.

<sup>5</sup> GRPA, s61(4)

place safety measures, widening state highways and closing state highways as it determines necessary. NZTA is empowered to make decisions on state highway upgrade projects and the scope, location and timing for those works to ensure it can manage the state highway network so as to meet its statutory obligations. NZTA's systems for ensuring the state highway network operates safely are directly relevant to the Panel's requests for information in relation to the tie-in of the Project with SH2 south of the Waipapa Bridge. These matters are discussed in greater detail at Part 4 below.

**PART 3: CONDITIONS ARE TO BE "NO MORE ONEROUS THAN NECESSARY"**

- 15 The FTAA represents a deliberate departure from the traditional consenting regime, recognising 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 significant infrastructure.
- 16 The Act is expressly designed to streamline approvals, reduce unnecessary procedural barriers, and enable more agile and responsive decision-making. It requires conditions to be proportionate, and we submit, supports the adoption of effects-based and outcomes-focused conditions, rather than being constrained by prescriptive or process-heavy conditions that do not directly address or manage the actual adverse effects of a proposal. The FTAA explicitly requires conditions to be "no more onerous than necessary".<sup>6</sup>
- 17 The FTAA decision-making framework governing the Panel's consideration of the Application is outlined in our opening legal submissions and is not repeated here, save to reiterate that:<sup>7</sup>
  - 17.1 The Project clearly meets the purpose of the FTAA, the factor to which the Panel must give 'greatest weight' when considering the Application.
  - 17.2 The Project has significant regional and national benefits, which are not in dispute.
  - 17.3 None of the comments received on the Application opposed the Project or sought that it be declined.
  - 17.4 The Panel's scope to decline the Application is limited. The Project is eligible, is consistent with relevant Treaty settlements and any adverse effects after mitigation will be no

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<sup>6</sup> FTAA, s83

<sup>7</sup> [Memorandum of legal submissions considerations on behalf of the New Zealand Transport Agency Waka Kotahi](#) dated 1 August 2025, paragraphs [18]-[35].

more than minor. We submit that none of the potential grounds for decline are engaged.

- 17.5 The Panel must also have regard to the NPS-I. As set out in the memorandum of counsel provided in response to RFI4,<sup>8</sup> the NPS-I introduces a more enabling and benefits-focused framework for the assessment of nationally significant infrastructure proposals such as the Project. Importantly, the NPS-I includes a more flexible approach to effects management, requiring management of adverse effects, rather than strict avoidance or remediation.<sup>9</sup> The NPS-I also provides a clear directive that national, regional and local benefits are to be recognised and provided for by decision-makers, relative to any localised adverse effects.<sup>10</sup> The Panel must seek to reconcile the provisions of the NPS-I with any other relevant NPSs.
- 17.6 Overall, the legal framework under the FTAA, even more so since the inclusion of the NPS-I within that framework, strongly supports the approval of the Project, subject to the conditions proposed by NZTA. The Proposed Conditions are specifically designed to facilitate the delivery of the Project (ie the purpose of the Act) and manage the environmental effects of the Project.
- 17.7 The Project has been comprehensively assessed against all relevant statutory requirements. Because the Application was initially prepared under the RMA, the Application and Project not only meets the tests set out in the FTAA and relevant provisions of the RMA, Heritage New Zealand Pouhere Taonga Act 2014 (*HNZPTA*), and Wildlife Act 1953 (*Wildlife Act*), but in many respects exceeds the statutory requirements and tests applicable under the FTAA.
- 18 Accordingly, we submit that the grant of the approvals for the Project is not in dispute. As such, the Panel's focus must be on ensuring the conditions to be imposed on the approvals are appropriate.

**"Appropriate" conditions**

- 19 The Panel's discretion to impose conditions is limited to conditions that are "no more onerous than necessary" to address the reason for which those conditions are set.<sup>11</sup> Any conditions beyond those

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<sup>8</sup> [Memorandum of Counsel dated 19 January 2026](#).

<sup>9</sup> Noting, as per the NPS-I Explanatory Note: "No national policy statement overrides another. Each national policy statement must be applied to the relevant decision-making process." The Explanatory Note also states that the NPS-I must be read alongside other national direction and local authority planning documents that govern s6 environments and values of the RMA.

<sup>10</sup> Policy 1(1).

<sup>11</sup> FTAA, s83.

proposed in Appendix A would, in NZTA's submission, be more onerous than necessary.

- 20 NZTA has proposed a suite of robust, proportionate, and effects-based conditions to ensure that any adverse effects are appropriately managed. These conditions are designed to secure environmental outcomes commensurate with the Project's effects, while providing flexibility for detailed design and implementation. This approach both ensures management of effects, and facilitates the delivery of the Project.

### **Legal requirements for conditions**

- 21 Conditions imposed by the Panel must also adhere to the requirements for legally enforceable conditions under section 108AA of the RMA.
- 22 The Panel may impose any condition on a resource consent that it considers "appropriate"<sup>12</sup> but may only impose conditions that are "directly connected to... an adverse effect of the activity on the environment" or "an applicable district or regional rule".<sup>13</sup>
- 23 Case law establishes other requirements for legally valid conditions, including that conditions must:
- 23.1 be for a resource management purpose (not an ulterior one), fairly and reasonably relate to the consented development, and be reasonable;<sup>14</sup>
- 23.2 be certain and enforceable;<sup>15</sup>
- 23.3 not frustrate the exercise of the consent being sought;<sup>16</sup> and
- 23.4 not rely on third parties.<sup>17</sup>

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<sup>12</sup> RMA, s108.

<sup>13</sup> RMA, s108AA(1)(b). Although section 108AA does not expressly apply to designations, it is submitted that same requirements for conditions should similarly apply.

<sup>14</sup> *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 at [65]-[67]; [2007] NZRMA 137 (SC) and cited by the High Court in *Ngai Te Hapu Incorporated v Bay of Plenty Regional Council* [2018] NZHC 1710 at [45].

<sup>15</sup> *Wood v Selwyn District Council* PT Decision C35/94, page 16 citing *Bitumix Limited v Mount Wellington Borough Council* NZSC Wellington, 10 October 1978, [1979] 2 NZLR 57.

<sup>16</sup> *Residential Management Ltd v Papatoetoe City Council* (Planning Tribunal A62/86, 29 July 1986,; *Lyttelton Port Company Ltd v Canterbury Regional Council* EnvC C008/01; *Taranaki Regional Council v Willan* [1996] ELHNZ 389.

<sup>17</sup> These requirements have been considered throughout case law, for example, see *McKay v North Shore City Council* EnvC W146/1995; [1995] ELHNZ 382 at [3] (where the proposed conditions sought to impose restrictions on third parties, which the Planning Tribunal deemed to be ultra vires and unenforceable); *Mount*

- 24 These legal principles have been carefully considered in the development of NZTA's Proposed Conditions, and it is submitted that these tests are met by the conditions set out in Appendix A.
- 25 Conversely, NZTA considers some conditions proposed by administering agencies do not satisfy the legal requirements for conditions. NZTA does not consider the reasoning offered by administering agencies that certain conditions are 'standard' and/or "what they always do" to be one that negates the legal requirements for a valid condition. For example, conditions proposed by DOC for the wildlife approval<sup>18</sup> relating to variations, costs, liabilities, revocation and compliance with legislation do not manage the effects of the Project. The imposition of these conditions would constitute the imposition of legally invalid conditions.
- 26 NZTA also observes a general resistance from some administering agencies to moving away from the status quo (acknowledging that, in the latest round of engagement, those agencies have departed from their 'standard' condition approaches in some respects). This resistance is understandable, particularly as it is often easier to do things the way they've always been done and there is unfamiliarity with how things should be done under the FTAA.
- 27 However, in our submission, a condition should not be imposed unless there is clear evidence that it is needed to ensure the Project is appropriately managed – to do otherwise would be an error of law. Conditions that are unclear, overly prescriptive, or refer to lengthy external documents that do not set clear requirements or outcomes similarly should not be adopted. Conditions must be clear and enforceable, or they cannot be legally imposed.

#### **The Panel's task**

- 28 Condition setting for the Project must be carried out through the lens of the FTAA. Section 83 of the FTAA requires that any condition imposed by the Panel must not be more onerous than necessary to address the reason for which it is set. This requirement ensures that conditions are proportionate, targeted, and do not unnecessarily constrain the delivery of projects, while still achieving the required level of environmental and cultural protection.
- 29 In our submission it is for the Panel to determine whether those conditions sought by other parties are truly necessary. It is NZTA's position that they are not.

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*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 [10.4].

<sup>18</sup> As in [DOC's Wildlife approval report dated 25 November 2025 \(s51 report\)](#).

## **PART 4: NZTA'S APPROACH TO ENSURING THE SAFE OPERATION OF THE STATE HIGHWAY NETWORK**

### **Safety of the tie-in between the Project and Waipapa Stream Bridge**

- 30 As outlined in Part 2 above, NZTA is responsible for operating, maintaining and developing the state highway network and is statutorily empowered to do all things necessary for the construction and operation of the state highway network (under the LTMA and the GRPA). NZTA's powers include determining the scope and design of any state highway upgrade project. One of NZTA's key responsibilities is designing and operating the state highway network to ensure it operates safely. NZTA takes safety issues very seriously. It is not in the business of building unsafe roads.
- 31 The Panel's expert transport advisor, Mr Phil Harrison, has raised concerns about the safety of the tie-in between the Project and the Waipapa Bridge. Mr Harrison is of a view that in order for the tie-in to be safe, the bridge must be widened. NZTA's position on the concern raised by Mr Harrison is set out in its response to RFI2 dated 16 January 2026, RFI5 dated 16 February 2026 and in the evidence of Mr Hughes and Mr Johnston dated 16 February 2026. In summary:
- 31.1 NZTA is aware of and has considered the potential impact of the Project on the safety of SH2 north of the Project. NZTA has undertaken Safe System audits of the Project's tie-in with SH2 during the concept and preliminary stages of the Project's design cycle in accordance with the Safe System Audit Guidelines. These safety audits identified a number of potential mitigation measures that NZTA could consider implementing as part of the Project (pursuant to NZTA's powers as the road controlling authority in relation to the state highway network under GRPA). The most recent Safe System Audit recommended these measures be further investigated at future design stages. NZTA is following this recommendation and is already in the process of considering potential updated specimen design options for the tie-in to ensure the interface is managed safely. These specimen design options are currently going through a Safe System Audit process.
- 31.2 Mr Hughes' and Mr Johnston's evidence confirms that while widening the Waipapa Bridge is a possible action, there are a range of other options which could (are, and will) be considered to manage the transition between the Project and the existing state highway network. In addition to the process already underway, multiple future Safe System Audit processes will be completed for the Project (ie of the detailed design as well as at pre-opening and potentially post-construction) to determine which safety measures are ultimately implemented for the Project.

31.3 As outlined in Mr Hughes' and Mr Johnston's evidence, NZTA has robust processes for identifying and responding to safety issues as part of the development of upgrade projects. The tie-in between the Project and the Waipapa Stream Bridge is and will continue to be managed by NZTA under these processes in line with its statutory obligations under the LTMA and the GRPA. The evidence confirms that NZTA's safety procedures for this Project are operating as intended and will ensure the final design achieves appropriate safety outcomes.

**NZTA does not consider a Waipapa Stream Bridge Condition is vires**

32 By RFI dated 29 January 2026, the Panel asked for NZTA's view on a potential condition, recommended by the Panel's expert transport advisor, Mr Harrison requiring that *"the TNL2 project must include the widening of the Waipapa Stream Bridge and its approaches to provide sufficient width to enable the introduction of a median barrier and appropriate shoulder width suitable to accommodate walking and cycling with roadside barriers on each approach."*<sup>19</sup>

33 NZTA's response to the matters raised by Mr Harrison that precipitated RFI5 is set out above. In terms of the specific condition proposed (*the Harrison Condition*), we submit that it (or any similar condition, requiring the widening of Waipapa Bridge as part of, or prior to, the Project) would be invalid and ultra vires for the reasons that follow:

33.1 *The Harrison Condition is not necessary to address an effect of the Project on the environment.* NZTA understands the Harrison Condition is intended to address a potential safety issue that is functionally connected to the Project, that is, the tie-in between the Project and the existing SH2 south of the Waipapa Stream Bridge. NZTA acknowledges and agrees that the tie-in needs to be managed to ensure it is safe. This issue is present in varying degrees in all state highway upgrade projects when a new, four lane highway must connect to an existing, two-lane highway. In all such situations, NZTA must take steps to ensure a safe transition. Mr Hughes' and Mr Johnston's evidence confirms there are a range of operational safety measures that can be implemented to ensure the tie-in is safe and that widening of the bridge is merely one option. Their evidence confirms NZTA already has robust, well-established processes and procedures in place to identify and manage any potential safety issues. NZTA will implement appropriate safety measures and manage the tie-in in line with its statutory obligations under the LTMA and GRPA to ensure the state highway operates safely. Widening of the Waipapa Bridge as part of the Project is not required to manage the transition between the Project and the existing SH2.

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<sup>19</sup> [Technical Note by Phil Harrison to the Panel](#) dated 28 January 2026, paragraph ix.

33.2 *The Harrison Condition does not fairly and reasonably relate to the Project.* The Waipapa Stream Bridge is unequivocally outside the scope of the Project. It is outside of the Proposed Designation and outside of the Project area assessed for the Application. Consents required for widening the bridge have not been sought. It is well established in case law that, while conditions can help define and clarify the scope and extent of what is authorised,<sup>20</sup> they cannot expand the scope of an application, and any consent or condition must strictly be confined to what was actually applied for.<sup>21</sup>

33.3 *The Harrison Condition would be unreasonable, impractical<sup>22</sup> and overly onerous.<sup>23</sup>* The widening of the Waipapa Bridge would require NZTA to undertake significant works, that may not be practicable to achieve, including:

- (a) Completing various internal assessment and decision-making processes (including business case and alternatives assessment) to determine whether widening should or could take place or whether there are other, preferred ways of managing the interface;
- (b) Following investment decision-making processes and complying with relevant statutory requirements for approval of funding for state highway improvement activities, including under the LTMA;
- (c) Undertaking design and engineering work to establish whether widening the existing, concrete bridge is technically feasible, and determine what other options might be available as alternatives to bridge widening and to inform decision-making (including cost-estimates); and
- (d) If widening is determined to be technically feasible and confirmed to be the preferred option:
  - (i) obtaining additional resource consents (and possibly alterations to existing SH2 designations);

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<sup>20</sup> *Red Hill Properties v Papakura District Council* (2000) 6 ELRNZ 157 (HC), at [47]; *Gillies Waiheke Ltd v Auckland City Council* HC Auckland A131/02, A132/02, A133/02, 20 December 2002.

<sup>21</sup> *Sutton v Moule* (1992) 2 NZRMA 41 (CA) at 47-48.; *Manners-Wood v Queenstown Lakes District Council* NZEnvC Wellington W077/07, 12 September 2007 at [23].; *Duggan v Auckland Council* [2017] NZHC 1540, [2017] NZRMA 317 at [34]; *Zindia Ltd v Marlborough District Council* [2019] NZHC 2765 at [91]-[98]; *Aotearoa Water Action Incorporated v Canterbury Regional Council* [2018] NZHC 3240, [2019] NZRMA 316 at [124].

<sup>22</sup> *Munro v Manukau City Council* A074/01 [2001] ELHNZ 310 at [132]-[137].

<sup>23</sup> FTAA, s84.

- (ii) undertaking a suite of technical assessments to support those consents;
- (iii) undergoing all relevant statutory notification and consultation process for the bridge works; and
- (iv) likely acquiring land via the Public Works Act 1981.

A condition requiring NZTA to undertake all of the above steps, not to mention the significant physical works involved in widening the bridge, would be unreasonable, overly onerous and impractical.

33.4 *The Harrison Condition would frustrate the exercise of the consents being sought.*<sup>24</sup> The Harrison Condition would “lock in” an outcome that, given the matters set out in paragraph 33.3 and the inherent uncertainty in relation to all of them, NZTA may never be able to achieve. As such, the Harrison Condition would have the effect of frustrating the consents for the Project.

33.5 *The Harrison Condition would be unenforceable.* Compliance with the Harrison Condition would require NZTA to obtain additional approvals and would therefore be uncertain and unenforceable. As the Panel will be aware, a condition is unenforceable if it depends on the consent holder obtaining approval or consent from a third party.<sup>25</sup> The courts have consistently held that such conditions are invalid if they rely on actions that the consent holder does not have the power or ability to control.<sup>26</sup> Although NZTA controls the SH2 corridor, it does not have automatic authority to widen the Waipapa Stream Bridge without separate resource consents and without obtaining access to and/or acquiring private land. The Harrison Condition would also cut across NZTA’s road controlling authority powers. It would be well beyond the scope of the District Council’s regulatory powers under the RMA to enforce such a condition.

34 Any such condition is strongly opposed by NZTA.

35 NZTA is the road controlling authority for the state highway network. It is empowered under the LTMA and the GRPA to make decisions on and implement appropriate measures to manage the interface between the Project and the existing state highway network. These

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<sup>24</sup> *Residential Management Ltd v Papatoetoe City Council* (Planning Tribunal A62/86, 29 July 1986,; *Lyttelton Port Company Ltd v Canterbury Regional Council* EnvC C008/01; *Taranaki Regional Council v Willan* [1996] ELHNZ 389.

<sup>25</sup> *Dart River Safaris Ltd v Kemp* HC Christchurch AP600/2000, 15 June 2000 at [18].

<sup>26</sup> *McKay v North Shore City Council* W146/95; *Winstone Aggregates Ltd v Franklin District Council* ENC Auckland A080/02, 17 April 2002 at [30]-[34].

matters go beyond the jurisdiction of the RMA (and the FTAA). It is not, we submit, for the Panel or the Council to regulate or enforce, via the FTAA or 'RMA approvals', NZTA's decisions in respect of the management of the state highway network, which NZTA is statutorily empowered to make. Even if that were not the case, as demonstrated by Mr Hughes' and Mr Johnston's evidence, the safety of the Project and its tie-ins is able to be and will be appropriately managed by NZTA. There are no safety issues, or effects that need to be addressed via FTAA conditions.

#### **PART 5: HAPŪ CONCERNS ARE APPROPRIATELY ADDRESSED**

- 36 As anticipated in the Minute issued by the Panel dated 27 January 2026, we set out below a:
- 36.1 Summary of engagement process between NZTA and hapū and an update on the status of the Ngāti Taka relationship agreement; and
- 36.2 Response to the:
- (a) Draft additions/amended conditions and matters raised in hapū comments on the Application; and
  - (b) Matters raised by hapū in the Joint Witness Statement (JWS).<sup>27</sup>
- 37 NZTA has undertaken further engagement with hapū, subsequent to the conditions workshop. As a result, some additional amendments to the conditions have been made to the designation, resource consent and archaeological conditions. These changes are discussed below, and in Part 6 of these legal submissions (with respect to the archaeological authority conditions).

#### **NZTA engagement with hapū on the Project is longstanding, meaningful and will continue**

- 38 Engagement with Ngāti Taka and Pirirākau has been a central and ongoing component of the Project, spanning many years and reflecting NZTA's commitment to meaningful collaboration with both hapū.<sup>28</sup> Both Ngāti Taka and Pirirākau have been involved with the Project from the early stages and throughout the process to date, with engagement including regular hui, workshops, site inspections, and participation in the Multi Criteria Assessment process for route selection.<sup>29</sup> Both hapū were provided with drafts of the environmental effect assessments and offered an opportunity to provide comment on them. Hapū input has shaped the Project's alignment and design, particularly with respect to cultural values,

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<sup>27</sup> [Ecology JWS](#) dated 20 January 2026 and [Conditions Workshop JS](#) dated 21 January 2026.

<sup>28</sup> [Substantive Application for Approvals](#), Sections 1.4 and 3.4.

<sup>29</sup> Ibid.

avoidance of wāhi tapu and culturally significant sites, and the development of mitigation measures.<sup>30</sup>

- 39 Pirirākau and Ngāti Taka also prepared separate Cultural Impact Assessments (CIAs), which have informed both the Project and the Proposed Conditions. NZTA's approach has emphasised ongoing dialogue, so that hapū are involved not only in the design phase, but also in the development of management plans and during the construction phase.<sup>31</sup> A comprehensive record of all consultation and engagement with Ngāti Taka and Pirirākau is provided in Appendix 9.3 of the Substantive Application which we do not repeat here.<sup>32</sup>
- 40 Since lodgement, engagement between the parties has continued. NZTA, Pirirākau and Ngāti Taka hui on a regular basis, currently on a fortnightly basis.
- 41 NZTA, Pirirākau and Ngāti Taka are continuing to progress side agreements in relation to the Project, with a view to addressing the matters raised by hapū that are not appropriate for inclusion as conditions of consent.
- 42 NZTA reiterates its commitment to continued meaningful engagement with hapū and to acting reasonably, honourably and in good faith as the Project moves out of the consenting and into the detailed design, construction and delivery stages.<sup>33</sup>
- 43 With respect to the Ngāti Taka relationship agreement, NZTA and Ngāti Taka have discussed the nature of terms to be included in an agreement. Draft documentation has been prepared and is under consideration by both parties. NZTA reconfirms its commitment to finalising a relationship agreement and understands that is also Ngāti Taka's intent.
- 44 For the avoidance of doubt, any relationship agreement reached between the Applicant and the hapū is a matter of private contract between the parties. It is not a matter for conditions of consent. Any agreement between NZTA and hapū falls outside of the Panel's jurisdiction and the FTAA consenting framework.<sup>34</sup>

**Statutory obligations under the Ngā Hapū o Ngāti Ranginui Claims Settlement Act 2025**

- 45 Section 7(1)(a) of the FTAA requires all persons performing functions, powers, and duties under the Act to act in a manner consistent with the obligations arising under existing Treaty

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<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> [Appendix 9.3 – Record of Consultation and Engagement](#).

<sup>33</sup> Comments from Pirirākau, paragraph 16.1.

<sup>34</sup> *Ngāi Te Hapū Inc v Bay of Plenty Regional Council* [2017] NZEnvC 169 at [18]; In response to Comments from Pirirākau, paragraph 16.2.

settlements. Section 84 provides that the Panel may set conditions to recognise or protect a relevant Treaty settlement.<sup>35</sup> Section 85(1)(b) provides that the Panel must decline approvals if granting would be inconsistent with a relevant Treaty Settlement. The Ngā Hapū o Ngāti Ranginui Claims Settlement Act 2025 (*Settlement Act*) is relevant to the Project.

- 46 Pirirākau believe there is statutory recognition of the taiao and wai in the Project area under the Settlement Act, and have asked that these matters be protected through conditions of the consent on the Project.<sup>36</sup>
- 47 NZTA acknowledges the cultural and ecological significance of these receiving environments to Pirirākau, the importance of the Settlement Act and the Crown's role as a Treaty partner. However, it is important to clarify that the Settlement Act does not create statutory acknowledgements or impose specific obligations in relation to the taiao or wai within the Project area. This position is confirmed by the Section 18 report by the Ministry for the Environment for the Project, which only lists the Crown acknowledgements and apologies as relevant principles and provisions to the Project.<sup>37</sup> The Crown's acknowledgements in the Settlement such as recognising the significance of the land, forests, harbours, and waterways of Tauranga Moana to the hapū of Ngāti Ranginui are general in nature and the Application is consistent with them. There is no express statutory recognition of these matters under the Settlement Act, nor any requirement under the Settlement Act for these matters to be protected by NZTA through the conditions of consent.<sup>38</sup> We also note that consistency with Treaty settlement obligations does not require agreement with all hapū requests or objections.<sup>39</sup>
- 48 The Panel can be satisfied that:
- 48.1 The Application process has been undertaken by NZTA in a manner that is consistent with the general provisions of the Settlement Act, for the purposes of section 7(1)(a) of the FTAA. NZTA has actively engaged with hapū, including Pirirākau and Ngāti Taka, to ensure that their interests are recognised and that their views inform the development and implementation of the Project. NZTA has included provision for hapū views and cultural values to be recognised throughout

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<sup>35</sup> [Substantive Application for Approvals](#), Section 3.9.

<sup>36</sup> [Ecology JWS](#) dated 20 January 2026, Section 3.1, page 3.

<sup>37</sup> [Ministry for the Environment Treaty Settlements and Other Obligations \(Section 18\) Report](#) dated 19 September 2025, paragraphs [33]-[35].

<sup>38</sup> Noting a Crown Acknowledgement is a formal, non-binding recognition by the government of past actions or breaches of the Treaty of Waitangi affecting Māori. In contrast, a Statutory Acknowledgement is a legally binding recognition of an iwi or hapū's association with specific areas, incorporated into legislation and considered in statutory processes such as resource consent applications.

<sup>39</sup> [Comments from Pirirākau](#), section 13.2.

Project construction through hapū input into management plans, cultural monitoring, and detailed design. On top of this, NZTA has offered an *Augier* condition requiring the preparation of a Tangata Whenua Values Monitoring and Management Plan including a cultural indicators framework for the Project (discussed further below).

- 48.2 The grant of the approvals sought is consistent with section 7(1) of the FTAA, and, for the purposes of section 84(1), the Panel can be satisfied that there are no additional conditions, beyond those already proposed, that would be necessary or appropriate for the further recognition or protection of Treaty settlements in the context of this Project.
- 48.3 NZTA has provided adequate information in its Application to fulfil clause 5 of Schedule 3 to the FTAA.
- 49 In summary, NZTA has and continues to meaningfully engage with hapū and has provided for cultural values to be recognised, where appropriate, through the Proposed Conditions. We submit that granting the approvals would be consistent with relevant Treaty settlement obligations under section 7 of the FTAA.

**NZTA offers a Tangata Whenua Values Monitoring and Management Plan condition**

- 50 Hapū seek acknowledgement and protection of cultural values as identified in the submitted CIAs including the establishment of a cultural indicator framework and active roles for hapū in Project implementation, particularly in monitoring and mitigation activities.<sup>40</sup> NZTA has incorporated recommendations from the CIAs into the Project and Proposed Conditions where appropriate.<sup>41</sup>
- 51 The Proposed Conditions include:
- 51.1 Hapū involvement in the development of management plans;
  - 51.2 Hapū input into archaeological and heritage protection;
  - 51.3 Site visits and cultural inductions;
  - 51.4 Hapū ceremonies at key Project milestones;
  - 51.5 Provision of hapū advice on signs for wayfinding;

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<sup>40</sup> Ibid; [Comments from Pirirākau](#), section 15.2.

<sup>41</sup> [Attachment 6 – Response to comments from Pirirākau](#), item 2; [Attachment 7 – Response to comments from Ngāti Taka](#), item 3.

- 51.6 Cultural expression through Project design, including recording and incorporating cultural narratives into the Landscape and Visual Management Plan (LVMP) and detailed design;<sup>42</sup>
- 51.7 The employment of a Kaiarahi to manage Kaitiaki and Kaitiaki training to ensure sufficient capacity to undertake cultural monitoring;
- 51.8 Nomination of traditional names along the Project corridor; and
- 51.9 Reporting in relation to the Cultural Conditions Implementation Report, to require NZTA to prepare a final report subsequent to construction works being completed, in collaboration with hapū to record how the designation conditions have been implemented.<sup>43</sup>
- 52 NZTA does not consider additional conditions requiring a 'cultural indicator framework' are necessary to mitigate an effect of the Project on the environment.<sup>44</sup> Nevertheless, in recognition of its relationship with hapū, NZTA wishes to continue engaging with Pirirākau and Ngāti Taka to develop a cultural indicator framework that addresses specific effects on cultural values and is both meaningful to hapū and workable for implementation by a contractor. As such, NZTA has proposed a condition (on an *Augier* basis) requiring a Tangata Whenua Values Monitoring and Management Plan (TWVMMP).<sup>45</sup>
- 53 Both cultural indicators and cultural monitoring are now directly addressed through the TWVMMP, which is to be developed with hapū input. The TWVMMP will include, where practicable:
- 53.1 A Cultural Monitoring Framework, including identification of activities and sites requiring cultural monitoring, specification of cultural health indicators and parameters to be measured, and the number of personnel involved;
- 53.2 Processes to ensure consistency with other monitoring activities and to avoid duplication;
- 53.3 Opportunities for Ngāti Taka and Pirirākau to participate in activities relating to planting, pest control, fish surveys and/or transfer, species monitoring and translocation; and

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<sup>42</sup> Proposed Designation Condition LV2(e).

<sup>43</sup> Proposed Conditions CU5.

<sup>44</sup> [Attachment 6 – Response to comments from Pirirākau](#), item 10; [Attachment 7 – Response to comments from Ngāti Taka](#), item 3.

<sup>45</sup> Resource Consent LC.01 Proposed Condition 10 in response to [Comments from Pirirākau](#), section 15.2 and [Comments from Ngāti Taka](#), paragraph [51].

- 53.4 Procedures for recognising and responding to the discovery of significant cultural sites or items during Project works.
- 54 NZTA therefore considers the Proposed Conditions comprehensively address hapū concerns regarding cultural values and demonstrate NZTA's commitment to its relationship with Ngāti Taka and Pirirākau.

### **Hapū role in management plans**

#### *Co-development is not appropriate*

- 55 Both hapū have emphasised that management plans must be co-developed with NZTA to ensure they are active participants.<sup>46</sup> NZTA is committed to hapū participation in the management plan process. This commitment is confirmed in NZTA's Proposed Conditions which require NZTA to:
- 55.1 Provide Ngāti Taka and Pirirākau with draft management plans for their review;
- 55.2 Consider all written feedback from Ngāti Taka and Pirirākau on management plans;
- 55.3 Incorporate suggestions made by hapū where appropriate; and
- 55.4 Provide written reasons to hapū and council where hapū suggestions are not adopted.
- 56 NZTA considers that co-development is achieved through ongoing engagement, the incorporation of hapū feedback where appropriate, and transparent communication. However, NZTA does not consider it is appropriate for hapū to be joint authors of the management plans. Hapū are not the consent holder or the requiring authority. Management plans must be prepared by suitably qualified and experienced persons. NZTA must retain governance and ownership of the Project and management plans in accordance with its statutory obligations as the consent holder and requiring authority.
- 57 NZTA acknowledges the approach to the preparation of management plans in the Proposed Conditions does not fully achieve the partnership and decision-making roles sought by hapū. NZTA is committed to ongoing kōrero with hapū about their aspirations and role in relation to the Project (outside of the FTAA process). Additional consent conditions are not necessary.
- #### *Amendment and adaptation of management plans*
- 58 Both hapū have sought that any unforeseen effects as a result of Project Works should prompt changes to the implementation of management plans. Hapū seek that any amendments to the management plans trigger further consultation with them and a

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<sup>46</sup> [Ecology JWS](#) dated 20 January 2026, Section 3.1, pages 2-3; [Conditions Workshop JS](#), Section 3.9, pages 7-8; [Comments from Pirirākau](#), section 13.2

written statement of how the changes align with the outcome of that consultation and the proposed cultural indicator framework.<sup>47</sup>

- 59 NZTA agrees with hapū that should there be significant or substantive amendments proposed to management plans, hapū should have an opportunity to input into those changes. NZTA has therefore updated the Proposed Conditions for all approvals with management plans to allow provision for hapū to review and provide comment on updated management plans, where practicable. NZTA considers the 'where practicable' qualifier to be appropriate, to allow for situations where, due to the nature of the update or reasoning behind it, it needs to be progressed urgently (eg an update to an Erosion and Sediment Control Plan due to unexpected weather conditions).

#### **Hapū - stream and watercourse impacts**

- 60 As set out in the JWS, hapū support conditions specifying where impacts on streams will occur, how functional and cultural equivalence will be achieved, and what remediation and mitigation measures apply if outcomes are not delivered.<sup>48</sup>
- 61 NZTA recognises the importance of cultural values in relation to watercourses and specifically culturally significant awa. The effects of the Project on watercourses and awa, including effects on the values of those waterbodies have been fulsomely assessed by NZTA's experts (and those of BOPRC and DOC) and extensive conditions have been proposed to ensure those effects are appropriately managed (including ensuring compliance with the requirements of the National Policy Statement for Freshwater Management 2020 (*NPS-FM*), even though such compliance is not required). As outlined above, the conditions also include requirements for cultural monitoring, provision for the development of a cultural indicators framework and hapū involvement in ecological related works where appropriate (eg planting, pest control, species monitoring and translocation, and fish surveys).<sup>49</sup>
- 62 However, NZTA does not consider a condition requiring NZTA to achieve 'cultural equivalence' of waterbodies is necessary or justifiable to manage an identifiable effect of the Project based on the ecological assessments and evidence of effects of the Project. Furthermore, it is not clear or certain what 'cultural equivalence' means, how it could be achieved or how compliance with a condition requiring it could be regulated by the council. NZTA therefore strongly opposes the inclusion of such a condition.

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<sup>47</sup> [Ecology JWS](#) dated 20 January 2026, Section 3.1, page 3; [Comments from Pirirākau](#), section 13.2 and [Comments from Ngāti Taka](#), paragraph [36].

<sup>48</sup> [Ecology JWS](#) dated 20 January 2026, section 3.2, page 4.

<sup>49</sup> Resource Consent LC.01 Proposed Condition 10.1(b).

### **Hapū - wetlands and stormwater**

- 63 Through the JWS, Pirirākau suggested, in relation to Takitimu North Link – Stage 1, that "*legal action had to be taken to get remedial action undertaken when stormwater devices failed and adverse effects on adjoining land occurred.*"<sup>50</sup> While not immediately relevant to the Project, given the potential reputational and compliance implications of Pirirākau's statement, NZTA wishes to clarify, for the record, that the suggestion made by Pirirākau is incorrect.
- 64 NZTA understands that the incident referred to in the JWS was an unforeseen device failure at the Te Mete Road area, which occurred subsequent to a heavy rain event, and resulted in pumice entering a nearby watercourse. The discharge lasted approximately one hour before being stopped, and NZTA's contractor self-reported it to BOPRC and subsequently received a non-compliance notice from BOPRC in relation to the incident.<sup>51</sup>
- 65 NZTA's contractors identified the discharge and:
- 65.1 Immediately actioned a clean-up;
  - 65.2 Undertook an assessment of environmental effects which confirmed the discharge had no adverse impact to the stream;
  - 65.3 Identified and immediately corrected the device failures; and
  - 65.4 Immediately notified the Kaiarahi, neighbouring properties and BOPRC.
- 66 BOPRC compliance officers confirmed that immediate remedial actions had been taken by NZTA and that the matter had been managed appropriately, with no adverse impact to the stream. No legal action was taken against NZTA or its contractors in relation to the incident (nor has any action been taken against NZTA or its contractors in relation to the construction of Takitimu North Link Stage 1 more generally).<sup>52</sup>
- 67 NZTA assumes the Stage 1 incident was raised by hapū in connection with their concern that erosion and sediment control plans for Stage 2 need to be robust and include enforceable remedial actions.<sup>53</sup> NZTA agrees and confirms that as per the Proposed Conditions, the management plans include enforceable remedial actions and are

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<sup>50</sup> [Ecology JWS](#) dated 20 January 2026, section 3.4.

<sup>51</sup> Noting that a non-compliance is not 'legal action', and that no legal notices (eg an abatement or infringement notice) were issued.

<sup>52</sup> Bay of Plenty Regional Council Compliance Audit RM17-0579-LC.01 dated 16 May 2023.

<sup>53</sup> [Ecology JWS](#) dated 20 January 2026, section 3.4, page 6.

designed to effectively manage the effects of the Project relating to stormwater.<sup>54</sup>

#### **Funding for cultural input**

68 Hapū seek a condition requiring NZTA to fund hapū involvement in management plan development, implementation of mitigation, and long-term monitoring.<sup>55</sup>

69 NZTA's position is that any funding of hapū involvement (including through scholarships, cadetships and job creation) in management plan development, mitigation implementation, and long-term monitoring are not appropriate matters to be imposed as conditions of consent on the Project under the FTAA. These matters do not relate to the management of Project effects on the environment and fall outside the Panel's jurisdiction.

#### **Effects on Tawhitinui Marae**

70 Pirirākau has sought specific recognition of Tawhitinui Marae and associated cultural practices from the construction noise effects of the Project. Specifically, Pirirākau have requested that the Construction Noise and Vibration Management Plan (CNVMP) include clear processes for engaging with Pirirākau, particularly in relation to managing construction noise during important cultural events at the marae (such as tangihanga and iwi gatherings).<sup>56</sup>

71 In response, NZTA has amended condition CNV4(g) of the CNVMP requirements to explicitly require that engagement processes include "*Pirirākau in relation to potential construction noise during cultural events at Tawhitinui Marae.*" Tawhitinui Marae will be identified and managed as a sensitive receiver under the CNVMP, in accordance with NZS 6803.

#### **Response to the draft amended conditions by Ngāti Taka**

72 A response to each of the specific draft conditions suggested by Ngāti Taka via their comments on the Application is provided in **Appendix B**.

### **PART 6: NZTA'S UPDATES TO CONDITIONS**

73 As set out in our opening legal submissions, at the time of lodgement, there was general alignment between NZTA, administering agencies and hapū on the Application and on the benefits of the Project, with a few matters of disagreement primarily in relation to conditions.

74 These matters were discussed at the ecology expert conference and conditions workshops on 20 and 21 January 2026. Subsequently,

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<sup>54</sup> Resource Consent DC.03 Proposed Conditions.

<sup>55</sup> [Ecology JWS](#) dated 20 January 2026, section 3.9 page 8.

<sup>56</sup> [Comments from Pirirākau](#), section 18.1-18.2.

NZTA has continued to work with the administering agencies and hapū representatives to further narrow the remaining areas of disagreement on the Proposed Conditions. As a result, there is now a high level of agreement between NZTA and these parties with respect to the Proposed Conditions.

- 75 The following is a summary of changes NZTA has made to the conditions in response to feedback:
- 75.1 NZTA has substantially re-structured the regional resource consent conditions to match BOPRC's preferred condition structure, including separate consent condition documents, with the conditions that apply to each 'consent', and inserting BOPRC's preferred introductory items, including 'purpose' and 'consent lapse and expiry' conditions.
- As per the joint letter from NZTA and BOPRC dated 16 February 2026 (**Appendix C**), BOPRC is now satisfied with the structure proposed for the regional resource consent conditions. NZTA and BOPRC have also further discussed the regional consent conditions, to address BOPRC's concerns with respect to substance. As a result of those discussions, there are now very few remaining areas of disagreement between NZTA and BOPRC. The residual areas of disagreement are outlined in the 16 February letter, and are explained further below.
- 75.2 NZTA has addressed a potential lack of alignment between the indicative restoration planting areas proposed for wetland mitigation and the locations identified in the Landscape Concept Plan. To ensure both landscape and ecological outcomes are achieved, a condition has been included requiring that planting under the LVMP takes into account the ecological, restoration, and landscape planting, monitoring and maintenance required by Condition 29 in Resource Consent LC.01. This amendment ensures that mitigation and restoration planting locations are integrated, supporting both visual amenity and ecological enhancement along the corridor, and avoiding any undermining of the landscape concept or ecological objectives.
- 75.3 NZTA has updated the contaminated land conditions that were in contention with BOPRC and Western Bay of Plenty District Council (*WBOPDC*). NZTA, BOPRC and WBOPDC are now in agreement with respect to the proposed contaminated land conditions. These require the preparation, certification, and implementation of Detailed Site Investigations (DSI) and associated management plans in accordance with the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (*NESCS*) and the Bay of Plenty Regional Natural Resources Plan. The contaminated land conditions

have been amended in response to BOPRC's concerns, to include a works completion report requirement, clarify the relationship between the DSI and CSMP, revise wording regarding measures for stockpiling and off-site disposal, and require BOPRC certification of the DSI.

- 75.4 NZTA has updated the key ecology-related conditions that were in contention with BOPRC, DOC and hapū (within the LC.01 earthworks conditions and BC.01 works within waterbodies conditions). The conditions in contention relate to the stream management and monitoring plan (*SMMP*), and some of the wetland, planting and lizard habitat conditions. NZTA provided the updated conditions to BOPRC, DOC, hapū and the Panel's advisor for review and comment as directed by the Panel minute dated 27 January 2026. The updated ecology-related conditions (in LC.01 and BC.01) provided in Schedule 1 to Appendix A to these submissions incorporate, to the extent NZTA considers appropriate within the FTAA context and in light of the significant benefits of the Project, the feedback received from the parties on those conditions. The residual areas of disagreement and NZTA's position in relation to them are explained further below.
- 75.5 NZTA has updated the LC.02 drilling, DC.03 permanent stormwater, WT.01 permanent groundwater, and WT.02 temporary dewatering consent conditions to address concerns raised by BOPRC. These consent conditions are now fully agreed with BOPRC.
- 75.6 NZTA has updated the other LC.01 earthworks and BC.01 conditions, and DC.01 temporary discharges conditions to address concerns raised by BOPRC. The LC.01 earthworks conditions that do not relate to ecology are now agreed with BOPRC. The ecology-related conditions in LC.01 that are not agreed with BOPRC are listed in the letter provided as Appendix C. In relation to BC.01 and DC.01, while these conditions aren't fully agreed with BOPRC, the areas of disagreement have been significantly narrowed.
- 75.7 NZTA has prepared a separate, standalone set of complex freshwater fisheries activity approval conditions (as in Schedule 4 to Appendix A) as requested by DOC in their comments and section 51 report. These conditions address the intent and principles of the conditions proposed by DOC, whilst ensuring consistency with NZTA's regional consent conditions relating to fisheries. The conditions were provided to DOC for comment, and further changes made in response to their comments. With the exception of the deemed certification condition (discussed below), the freshwater fisheries activity approval conditions are supported by DOC.

75.8 NZTA has updated the archaeological authority conditions to reflect the outcomes of the joint statement from the condition workshop:

- (a) NZTA has engaged with HNZPT and hapū with respect to the conditions that require the archaeological management plan (*AMP*) and archaeological research and mitigation strategy (*Strategy*) to be provided to the hapū for review and comment. NZTA has also made changes to provide for cultural induction as part of the AMP as opposed to a standalone condition and expanded upon what the Strategy will include (as per HNZPT's suggestions). As a result of that engagement, changes have been made to provide for hapū engagement on the AMP and Strategy, which NZTA understands are supported by the hapū. NZTA considers that these amendments address HNZPT's concerns with respect to these conditions, however, confirmation from HNZPT of this has not been provided.
- (b) NZTA has made a number of other updates, including structural amendments to match NZHPT's preferred structure. Further changes to the AMP condition include a requirement to explain how written feedback from Pirirākau and Ngāti Taka during preparation of the AMP has been addressed or, if not, the reasons why. In line with HNZPT's suggestions, the Strategy has also been expanded to require that both research and mitigation measures are informed by tikanga. Additionally, as recommended by hapū, the Strategy now specifically requires that cultural values are taken into account as part of the research and mitigation measures. The residual areas of disagreement and NZTA's position in relation to them are explained further below.

75.9 NZTA has updated the designation conditions to reflect some of the outcomes of the joint statement from the condition workshop. Specifically, NZTA has:

- (a) Made amendments to the requirements of construction traffic management plan (*CTMP*) Condition CT2 to ensure that the CTMP manages traffic movements to and from the site as a result of the disposal of earthwork cut to waste. WBOPDC has confirmed they agree with the amendments proposed.<sup>57</sup>
- (b) Made amendments to the requirements of the LVMP Conditions LV2 and LV3 to ensure integration of the Project with planned urban development in the Francis

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<sup>57</sup> Letter from Christopher Watt (Development Project Facilitator) at Western Bay of Plenty District Council dated 3 February 2026.

Road area, in response to the concerns raised by the landowner at 4 Francis Road.<sup>58</sup> The amendments require the LVMP to consider integration of the Project with planned urban development in the Francis Road area, and include information and plans to illustrate how the Francis Road realignment will be integrated with existing and planned urban development where practicable. WBOPDC agrees with NZTA's amendments to LV2 and LV3.<sup>59</sup> The amendments were provided to Mr Matthew Kerr-Ridge, the planner for the landowners. Mr Kerr-Ridge agrees with NZTA's changes but seeks further amendments to include specific details of what the "information and plans" required by LV3 shall include. NZTA does not consider further detail is necessary or appropriate. Mr Kerr-Ridge's concern is adequately covered by LV3(c) and matters of detail will be provided through the LVMP once it is prepared.

- (c) Discussed the designation conditions and resource consent conditions with hapū and further updated them, as addressed in Part 5.

75.10 NZTA has re-considered the proposed wildlife approval conditions and maintains its position that the conditions proposed are appropriate to manage the effects of the Project on lizards. NZTA does not consider any changes to the proposed wildlife approval conditions are necessary or appropriate. As explained further below, NZTA considers that some of the conditions proposed by DOC with respect to the wildlife approval conditions are not only 'more onerous than necessary', but also do not meet the requirements for a lawful condition. A minor amendment has however been made to the wildlife conditions, to allow provision for hapū to review and provide comment on updated management plans, where practicable.

- 76 The updated conditions (both tracked and clean versions) are provided in Appendix A to these submissions. The track change versions identify only changes in substance – they do not 'track' the restructure of the conditions.

## **PART 7: ISSUES REMAINING FOR THE PANEL'S CONSIDERATION**

- 77 The outstanding matters of disagreement between the parties are very limited. With respect to the areas of disagreement pertaining to

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<sup>58</sup> At the conditions workshop on 21 January 2026, Mr Kerr-Ridge raised concerns on behalf of the landowners at 4 Francis Road with respect to the integration of the Project with future planned urban development at that property.

<sup>59</sup> Letter from Christopher Watt (Development Project Facilitator) at Western Bay of Plenty District Council dated 3 February 2026.

the regional consent conditions, we note that DOC is merely a commentator, it is not the regulator. We therefore submit that BOPRC's position, as the relevant administering agency in respect of those matters, should be preferred over DOC's. The material areas outstanding are:<sup>60</sup>

- 77.1 The 'no Condition 1' approach;
- 77.2 Preparation of management plans prior to construction instead of as part of the Application;
- 77.3 Deemed certification;
- 77.4 Wetlands;
- 77.5 Freshwater;
- 77.6 Temporary discharges; and
- 77.7 Wildlife approval conditions.

78 There are also some more minor areas of disagreement in relation to the archaeological authority conditions.

79 We set out below a brief summary of the remaining areas of disagreement and NZTA's position in relation to those matters.

**The "no Condition 1" approach**

80 As explained in NZTA's opening submissions, NZTA does not propose a traditional 'Condition 1' for this Project, which would ordinarily require construction and operation "in general accordance with" specified drawings and documents. Instead, NZTA has adopted an approach that enables flexibility in design and construction methodologies, while ensuring that the final design remains subject to a comprehensive suite of conditions that effectively constrain the Project's potential effects and secure appropriate mitigation.

81 This approach is particularly beneficial to large linear infrastructure projects, where optimisation of the design is a standard practice during the detailed design phase. 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, which is at indicative design stage, changes will occur through the detailed design phase. 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 conditions, resulting in

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<sup>60</sup> Except for issues raised by Hapū discussed above at Part 5.

significant additional cost and delays to procurement and construction.

- 82 The “no Condition 1” approach thus supports more efficient delivery of the Project, enabling 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. NZTA has ensured that the assessment of effects considered not only the indicative alignment, but also potential amendments within the designation boundary. This process has defined an ‘envelope of effects’ for each technical area, which is secured by the Proposed Conditions.
- 84 The conditions proposed by NZTA are outcomes-based, requiring that the Project avoids, remedies, or mitigates any potential adverse effects, regardless of design amendments. The conditions therefore meet the standard legal requirements, providing a robust and adaptable framework for managing environmental impacts.
- 85 The “no Condition 1” approach has precedent and has been recognised as lawful under the RMA<sup>61</sup> and is now NZTA’s preferred consenting approach for its major projects. It has been implemented in the Pūhoi to Warkworth Project (operational), the first section of the Northland Corridor Project (Warkworth to Te Hana) (in procurement) and the Cambridge to Piarere Project (granted under the NBEA fast-track). Given that this approach has been recognised as lawful even under the more stringent requirements of the RMA, there should be no issue in the Panel adopting a “No Condition 1” approach under the FTAA.
- 86 We submit the Panel can be satisfied that the NZTA’s Proposed Conditions will avoid, remedy, or mitigate any actual or potential adverse effects, setting clear outcomes to ensure that any changes to the indicative design will be appropriately managed, without imposing a traditional ‘Condition 1’.

#### **Provision of draft management plans**

- 87 NZTA has not prepared draft management plans for the Project.
- 88 There is no legal requirement under the FTAA or the RMA to submit draft management plans at the time of application. Furthermore, the Environment Court has commented that draft management plans often have little value, noting “*in many instances the draft management plans may do very little other than provide a list of*

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<sup>61</sup> State Highway 1 Cambridge to Piarere long-term improvements and Ara Tūhono – Pūhoi to Warkworth and Warkworth to Wellsford.

*(possible) contents for a management plan that is yet to be prepared".<sup>62</sup>*

- 89 For the reasons set out in NZTA's opening legal submissions and response to comments, NZTA does not consider it necessary or appropriate for draft management plans to be prepared now. Were draft management plans for the Project to be prepared now, they would be incomplete and would be obsolete when the design evolves during the detailed design phase. Management plans can only be usefully prepared once the detailed design and construction methodology for the Project has been sufficiently progressed.

**Deemed certification**

- 90 Where the Proposed Conditions require NZTA to submit management plans to the relevant administering agency for certification, NZTA has proposed a condition deeming those management plans to be certified where a response has not been received from the administering agency within the specified timeframe. The administering agencies and hapū are opposed to this 'deemed certification' condition.
- 91 The intent of the proposed condition is to encourage timely responses from administering agencies on management plans, and to avoid the Project from being indefinitely held up as a result of unreasonable delay in certification. The condition provides a 'backstop' to ensure agencies provide a response on the management plan within the specified timeframe. Where the response is that the management plan is not suitable to certify, the clock effectively 'stops', requiring NZTA to prepare an updated version of the plan to be re-submitted to the agency for certification.
- 92 The timeframes for certification proposed in the management plan conditions are appropriate and generous. We submit that any additional time taken by an agency beyond that proposed in each management plan condition would be contrary to the administering agencies' duty to avoid delay under the FTAA.<sup>63</sup>
- 93 We also submit that allowing administering agencies unlimited time or not putting a time limit on their certification process, would be contrary to the purpose of the FTAA, to facilitate the delivery of infrastructure.<sup>64</sup> While NZTA does not expect such delays to occur frequently in practice, it is important to have safeguards in place for extreme cases. Otherwise, the Project could be held up indefinitely while NZTA waits for administering agencies to review and certify management plans. NZTA would have limited recourse in this

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<sup>62</sup> *Summerset Villages (Lower Hutt) Limited v Hutt City Council* [2020] NZEnvC 114 at [50].

<sup>63</sup> FTAA, s92(2) and the equivalent RMA, s21.

<sup>64</sup> FTAA, s3.

scenario – a formal complaint is unlikely to result in timely resolution of an agency delay in certification.

- 94 NZTA notes that an equivalent ‘deemed certification’ condition has been imposed on other NZTA projects, including NZTA’s Pūhoi to Warkworth project,<sup>65</sup> and Papakura to Drury South State Highway 1 improvements, Stage 1B2 and Stage 1B1.<sup>66</sup>
- 95 It is therefore NZTA’s submission that the deemed certification conditions are not only appropriate and reasonable, but also necessary to achieve the purpose of the FTAA, and to facilitate the delivery of infrastructure. Omitting deemed certification from NZTA’s Proposed Conditions could undermine this purpose.

### **Freshwater conditions**

- 96 Freshwater ecology has been a key focus throughout the consenting process, with input from a range of experts and parties, as recorded in the JWS from the ecology expert conference held on 20 January 2026. While DOC, BOPRC and hapū have raised concerns about the adequacy of mitigation and offsetting, none have suggested that the Application should be declined due to freshwater ecology effects.

### ***The Panel must seek to reconcile National Policy Direction***

- 97 NPSs are a matter for the Panel to consider under the FTAA. However, they are not determinative. NPSs must be weighed alongside many other factors and must be given less weight than the purpose of the Act, which requires the delivery of the Project to be facilitated. Furthermore, where more than one NPS is relevant, as is the case here (ie the NPS-I and the NPS-FM), the Panel must seek to reconcile any potentially conflicting policy direction within the competing NPSs.<sup>67</sup> Strict adherence to the NPS-FM is not required.
- 98 Nevertheless, NZTA’s ecological assessment and approach to the management of freshwater effects for the Project has been guided by the NPS-FM, especially Policy 7, which requires “*the loss of river extent and values to be avoided to the extent practicable*”.
- 99 The Project will avoid the loss of river extent and impacts on the values of rivers through a range of management measures,<sup>68</sup>

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<sup>65</sup> [Ara Tūhono: Pūhoi to Warkworth Designation and Resource Consent Conditions](#).

<sup>66</sup> See the Stage 1B1 decision [here](#), condition PC.6, and the Stage 1B2 [here](#), condition PC.3.

<sup>67</sup> *Te Runanga o Ngāti Whātua v Auckland Council* [2023] NZEnvC 277 at [858]-[859] citing *Port Otago Ltd v Environmental Defence Society Inc* [2022] NZSC 112 and *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38; [2014] 1 NZLR 593.

<sup>68</sup> *Ibid.*

applying the Effects Management Hierarchy (*EMH*) as detailed in our opening legal submissions.<sup>69</sup>

- 100 Accordingly, it is submitted the Project is consistent with NPS-FM Policy 7 and Clause 3.24. NZTA has addressed the relevant NPS-FM provisions in the Project's Substantive Application,<sup>70</sup> and the principles of aquatic offsetting are addressed in the evidence of NZTA's freshwater ecology expert, Mr Jeremy Garrett-Walker.<sup>71</sup>

### **Matters of contention**

#### *Magnitude of effects*

- 101 As linear infrastructure, the Project's construction will require the realignment and culverting of several reaches of streams. No high value watercourses are impacted. Realignment and daylighting are proposed to maintain or enhance stream length and function, and bridges are used in key locations to avoid direct impacts on higher-value aquatic habitats. The Ecological Effects Assessment (*EEA*)<sup>72</sup> also notes a theoretical risk of groundwater diversion affecting baseflows, but the risk is considered low and will be monitored.<sup>73</sup>
- 102 While there is some difference of expert opinion as to the exact level to attribute to these effects, we submit the difference is immaterial as the effects will be appropriately managed by the Proposed Conditions. Although it is not material, we address the difference of expert opinion for completeness.
- 103 As the Panel will be aware, the different views on magnitude of effect largely arise from the scale adopted for assessment. The Environment Court has accepted that professional judgement needs to be applied to identify an appropriate scale for assessing effects.<sup>74</sup> A one-size-fits-all approach is not appropriate.
- 104 In our submission, Mr Garrett-Walker has appropriately applied professional judgement to identify an appropriate scale for assessing effects. He has assessed the effects at sub-catchment/catchment scale, whereas BOPRC<sup>75</sup> and DOC<sup>76</sup> would prefer a site/reach assessment scale. DOC suggest that NZTA's approach does not align with the EIANZ Guidelines.<sup>77</sup> On closer examination, this statement

<sup>69</sup> [Memorandum of legal submissions considerations on behalf of the New Zealand Transport Agency Waka Kotahi](#), paragraph [29].

<sup>70</sup> Ibid, Table 8, Section 4.3.1.

<sup>71</sup> [Statement of Evidence of Mr Garrett-Walker](#), paragraph [33].

<sup>72</sup> [Appendix 9.4.4. – Ecological Effects Assessment](#).

<sup>73</sup> Ibid.

<sup>74</sup> *Grenadier Limited v Manawatū-Whanganui Regional Council* [2024] NZEnvC 183 at [84]-[85].

<sup>75</sup> [Bay of Plenty Regional Council comments](#), section 6.2.

<sup>76</sup> [Director-General of Conservation comments](#), Appendix B Review of the Ecological Effects Assessment for Waterways, page 25.

<sup>77</sup> [Director-General of Conservation comments](#), sections 3.8-3.11.

is incorrect. Rather, the site/reach assessment approach (ie DOC's approach) seems to directly contradict the EIANZ Guidelines and results in an exaggerated assessment of effects:

105 The EIANZ Guidelines state:<sup>78</sup>

Assessing magnitude of effect at the spatial scale of the effect is not recommended, since it does not assist in developing impact management options. For many activities, this is a narrow perspective on the effect on ecological value and provides no information about the impact of the effect in the context of the local ecosystems, or in the context of the site's value. For example, removal of 10m<sup>2</sup> kanuka at the edge of a 20m<sup>2</sup> stand for an access road may reduce the site's kanuka cover by 50%; but if the surrounding land supports extensive kanuka, and the species is common in the Ecological District, the wider context of that clearance needs to be considered.

106 We submit the Panel should prefer the approach adopted by Mr Garrett-Walker and his assessment of the magnitude of the Project's freshwater effects.

*Matters identified by Mr Ussher*

107 The Panel's technical advisor Mr Graham Ussher has identified key matters in contention between the parties (in relation to determining an appropriate effects management approach) as:<sup>79</sup>

107.1 *Stream realignment outcomes:* Whether the ecological outcomes of stream realignment are sufficiently certain and reliable to be relied upon.

107.2 *The 'potential' stream value:* Whether the management approach should be based on the potential value of the stream environment "if people made effort to restore or improve stream values" or the current value of the environment as it exists now.

107.3 *Offset vs. Remedy:* Whether stream realignment should be classified as 'remediation' rather than 'offset' when assessed as part of the EMH.

107.4 *The application of a multiplier:* Whether the management approach should include a 1.5x multiplier to account for lag time and/or chance of default.

108 DOC and BOPRC have also queried whether a fixed 10-year period for success monitoring of stream realignments is necessary.

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<sup>78</sup> EIANZ Guidelines (2018) at page 80.

<sup>79</sup> [Minute 3 of the Expert Panel](#) dated 19 December 2025, [Attachment 1 Conference Agenda - Ecology](#).

*Stream realignment outcomes*

109 DOC's expert Dr Martin Neale expresses concern regarding NZTA's reliance on stream realignments as part of the effects management approach. Dr Neale's position is that realignment is an inherently risky management option, associated with poor ecological outcomes, and should not be considered a remedy action.<sup>80</sup> Dr Neale points to the disruption of stream equilibrium and groundwater interactions, loss of hyporheic function, and a series of project examples (Long Bay, Pūhoi to Warkworth, Transmission Gully) where realigned streams have not in his opinion met ecological expectations.<sup>81</sup>

110 Mr Garrett-Walker's evidence directly addresses these concerns and demonstrates why the risks cited by Dr Neale are not applicable to the Project:

110.1 *Design Certainty and Best Practice:* The Project's stream realignments will be subject to detailed design and outcomes-based performance requirements. These are to be assessed and confirmed by a Suitably Qualified and Experienced Practitioner (*SQEP*) through the Culvert and Stream Hydraulic Design Report and Stream Monitoring and Management Plan and certified by BOPRC. These documents will specify requirements such as natural substrate gradations, appropriate grade control, hydraulic performance, habitat complexity, and fish passage, and will include adaptive monitoring and triggers for remedial action.<sup>82</sup>

110.2 *International and New Zealand Success:* Contrary to Mr Neale's assertion of anecdotal success, Mr Garrett-Walker cites a substantial body of peer-reviewed literature and successful New Zealand examples (Duck Creek, Kakariki Stream, Paetawa Stream, Maurice Smith Way Stream, Waimeha Stream, Mazengarb Stream, Rata Road wetlands) where stream realignments have achieved robust ecological outcomes when context-appropriate design and monitoring are applied.<sup>83</sup> He notes that Dr Neale's examples differ fundamentally from what NZTA is proposing. For example, the use of concrete-lined trapezoids, will be specifically avoided for through the requirements of the Proposed Conditions.<sup>84</sup>

111 Mr Garrett-Walker's evidence supports the view that restoration works are likely to be successful on this Project because the proposed works "*provide the certainty ... without locking in a single method. Prescriptive, one-size-fits-all geometries can hinder*

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<sup>80</sup> [Director-General of Conservation comments](#), paragraph 3.10, 3.13 and Appendix B Review of the Ecological Effects Assessment for Waterways, page 25.

<sup>81</sup> [Director-General of Conservation comments](#) – Appendix C Review of the effects management packages, pages 30–33.

<sup>82</sup> [Statement of Evidence of Mr Garrett-Walker](#), paragraphs [18], [22] and [25].

<sup>83</sup> Ibid, paragraph [16].

<sup>84</sup> Ibid, paragraphs [18]–[19].

*ecological optimisation and do not guarantee function. Where DOC/BOPRC request more certainty, in my opinion the appropriate response is to classify outcomes, not to mandate a single shape or method".<sup>85</sup>*

- 112 In his comments on the Project, Dr Neale claims that realigned streams have not met ecological expectations, specifically referencing Long Bay, Pūhoi to Warkworth and Transmission Gully projects.<sup>86</sup> It is important to clarify how these examples relate to the Project, and to address the context and accuracy of Dr Neale's assertions.
- 113 *Long Bay:* Dr Neale refers to the Long Bay stream realignment, claiming that the new channel "has been unable to retain water" and provides a photograph in support of this statement.<sup>87</sup> However, the photograph is undated, and it is unclear whether Dr Neale himself took it or has visited the site to observe the realigned stream in person.<sup>88</sup> The timing of the photograph is particularly important, as NZTA understands that the stream in question (formerly known as Tributary 7.05) was, even prior to realignment, classified as a Category 2 stream, meaning it was a low-flow, intermittent or ephemeral stream. NZTA has previously presented evidence from Dr Vaughan Keesing for the Cambridge to Piarere project, responding to the same examples cited by Dr Neale. Dr Keesing confirmed that this stream has always been generally summer-dry.<sup>89</sup> Thus, the example cited by Dr Neale does not demonstrate a failure of realignment, but rather reflects the natural, seasonal behaviour of the stream within its catchment.
- 114 *SH1 Pūhoi to Warkworth:* Dr Neale also provides a photograph, which he states is of the SH1 Pūhoi to Warkworth stream realignment and supplied by Auckland Council Consent Compliance. Dr Neale noted that this photograph was taken several months after the 'livening' of the channel and shows no surface water present in the diverted reach. However, the photograph is undated and unverified, and there is no information as to whether Dr Neale has personally visited or assessed the site. Without further context regarding the timing, hydrological conditions, or site inspection, it is not possible to verify the claims made in his evidence or to draw robust conclusions about the overall performance of the realigned stream. Even if Dr Neale is correct and the stream realignment was unsuccessful at the time the photograph was taken, the example demonstrates that monitoring

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<sup>85</sup> Ibid, paragraph [19].

<sup>86</sup> [Director-General of Conservation comments](#) – Appendix C Review of the effects management packages, pages 31 – 33.

<sup>87</sup> [Director-General of Conservation comments](#) – Appendix C Review of the effects management packages, page 31.

<sup>88</sup> Ibid.

<sup>89</sup> [Second Supplementary Statement of Evidence of Dr Keesing on behalf of NZ Transport Agency Waka Kotahi](#) dated 24 July 2025 at paragraph 21.

(as proposed by NZTA) will ensure any potential failures will be identified so they can be rectified.

- 115 *Transmission Gully*: NZTA acknowledges that some of the stream realignments associated with Transmission Gully resulted in poor ecological outcomes requiring remedial action. However, NZTA understands that the problems identified by Dr Neale, such as the loss of surface flow to subsurface spaces, have now been actively addressed, and solutions have been largely successful. The example therefore demonstrates that even where initial problems arise, conditions requiring outcomes to be achieved and monitoring and remediation to continue until those outcomes have been met (such as those proposed for the Project) will ensure stream realignments are successful.
- 116 In summary, while there have been challenges in some stream realignment projects, these are context-specific, and ongoing remediation has resulted in substantial ecological improvements. The examples cited by Dr Neale do not provide a robust basis for concluding that all realigned streams inherently fail to meet ecological expectations, nor are they directly comparable to the approach and outcomes anticipated for the Project.
- 117 Regardless of the difference in expert opinion on the reliability of stream realignment, Mr Garrett-Walker's evidence is that the robust, outcomes-based consent conditions proposed for this Project will ensure no net loss and a net gain of river extent and values. The Proposed Conditions require NZTA to achieve the outcomes specified, to monitor against those outcomes and to implement appropriate measures to ensure they are met. Monitoring and remediation will continue until success has been achieved. NZTA must ensure stream realignments achieve the specified outcomes, or it will be in breach of its consent conditions. The difference of opinion between Dr Neale and Mr Garrett-Walker is therefore academic and does not alter the ecological result achieved.<sup>90</sup>

*Consideration of 'potential values' of streams is not appropriate for this Project*

- 118 The Project traverses a rural, peri-urban landscape predominantly used for agriculture and horticulture. As detailed in the EEA, the majority of streams and watercourses within the proposed designation are highly modified, exhibiting limited habitat quality, degraded water quality, and low to moderate ecological value.<sup>91</sup> Most watercourses are soft-bottomed, with poor macroinvertebrate and fish communities, and are subject to ongoing pressures from surrounding land use.<sup>92</sup> The EEA confirms that, with the exception of some higher-value reaches and wetlands to be avoided or enhanced,

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<sup>90</sup> Ibid, paragraphs [6], [13] and [35].

<sup>91</sup> [Appendix 9.4.4. – Ecological Effects Assessment](#), Sections 3.2.1 and 3.2.3.

<sup>92</sup> Ibid, Section 3.2.2.

the freshwater environment is not pristine and is typical of rural lowland New Zealand.<sup>93</sup> This is the environment against which the effects of the Project must be assessed.

- 119 We acknowledge the NPS-FM directs the application of the EMH to “any loss of extent or values of the river (including cumulative effects and loss of potential value)”.<sup>94</sup> NZTA also acknowledges that consistency with the NPS-FM is a matter for the Panel to consider. However, it is not the only matter requiring consideration by the Panel, nor is it determinative. It must be given lesser weight than the purpose of the Act (to facilitate the delivery of the Project) and weighed alongside other considerations (including the benefits of the Project, the Government Policy Statement for Land Transport (GPS) and the NPS-I). The Panel must also take into account Part 6 of the RMA which tasks the Panel with considering the “effects on the environment of allowing the activity”.<sup>95</sup>
- 120 As explained in NZTA’s opening legal submissions, the ‘environment’ against which the effects of the Project are to be assessed under the FTAA<sup>96</sup> is the ‘existing environment’. Case law establishes that the ‘existing environment’<sup>97</sup> includes:<sup>98</sup>
- 120.1 The environment as it exists now; and
- 120.2 The reasonably foreseeable future state of the environment as potentially modified by any permitted activities and the implementation of resource consents that have been granted, where it appears likely they will be implemented.
- 121 More generally, the High Court has noted that “*the RMA as a whole, calls for a “real world” approach to analysis, without artificial assumptions, creating an artificial future environment*”.<sup>99</sup>
- 122 DOC says that, while the streams are currently compromised by rural land management, their condition is typical of other rural streams and could be substantially improved through straightforward management actions such as fencing and riparian planting.<sup>100</sup> Accordingly, DOC considers that the potential values that could be

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<sup>93</sup> Ibid, Table 12 and Section 3.2.3.

<sup>94</sup> NPS-FM, clause 3.24(1) and (3)(a)(i).

<sup>95</sup> RMA, s104(1)(a).

<sup>96</sup> FTAA, Sch 5, cl17(1)(b) must take into account the provisions of the RMA that direct decision making on an application for a resource consent, in this case s104(1)(a) and 171(1) RMA.

<sup>97</sup> *Queenstown Lakes District Council v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299; [2006] NZRMA 424 (CA).

<sup>98</sup> [Memorandum of legal submissions considerations on behalf of the New Zealand Transport Agency Waka Kotahi](#) dated 1 August 2025 at [19]-[22].

<sup>99</sup> *Queenstown Central Limited v Queenstown Lakes District Council* [2013] NZHC 815 at [85].

<sup>100</sup> [Director-General of Conservation comments](#), Sections 3.20–3.22.

realised through such management actions must be accounted for in the effects management assessment and any offsetting package for the Project. This elevated starting point inevitably leads to more onerous mitigation requirements because it requires NZTA to restore streams to much higher values than they actually have at present.

- 123 NZTA acknowledges the NPS-FM refers to “potential values” and that the Stream Ecological Valuation (SEV) Technical Report suggests potential value of impact sites should inform an effects management package. However, the SEV Technical Report is a guidance tool only. There is no legal requirement that it be used.<sup>101</sup> Furthermore, the SEV methodology and environmental compensation ratio formula are not prescriptive, they allow for professional judgement in their application. We submit that the application of potential SEV scores must be grounded in a realistic assessment of whether the restoration required to achieve that potential value is likely to occur in the foreseeable future.
- 124 Furthermore, a strict, narrow interpretation and application of the NPS-FM is neither justifiable or appropriate in the context of the FTAA (noting the benefits of the Project, the GPS, the comprehensive mitigation proposed to address the effects of the Project on freshwater, the NPS-I and most importantly, the overall purpose of the Act).
- 125 The approach advocated by DOC would require NZTA to assess and manage the effects of the Project on the basis that all low-value streams affected would otherwise be restored to a higher ecological value, regardless of whether such restoration is actually likely to occur. This is neither a realistic nor a legally sound approach. There is no regulatory certainty or reasonable expectation that widespread restoration of these streams would take place in the absence of the Project or in the near future.<sup>102</sup> While isolated examples of voluntary restoration exist, these do not represent the general pattern for rural streams. DOC has not produced evidence of any incentives or new regulatory mechanisms currently in effect, or with sufficient certainty and scale, that would justify their inclusion in the baseline for assessing effects.
- 126 Furthermore, requiring NZTA to offset the “loss” of these hypothetical future values would lead to perverse outcomes, such as removing the incentive to avoid impacts on higher-value streams, since the same mitigation would be required regardless of existing stream value. The decision-maker must therefore evaluate whether the existing streams have any realistic potential value that might be impacted, and only require offsetting for such values where there is a

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<sup>101</sup> Cambridge to Piarere Decision dated 17 October 2025, paragraph 12.118(a).

<sup>102</sup> *Queenstown-Lakes District Council v Hawthorn Estate Ltd* CA45/05, 12 June 2006 at [52]-[53].

reasonable expectation that they would be realised in the absence of the Project.

- 127 The Panel's task is therefore to determine whether the streams impacted by the Project have any realistic potential values that would likely be realised, and to require offsetting or mitigation only for those values. In any event, the evidence of Mr Garrett-Walker following careful evaluation of the existing streams, confirms that the Project's effects management approach and Proposed Conditions will achieve the required ecological outcomes, regardless of the debate over potential values. The debate is ultimately academic, as the outcome for river extent and values remains unchanged.<sup>103</sup>
- 128 NZTA's effects management approach appropriately and reasonably responds to the actual effects of the Project on the streams impacted by realignment and culverting. NZTA's Proposed Conditions will ensure any impacted streams are returned to, at a minimum, the same value as they currently are. There is no requirement, under the FTAA for NZTA to improve or enhance the values of the streams.

*Remedy vs. off-set*

- 129 DOC's and BOPRC's positions are that stream diversions or realignments should be considered as offsets rather than remedies under the EMH, on the basis that reclamation results in the total loss of the original stream channel and values.<sup>104</sup> This characterisation is not accepted by NZTA. Realignment and diversions do not amount to reclamation. The evidence of Mr Garrett-Walker is that a diversion does not result in a loss of extent or value of streams, provided the diversion is at least the same length as the stream replaced and is functionally integrated into the catchment.<sup>105</sup>
- 130 Under clause 3.21 of the NPS-FM, "remedy" follows avoidance and minimisation, and comes before offsetting and compensation.
- 131 DOC's assertion that remedy is "impossible" once the original bed is filled conflates the restoration of the original physical substrate with the restoration of ecological extent and values.<sup>106</sup> The EMH is concerned with the latter. The NPS-FM does not require the original stream bed material to remain unaltered; it requires that loss of stream extent and values is addressed through the EMH, and that remedy is available to achieve that outcome, where practicable.
- 132 DOC has not explained why a stream must be reinstated in exactly the same place to be considered a remedy. It simply states that a remedy would require restoring the original channel, which is not

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<sup>103</sup> [Statement of Evidence of Mr Garrett-Walker](#), paragraphs [6] and [31].

<sup>104</sup> [Director-General of Conservation comments](#) – Appendix C Review of the effects management packages, pages 33-34.

<sup>105</sup> [Statement of Evidence of Mr Garrett-Walker](#), paragraphs [26]-[27].

<sup>106</sup> [Director-General of Conservation comments](#) – Appendix C Review of the effects management packages, page 34.

possible once a road is built.<sup>107</sup> DOC does not address whether equivalent ecological function or value could be restored elsewhere within the project area, or why this would be an offset rather than a remedy. In our submission, the real issue is not terminology, but which effects management approach is most appropriate.

- 133 We submit that what is 'appropriate' must be considered in the FTAA context. The FTAA is explicitly not a no-effects statute. The NPS-FM is deliberately of lesser importance in the FTAA decision making hierarchy and the NPS-I provides for a more lenient approach to the application of the EMH for infrastructure. It is our submission that NPSs must be read together, rather than in isolation, and any tensions or overlaps be resolved by interpreting them in a way that gives effect to both, to the extent possible.<sup>108</sup> Nevertheless, NZTA's approach in this particular context ensures no net loss of river extent or values, and aims for overall ecological improvement. Measures include:
- 133.1 Functional and biodiversity performance;
  - 133.2 Hydraulic outcomes (eg flow and depth);
  - 133.3 Habitat and fauna improvements;
  - 133.4 Sediment controls during construction; and
  - 133.5 At least like-for-like stream length replacement, and where possible, net gain.
- 134 As set out in Mr Garrett-Walker's evidence at paragraph 33, the Project meets the NPS-FM's offsetting principles.<sup>109</sup>
- 135 Mr Garrett-Walker's evidence is that new channels created as part of the diversions fully remedy the loss of flow and aquatic habitat when the replacement channel matches the original in amount, type, and quality of habitat, and is in the same flow location.
- 136 While a 1:1 replacement ratio of stream length is the minimum standard, additional enhancements such as improved instream habitat and water quality controls are included to address any temporary lag in ecological function. These measures are expected not only to offset any lag but to deliver a net improvement in ecological value over time.

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<sup>107</sup> [Director-General of Conservation comments](#), paragraph 3.18 and Appendix C Review of the effects management packages, page 34.

<sup>108</sup> *Te Runanga o Ngāti Whātua v Auckland Council* [2023] NZEnvC 277 at [858]-[859] citing *Port Otago Ltd v Environmental Defence Society Inc* [2022] NZSC 112 and *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38; [2014] 1 NZLR 593.

<sup>109</sup> [Statement of Evidence of Mr Garrett-Walker](#) at [33].

- 137 We therefore submit that where a diversion fully replaces lost stream extent and function, and is designed for improved ecological outcomes, it is appropriate and consistent with the EMH and NPS-FM to treat the realignment as a remedy rather than an offset. Offsetting or compensation should only be required where a realignment does not fully replace lost values or where there are residual effects. NZTA's approach is robust, evidence-based, and ensures the ecological outcomes required by the NPS-FM are achieved. In our submission, NZTA's approach goes beyond that legally required under the FTAA.
- 138 As Mr Garrett-Walker's evidence makes clear, whether stream realignment is classified as 'remedy' or 'offset' does not affect the ecological outcome. The Project's conditions guarantee no net loss and a net gain in stream values, making the distinction one of terminology rather than substance.<sup>110</sup>
- 139 In our submission, the difference in terminology need not be resolved. Instead, the Panel should focus on what effects management approach is appropriate, on the evidence before it and in the context of the FTAA.

*The 1.5x Multiplier is not required for this Project*

- 140 BOPRC considers a 1.5x multiplier to the environmental compensation ratio is required to account for lag time for the proposed stream reinstatement and enhancement.<sup>111</sup>
- 141 Mr Garrett-Walker's evidence is that the SEV Technical Report does not require a standard 1.5x multiplier to be applied in all circumstances. The guidance presents the 1.5x multiplier as a default starting point, but explicitly encourages practitioners to exercise professional judgement, taking into account the specific context of each project. Lag time and other risks are to be assessed on a case-by-case basis, and the Technical Report does not prescribe a fixed multiplier for every situation.<sup>112</sup>
- 142 In our submission, it would be an error for the Panel to apply a 1.5x multiplier as if it were a rule. The Panel must carefully consider whether any multiplier is required at all, and if so, ensure it is tailored to the actual risks associated with this Project in the context of the FTAA framework. Mr Garrett-Walker's evidence is that there is no factual basis to apply a 1.5x multiplier in this instance, as there is no evidence of significant lag time, risk of default, or risk of restoration works failing.<sup>113</sup>

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<sup>110</sup> [Statement of Evidence of Mr Garrett-Walker](#) at paragraphs [6] and [31].

<sup>111</sup> [Bay of Plenty Regional Council comments](#), Section 6.3.2.

<sup>112</sup> [Statement of Evidence of Mr Garrett-Walker](#), paragraphs [32] and [35].

<sup>113</sup> *Ibid*, paragraphs [31]-[35].

- 143 The SEV Technical Report itself envisages that a key factor in justifying a multiplier is a “*long time-lag before full benefits of environmental compensation (eg from riparian planting) accrue to the mitigated site, this may exceed 10 years*”.<sup>114</sup> However, there is no evidence in this case of a lag time exceeding 10 years, with instream communities in small modified systems typically re-establishing within months under best practice.<sup>115</sup>
- 144 Furthermore, the Technical Report notes that the multiplier may be adjusted based on factors such as the similarity between impact and enhancement sites, confidence in restoration success, and the expected time required for ecological improvement. Mr Garrett-Walker’s opinion is that the current framework proposed for this Project ensures no net loss and, in fact, provides for a net gain of river extent and ecological values. There is no evidence before the Panel that would indicate a significant lag time or other factor that would warrant the application of a 1.5x multiplier.<sup>116</sup> We submit that a condition requiring a 1.5x multiplier would be more onerous than necessary and as such contrary to section 83 of the FTAA.

*Success Monitoring Duration for Stream Realignments*

- 145 Both DOC and BOPRC have sought a fixed 10-year period for monitoring the success of stream realignments after construction is finished. They recommend that monitoring and adaptive management should continue for at least ten years, with annual reviews and updates to the relevant management plans during the life of the consent.<sup>117</sup>
- 146 NZTA does not support the imposition of a fixed 10-year period for success monitoring of stream realignments. As set out in his evidence, Mr Garrett-Walker considers that the appropriate approach is to require monitoring and adaptive management until ecological success is demonstrably achieved, rather than for an arbitrary period.<sup>118</sup> The achievement of ecological success may occur before or after 10 years, and a rigid timeframe does not guarantee improved ecological outcomes. Instead, a performance-based, outcomes-focused condition provides greater certainty that the objectives of stream reinstatement and ecological enhancement will be realised.<sup>119</sup>
- 147 In summary, NZTA considers a performance-based, outcomes-focused approach is more appropriate. Such an approach ensures

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<sup>114</sup> Auckland Council 2015. Stream Ecological Valuation (SEV): a method for assessing the ecological functions of Auckland streams October 2011 Technical Report 2011/009 (reprint 2015) at page 52.

<sup>115</sup> [Statement of Evidence of Mr Garrett-Walker](#), paragraph [33.8].

<sup>116</sup> *Ibid*, paragraphs [31]-[35].

<sup>117</sup> [Bay of Plenty Regional Council Comments](#), Section 6.4; [Director-General of Conservation comments](#), sections 4.10-4.12.

<sup>118</sup> [Statement of Evidence of Mr Garrett-Walker](#), paragraph [25.2].

<sup>119</sup> *Ibid*, paragraph [17].

monitoring and management efforts continue for as long as necessary to secure successful stream reinstatement and enhancement, and avoids the risk that a fixed period may either be insufficient or unnecessarily prolonged. As such, we submit the imposition of a 10 year period is unnecessary.

***Conditions relating to freshwater***

148 Where considered appropriate, NZTA has updated the ecology-related Project-conditions, including conditions relating to freshwater streams. NZTA's view as to whether changes were justified/appropriate is based on:

148.1 The evidence of NZTA's experts and those of DOC, BOPRC, hapū and the Panel's advisor;

148.2 The requirements for legally enforceable conditions; and

148.3 Implications/impacts of the conditions from a practical, cost and efficiency perspective on NZTA's ability to deliver the Project.

*Changes adopted*

149 In line with the ecology JWS, NZTA has made amendments to the conditions as follows:

149.1 Condition 28 in LC.01 relating to the SMMP has been amended to:

- (a) Clarify the purpose of the SMMP, with linkages to establishing ecologically successful watercourse realignments;
- (b) Include a requirement for receiving environment trigger thresholds where, if exceeded, require action to avoid, remediate or offset effects;
- (c) Clarify how ecological success subsequent to construction works or realignments will be confirmed;
- (d) Require success measures and criteria designed to confirm no net loss of watercourse functions and values;
- (e) Include new requirements:
  - (i) To minimise the lag between construction effects and mitigation works to achieve success criteria;
  - (ii) For stream realignment success monitoring; and
  - (iii) To review and update the SMMP to include alternative methods and interventions to support the achievement of relevant requirements, where

those requirements have not been met with the relevant timeframes.

149.2 Condition 13 in BC.01 relating to culverts and streams has also been amended to:

- (a) Require the Culverts and Stream Hydraulic Design Report to cover installation requirements including targets for in-culvert watercourse substrate; and
- (b) Include requirements to inspect culverts following construction to determine whether fish passage is provided.

149.3 The definition of 'watercourse' within the conditions has also been amended to clarify that modified watercourses are included (as was raised at the ecology expert conference on 20 January 2026).

*Changes rejected*

- 150 DOC, BOPRC and the Panel's advisor have requested a condition imposing a maximum length on impacted watercourses. NZTA does not consider such a condition is necessary.
- 151 NZTA notes that the JWS from the ecology expert conference states that the ecology experts agree a condition requiring the total length of watercourse impacted by permanent reclamation and culverting or piping to be no greater than 3500m, of which no more than 500m is culverting or piping 'be' included.<sup>120</sup>
- 152 To correct the record, while NZTA's expert, Mr Garrett-Walker, considers such a condition 'could be' included, he does not consider such a condition is *necessary* to manage the effects of the Project. We submit that the impacts of reclamation, culverting or piping on watercourses will be mitigated by the 1:1 replacement ratio, irrespective of the total length of watercourse eventually impacted. Conversely, from a constructability perspective, putting a specific limit on watercourse length impacted, based on the specimen design, could constrain flexibility for NZTA, potentially creating cost (which is ultimately borne by the taxpayer) and delay. NZTA therefore opposes such a condition.
- 153 Other parties have proposed conditions requiring:
- 153.1 A minimum area of streams to be created through realignment.
- 153.2 Potential ecological value of impacted streams to be taken into account (as discussed above).

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<sup>120</sup> [Ecology JWS](#) dated 20 January 2026, section 3.2.

- 153.3 A 'back-up' management plan / offsetting package where ecological success relating to streams is not met.
- 154 We disagree and submit these conditions are not necessary or appropriate for this Project. The Proposed Conditions require the outcomes to be achieved - NZTA must achieve 'success', otherwise it will be in breach of the conditions. Any failure is at NZTA's risk. That said, NZTA has made some additions to the SMMP in LC.01 Condition 28.4(g) to require:
- 154.1 an assessment of realignments five years after completion of construction; and
- 154.2 where that report concludes success measures have not been achieved and/or success is not considered stable, updates to the SMMP to include methods and interventions to support achievement of the requirements, or alternative recommendations to meet the requirements.
- 155 NZTA does not consider additional stream offsetting management/monitoring plans are required. NZTA's obligations, success criteria, monitoring obligations and contingency measures are set out in the SMMP conditions. Additional plans duplicating these obligations are not necessary.
- 156 Long-term maintenance of streams and planting is also not necessary, for the reasons set out further below with respect to wetlands. Arbitrary timeframes for long-term monitoring of realignments are also unnecessary, particularly given the amendments to LC.01 Condition 28.4(g) as set out above.
- 157 While the specific wording of the amendments made to the conditions following the JWS has not been completely agreed between the ecological experts or parties, NZTA considers that the amendments made address the principle behind the parties' concerns.

***Conclusion – Freshwater ecology***

- 158 Many of the approaches advanced by DOC and BOPRC (eg relying on hypothetical 'potential values' of streams, and insisting on a 1.5x multiplier), are inconsistent with relevant policy direction and will result in overly onerous and unnecessary mitigation.
- 159 In contrast, the approach adopted by Mr Garrett-Walker is rational, evidence-based, and clearly justified. It strikes the appropriate balance between the national policy direction in the NPS-I and NPS-FM and aligns with the Panel's decision-making obligations under:<sup>121</sup>

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<sup>121</sup> FTAA, Sch 5, cl17(1).

- 159.1 Sections 104(1)(a) and 171(1) RMA, by focusing on the actual and potential effects on the environment as it exists;
- 159.2 Sections 104(1)(b) and 171(1) RMA, by giving effect to the NPS-FM direction to avoid the loss of river extent and values to the extent practicable (Policy 7);
- 159.3 Sections 104(1)(b) and 171(1) RMA, by giving effect to the NPS-I direction to ensure benefits of infrastructure, relative to any localised adverse effects on the environment, are recognised and provided for (Policy 1(1)), and to ensure that mitigation and the conditions proposed are proportionate to the scale of adverse effects generated (Policy 7(e)); and
- 159.4 Section 108AA(1)(b)(i) RMA, by ensuring that any conditions imposed are directly connected to an adverse effect of the activity.
- 160 NZTA's proposed freshwater management approach, as set out in the consent conditions and supported by robust expert evidence, will appropriately manage the effects of the Project and deliver no net loss and in fact, a net gain of river extent and ecological values. This approach is consistent with the requirements of the RMA and the NPS-FM and over and above what is required under the FTAA.

#### **Wetlands conditions**

##### ***Project effects on the wetland environment***

- 161 As a 7.7km linear infrastructure project, the Project will unavoidably traverse and impact a number of wetlands within the designation. NZTA and its technical experts have carefully considered the proposed effects management package relating to wetlands.
- 162 With implementation of these measures, the overall effects of the Project on Natural Wetlands can be adequately managed to result in no net loss, and in some areas, a net gain of wetland values, particularly with respect to indigenous biodiversity, wetland hydrological functioning, and habitat for At Risk and Threatened avifauna. The comprehensive package of wetland creation, restoration and planting required by the conditions is designed to maintain and enhance the ecological integrity and functioning of Natural Wetlands affected by the Project.
- 163 The remaining substantive matter in contention for wetlands is the duration and nature of monitoring and maintenance obligations for wetland restoration areas and planting.

##### ***No maintenance in perpetuity conditions are required***

- 164 BOPRC considers that maintenance of wetland restoration areas should continue for the duration of the relevant consent, or longer.<sup>122</sup>

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<sup>122</sup> [Bay of Plenty Regional Council Comments](#), section 3.5.

Their concern is that restoration gains can be lost if maintenance ceases, particularly due to the risk of pest reinvasion.<sup>123</sup>

- 165 NZTA does not consider that indefinite or in-perpetuity maintenance (or long-term monitoring beyond restoration) conditions are necessary or appropriate for the Project. NZTA's position is that maintenance of wetland restoration areas should be linked to the achievement of clear, measurable performance criteria such as target indigenous vegetation cover and control of exotic species as set out in the Proposed Conditions.<sup>124</sup> As explained in paragraph 16 of Mr Blayney's evidence, indefinite maintenance conditions are arbitrary. Once specified outcomes are demonstrably achieved, ongoing maintenance should not be required.<sup>125</sup> This approach reflects Mr Blayney's view that, at that point, the restored wetlands will be self-sustaining and further intervention is unnecessary.
- 166 We submit that NZTA's effects management approach, which requires maintenance and monitoring until restoration success is achieved, is robust, efficient, and proportionate. This proposal ensures that wetland restoration delivers its intended ecological benefits, but avoids imposing unnecessary and ongoing obligations for no ecological reason. NZTA's approach provides certainty for all parties, is enforceable through clear performance standards, and is consistent with good ecological practice.
- 167 Accordingly, we respectfully submit that ongoing maintenance in perpetuity, or for the entire duration of the consent, would be more onerous than necessary, imposing significant obligations on NZTA that are not justifiable on the evidence and would be contrary to the purpose of the FTAA.

***Conditions relation to wetlands***

- 168 As set out above, NZTA has updated the ecology-related conditions that were in contention with BOPRC, DOC and hapū, including conditions relating to wetlands, planting and lizard habitat (and in line with the ecology JWS):<sup>126</sup>
- 168.1 Condition 17 relating to the ecological management plan has been amended to provide further detail on lizard habitat creation.
- 168.2 Condition 24 relating to the wetland management plan has been amended to:
- (a) Clarify that loss of values or extent of natural wetlands that extend outside the designation boundary will be

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<sup>123</sup> Ibid, Section 5.4.

<sup>124</sup> Resource Consent LC.01 Proposed Condition 29.

<sup>125</sup> [Statement of Evidence of Mr Blayney](#) at paragraph [16].

<sup>126</sup> The conditions referred to are in Resource Consent LC.01.

identified and addressed to ensure no loss of values and extent.

- (b) Clarify the requirement for restoration planting, wetland creation and habitat rehabilitation to provide or enhance habitat for 'at risk and threatened' wetland birds within modified wetlands.

168.3 Condition 29.2 has been inserted to clarify that planting under the EMP will include plant species that will provide foraging and roosting resources for kākā, kārearea, shining cuckoo and kererū.

168.4 Condition 31.4 relating to wetland restoration and creation has been amended, in relation to offsetting moderate value wetlands, to clarify that restoration is the establishment of a dominant cover of native wetland vegetation in an existing area of exotic dominated wetland vegetation through implementing pest plant control and planting.

- 169 While the specific wording of the amendments made to the conditions following the JWS has not been completely agreed between the ecological experts or parties, NZTA considers that the amendments made address the principle behind the parties' concerns.

#### **Conclusion - Wetlands**

- 170 In summary, NZTA considers that the proposed effects management package will adequately address the impacts of the Project on Natural Wetlands. The conditions provide robust safeguards, ensuring no net loss of wetland extent and the restoration of indigenous biodiversity. While most wetlands affected by the Project are small and of lower ecological value, the Project will ultimately result in the creation of higher quality wetland habitats, delivering net ecological gains. The approach is consistent with national and regional policy and represents best practice for managing wetland effects in major infrastructure projects.

#### **Timing and requirements for preparation of a bat management plan**

- 171 The management of potential effects of the Project on long-tailed bats has resulted in two primary areas of disagreement between NZTA and DOC:

171.1 the potential for a Bat Management Plan (*Bat MP*); and

171.2 the extent to which external documents, guidelines, and protocols should be referenced within the consent conditions.

#### *A bat management plan is more onerous than necessary*

- 172 DOC seeks the preparation of a Bat MP at this stage of the Project, irrespective of the absence of recent bat detections within the Project

Area. DOC relies on the proximity of a 2017 long-tailed bat record, located approximately 2.5 kilometres from the eastern end of the Project Area,<sup>127</sup> and the alleged potential for significant adverse effects on bats from road construction and operation, including habitat loss and fragmentation, disruption of commuting routes, and disturbance from noise and artificial light.<sup>128</sup> Their position is that, given the uncertainty regarding the location of bat roosts or key habitats, and the risk of irreversible effects on the local bat population, a precautionary approach is warranted, and a Bat MP should be prepared now.<sup>129</sup>

- 173 The National Policy Statement for Indigenous Biodiversity (*NPS-IB*) directs that a precautionary approach must be adopted when considering adverse effects on indigenous biodiversity,<sup>130</sup> particularly where the effects are uncertain, unknown, or little understood, but could cause significant or irreversible damage.<sup>131</sup> As already noted, NPS requirements are a lower order consideration under the FTAA and we submit that strict application of NPS-IB policy is not required. Nevertheless, NZTA has adopted a precautionary approach to bat management. As identified in Section 3.1.3.3 of the EEA, detection rates have been extremely low, with only two confirmed passes and seven potential passes recorded over 336 detector-nights in the Stage 1 area in 2017, and no long-tailed bats detected in subsequent surveys of either the Stage 1 or Stage 2 area.
- 174 We submit that a Bat MP is not required unless and until bats are detected within the Project Area. Recent surveys have not identified any bat activity within the Project footprint, and the nearest detection is sufficiently distant to indicate a low likelihood of presence. NZTA proposes a targeted and proportionate approach, whereby a further survey will be undertaken prior to construction, and a Bat MP will only be prepared if bats are subsequently detected. This approach, reflected in the proposed consent conditions, ensures that any management response is based on current, site-specific evidence rather than hypothetical risk. We submit that to require a Bat MP in the absence of any evidence of bats within the Project Area would be unnecessarily onerous, not justified on the basis of the available information and therefore ultra vires.

*Reference to external documents in conditions*

- 175 The second area of disagreement concerns the content of the Bat MP. DOC seeks that the Bat MP should expressly reference and require compliance with specific external guidelines and protocols, such as the Department of Conservation's Protocols for Minimising the Risk of Felling Occupied Bat Roosts and the New Zealand Bat Recovery

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<sup>127</sup> [Director-General of Conservation comments](#), paragraph 3.35.

<sup>128</sup> Ibid, paragraphs 3.38-3.39.

<sup>129</sup> Ibid, paragraph 3.40.

<sup>130</sup> NPS-IB, Policy 3.

<sup>131</sup> NPS-IB, Part 3.

Group Advice Note - Planting to provide roosts for bats in the long-term.<sup>132</sup>

- 176 NZTA's approach is to avoid embedding references to external documents within consent conditions unless absolutely necessary, to prevent locking the Project into compliance with documents that are intended to guide, rather than prescribe, the management of effects, and which may be subject to change over time. Instead, as set out in the evidence of Mr Blayney,<sup>133</sup> NZTA proposes that the Bat MP, if required, should set out the current best practice at the time of its preparation. This approach ensures that decisions around appropriate management are based on the most contemporary data and expert advice available at the time construction occurs, rather than being tied to specific protocols that may be rendered redundant or replaced by entirely new guidance in the future. It also avoids the universal application of effects management protocols, such as tree felling protocols, in situations where the risk to long-tailed bats is very low and such measures would provide no benefit (but would impose additional costs on NZTA).<sup>134</sup>
- 177 In our submission, the Panel can be satisfied that the potential effects of the Project on long-tailed bats will be appropriately managed through NZTA's Proposed Conditions. If long-tailed bats are found to be present in areas where they may be impacted by Project works, a Bat MP shall be prepared in accordance with current best practice at that time.

**Other residual areas of disagreement with BOPRC – DC.01 and BC.01**

- 178 There are a few other, more minor areas of disagreement between NZTA and BOPRC with respect to some conditions in DC.01 (temporary discharges) and BC.01 (works in waterbodies).
- 179 In relation to DC.01:
- 179.1 BOPRC seeks conditions requiring:
- (a) a winter earthworks plan for the discharge of sediment contaminated stormwater during winter;<sup>135</sup> and
  - (b) set limits on the concentration of Total Suspended Solids (*TSS*) in stormwater discharges.<sup>136</sup>

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<sup>132</sup> [Director-General of Conservation comments](#), paragraph 4.22.

<sup>133</sup> [Statement of Evidence of Mr Blayney](#) at paragraph [21].

<sup>134</sup> *Ibid*, at paragraph [20].

<sup>135</sup> Bay of Plenty Regional Council Proposed Resource Consent Conditions (December 2025) RM25-0466-LC.01.

<sup>136</sup> [Bay of Plenty Regional Council comments](#), section 7.2

- 179.2 NZTA opposes the inclusion of the condition relating to winter earthworks as requirements relating to winter earthworks (and therefore any associated discharge) are managed through Condition 21 in LC.01. The insertion of this condition on DC.01 would be a duplication.
- 179.3 NZTA's expert has advised that any numerical standards on temporary discharges such as this, including limits on TSSs, are not possible to guarantee compliance with. Accordingly (and as set out above), the proposed condition from BOPRC would not be legally valid as it would have the effect of frustrating the consent.
- 179.4 NZTA considers that the existing approach proposed in the conditions, including requirements to comply with the relevant BOPRC guidelines as per the conditions on LC.01, is sufficient.
- 180 In relation to BC.01:
- 180.1 That Conditions 9.3 and 10.1-10.3 in BC.01 refer specifically to the type of SQEP that is to prepare the relevant plans. NZTA does not consider it necessary for the specific type of SQEP to be specified in the condition itself – as per the definitions, all SQEPs referred to in the conditions are persons who can provide sufficient evidence to demonstrate their suitability and competence in the *relevant field of expertise*.
- 180.2 Additional detail in relation to the stream realignment design Condition 13.3(a)4. NZTA considers that additional detail is not necessary.
- 180.3 An additional condition requiring that temporary stream diversions provide for full fish passage if the diversion is in place for 10 working days or more. A requirement for full fish passage in all circumstances is not appropriate – for example, the provision of full fish passage where fish are not present is overly onerous. NZTA considers the Proposed Conditions will adequately provide for fish passage, where appropriate.
- 180.4 An additional condition requiring all works associated with the construction of embankments as part of the permanent diversion of floodwaters to be supervised by a geotechnical engineer. NZTA considers this condition to be inappropriate – supervision by a geotechnical engineer at all times is not necessary.

### **Lizard management is covered by the wildlife approval**

- 181 There is some disagreement between DOC and NZTA in relation to lizard management.<sup>137</sup>
- 182 NZTA's position, as set out in Mr Blayney's evidence, is that only one LMP is required, prepared to meet the Wildlife Act approval.<sup>138</sup> NZTA does not consider it appropriate for this LMP to also include detailed habitat replacement and monitoring requirements for the RMA. Instead, NZTA considers that these requirements should be captured in the EMP, which is certified under the RMA. This approach, in NZTA's view, avoids unnecessary duplication of content and ensures the LMP remains a concise, practical document focused on operational species management for use by contractors and project managers.<sup>139</sup>
- 183 As a result of discussions at the ecology expert conference, NZTA has proposed an amendment to the EMP Condition 17 to strengthen the existing obligation in the EMP to provide for lizard habitat. NZTA understands that all parties agree to the amended wording. However, DOC seeks an additional condition requiring the lizard habitat areas to be monitored and providing for weed control and maintenance. NZTA does not consider an additional condition to be necessary, as these matters are already covered under the requirements of the EMP.

### **Archaeological authority conditions**

- 184 There are three key outstanding areas of disagreement with HNZPT in relation to the archaeological authority conditions (in addition to deemed certification, as discussed above):
- 184.1 NZTA has proposed a set of definitions be included in the archaeological conditions. HNZPT opposes the inclusion of definitions on the basis that the definitions will not fit in their condition portal, even if the definitions were included as a schedule. NZTA considers the definitions are required to ensure clarity and avoid disputes as to interpretation on the meaning of the conditions. Inclusion of definitions in consenting and approval documents is widely practiced. NZTA is unclear as to why HNZPT considers including the definitions as a schedule cannot be facilitated by the portal, given the legal descriptions of the land the authorities relate to are to be contained within a schedule, which apparently the portal can facilitate. NZTA has therefore retained the definitions.
- 184.2 Condition AA3(b) requires the AMP to include a procedure to apply in the event that kōiwi are encountered during Project Works, including subsequent steps to take place in the

<sup>137</sup> [Director-General of Conservation comments](#), Sections 3.29-3.34; [Bay of Plenty Regional Council comments](#), Section 5.5.5.

<sup>138</sup> [Statement of Evidence of Mr Blayney](#) at paragraphs [22]-[24].

<sup>139</sup> *Ibid*, at paragraph [25].

management of kōiwi, to be undertaken 'in general accordance with' the Guidelines for Kōiwi Tangata/Human Remains (AGS8 2014). HNZPT opposes the inclusion of the word 'general'. The Guidelines run to 44 pages and cover a wide range of matters, from the role of the Police to the importance of historical burial practices. They are guidelines, not rules and we submit, are too broad for a condition requiring work to be undertaken in accordance with them to be enforceable. NZTA therefore considers its proposed wording, requiring 'general accordance with' the Guidelines to be more appropriate.

- 184.3 Condition AA3(c) requires the AMP to be submitted to HNZPT for written approval that it satisfies the requirements of AA3(b). Condition AA3(b) sets out a comprehensive list of items to be included and addressed in the AMP. HNZPT seeks an additional 'catch all' requirement of "any other relevant matters that NZHPT considers appropriate for the land subject to the authority". NZTA opposes the inclusion of this additional criteria. NZTA considers that the criteria against which HNZPT is to approve the AMP must be sufficiently certain.<sup>140</sup> The proposed "catch all" gives HNZPT complete discretion to decide whether or not the AMP has been prepared to its satisfaction and means that HNZPT could, in theory, refuse to certify the AMP for any reason – no matter how trivial.
- 184.4 Condition AA10 sets out the reporting requirements in relation to each authority. Advice Note 2 clarifies that reporting under AA10 can be 'grouped' so as to include the reporting for multiple authorities in a singular interim report or site record update. HNZPT opposes Advice Note 2. NZTA understands HNZPT's opposition is on the basis that it would allow NZTA to delay the provision of reports to HNZPT by grouping the authorities. This is incorrect. Condition AA10 requires NZTA to satisfy the reporting requirements of that condition within 20 working days of the completion of on-site archaeological work associated with each authority. Advice Note 2 does not delay or usurp this 20 working day timeframe, it simply recognises the ability to report on multiple authorities at once, but still within the 20 working day timeframe of completion of the earliest on-site archaeological work associated with an authority. NZTA seeks the inclusion of Advice Note 2 to provide clarity that it can, for practical reasons, group reporting requirements provided such groupings comply with other condition requirements.
- 185 The archaeological conditions proposed, and attached to these closing legal submissions, have been discussed with hapū. NZTA

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<sup>140</sup> See above Part 4 regarding requirements of conditions.

understands that hapū now agree with these conditions, with the exception of the deemed certification conditions, which hapū oppose.

- 186 As a final point, for the record, NZTA wishes to clarify the statement in the JWS from the conditions workshop that *"NZTA is currently in non-compliance with Stage 1 of Takitimu North Link as final reports have not been presented"*. NZTA acknowledges it has not submitted a report for a building which was demolished as part of Takitimu North Link Stage 1. NZTA has been unable to do so as it has been unable to contact the archaeologist who carried out a survey of the building on behalf of NZTA despite repeated efforts. NZTA understands that he is no longer practicing as an archaeologist in New Zealand. NZTA has advised HNZPT of the issue and are working with HNZPT to remedy the situation.

### **PART 8: CONCLUSION**

- 187 The Project is fully aligned with the purpose of the FTAA - to facilitate the delivery of infrastructure of significant regional or national benefit. It is consistent with relevant policy direction (including the NPS-I, NPS-FM and NPS-IB), has strong community support and will deliver substantial regional and national benefits. These benefits significantly outweigh any potential adverse effects; effects that, in any event, will be minor or positive given the comprehensive suite of conditions proposed by NZTA. The Proposed Conditions are robust, evidence-based, and proportionate, ensuring that any residual adverse effects are appropriately avoided, remedied, or mitigated, in accordance with the statutory direction of the FTAA. The additional mitigation requirements sought by DOC, BOPRC, hapū and the Panel's advisors are not necessary to manage the effects of the Project and would be overly onerous, if imposed.
- 188 Accordingly, we submit that the Panel should grant the Approvals sought and confirm the alteration to the designation, subject to NZTA's Proposed Conditions.

**Dated 16 February 2026**

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