11 August 2025

Appendix E: Complex freshwater fisheries activity approval report

Section 51(2)(e) complex freshwater fisheries activity approval report for – FT-0063 Waihi North Project

Department of Conservation
Te Papa Atawhai

Te Kāwanatanga o Aotearoa
New Zealand Government

Contents

Introduction

1. On 2 May 2025, the Environmental Protection Authority (EPA) determined that the Oceana Gold (New Zealand) Limited ("OGNZL") substantive application for the Waihi North Project was complete and complied with the requirements of section 46(2) of the Fast-track Approvals Act 2024 (the Act/FTAA).

2. As part of the application, OGLNZ is seeking two approvals that would otherwise be sought under regulation 42 or 43 of the Freshwater Fisheries Regulations 1983.

3. On 27 May 2025 the Panel Convener directed the EPA to obtain a report prepared by the Director-General of Conservation, in accordance with section 51(2)(e) of the Act. This report is due to the EPA on 11 August 2025.

Purpose of the report

4. This report has been prepared by the Department of Conservation (DOC) on behalf of the Director-General of Conservation. This report provides information on risks relating to complex freshwater fisheries activities to assist the Panel in its consideration of the application by OGNZL, for dispensation for the Waihi North Project.

5. The Act outlines at Schedule 9, clause 4, that this report must address the following matters:

- the alignment of the proposed activity with best practice and the New Zealand Fish Passage Guidelines; and
- the management of risks to freshwater values or habitat, including prevention of access to or spread of invasive species; and
- the availability and quality of the habitat upstream and downstream from the proposed activity; and
- the presence of threatened, data-deficient, or at-risk species under the New Zealand Threat Classification System in the vicinity of the proposed activity; and
- the advantages and disadvantages of providing fish passage upstream or downstream of the proposed activity; and
- any conditions that should be imposed in accordance with clause 6 or section 84.

The Project

6. The Waihi North Project ("the Project") is a proposed mining initiative in Waihi, aiming to extend existing operations through the development of new underground and open-pit mining areas.

7. The application involves the diversion of two streams, being:

(a) the Northern Uphill Diversion Drain, a diversion of watercourse TB1 around the Northern Rock Stack, and

(b) the Southern Uphill Diversion Drain, a diversion of the Ruahorehore Stream around Tailings Storage Facility 3.

8. This report relates to the application for complex freshwater fisheries activity approval, specifically dispensation from providing a fish facility (i.e. fish pass) at the two stream diversions.

Information used to write this report

9. This report draws on information from the substantive application, in particular:

- Waihi North Project: Freshwater Ecological Assessment. Boffa Miskell Limited. 2025. Provided with the application as B.43.
- Substantive Application Report. Provided as documents A.00 – A.12. In particular, this report draws on information from the Project Description (A.05), Approvals Required (A.07), and Assessment of Environmental Effects (A.09).
- Aquatic Fauna Salvage and Relocation Plan. Included in the Ecology and Landscape Management Plan Waihi Area 2025. Provided with the application as H.02.
- Waihi North Project Proposed Freshwater Fisheries Dispensation Conditions. Provided with the application as D.06.

10. In addition, DOC and OGNZL have engaged post-lodgement to discuss issues as encouraged by the Panel Convener. This has resulted in a revised condition set provided on Friday 25 July that DOC understands has been provided to the Panel. DOC has reviewed the freshwater fisheries conditions and attached it as Appendix 1 with further tracked changes and comments.

11. OGNZL have advised DOC that the Ecological and Landscape Management Plan (ELMP) for Waihi has been amended to include the Stream Diversion and Development Plan – provided in draft in Appendix 14 of the Freshwater Ecological Assessment (B.43). DOC has not been provided with the amended ELMP that contains a Stream Diversion and Development Plan.

12. The assessment in this report is informed by advice from DOC freshwater experts, Natasha Petrove and Jacob Williams, whose expertise is detailed in DOC's Covering Report.

Complex Freshwater Fisheries Activities

Statutory context

13. OGNZL is seeking "complex freshwater fisheries activity approval" under the Act for two stream diversions associated with the Project.

14. Under the Act (clause 7 of Schedule 9), a complex freshwater fisheries activity approval is deemed to be issued under regulation 42 or 43 of the Freshwater Fisheries Regulations 1983 (FFR).

15. Relevantly, regulation 43 of the FFR provides that a proposal to build a diversion structure requires notification to the Director-General, who may then decide whether a 'fish facility' is required.

16. A fish facility is defined in the FFR as "*any structure or device, including any fish pass or fish screen inserted in or by any water course or lake, to stop, permit, or control the passage of fish through, around, or past any dam or other structure impeding the natural movement of fish upstream or downstream*". The Director-General may either (a) require a fish facility and impose conditions or (b) issue a dispensation from the requirement to provide a fish facility. Under the FTAA, a permanent diversion structure is "a complex freshwater fisheries activity" requiring complex freshwater fisheries approval.

17. OGNZL's application document A.07 (4.7) indicates that complex freshwater fisheries approval is also sought in regard to regulation 42 (i.e., culverts and fords). Under s 2 of the FTAA, a culvert or ford that permanently blocks fish passage meets the definition of a complex freshwater fisheries activity (s 2). OGNZL has confirmed by way of email to DOC on 28 July 2025 that no culverts or fords are proposed that would permanently block fish passage, and that complex freshwater fisheries activity approval is only sought for the two diversion structures (which are intended to maintain fish passage, albeit in a diverted course).

The application

18. OGNZL is seeking dispensation from the requirements to provide a fish facility at two stream diversions associated with the project, the Northern Uphill Diversion Drain and the Southern Uphill Diversion Drain.

19. The applicant's reasoning for the dispensations is summarised in the application as:

> "*Both the Northern and Southern Uphill Diversion Drains are designed to maintain fish passage (and habitats) to a similar standard as existing. Therefore, it is considered that there is no requirement for these diversion structures to include a fish facility and a dispensation is sought accordingly*".[1]

Northern Uphill Diversion Drain / TB1

20. The Northern Uphill Diversion Drain is a proposed diversion of 1,389 m length of an Ohinemuri River tributary ("TB1") around the Northern Rock Stack, to form 695 m of diverted watercourse.

21. Fish populations were assessed by the applicant at two sites along TB1, with only shortfin eels detected (Table 1). A large natural waterfall downstream is identified as a significant natural barrier to migration to the site.

Table 1. Freshwater fish species detected at the TB1 tributary.

Common name	Scientific name	New Zealand Threat Classification Status
Shortfin eel	*Anguilla australis*	Not Threatened

[1] p 341 of A.07

22. The applicant proposes to create a stream diversion that is ecologically functional, stating: *"The design of the diversion channel is planned to replicate aquatic habitat attributes with a range of suitable stable microhabitats for fish and invertebrates, including the creation of stable pool habitats, the inclusion of gravel and cobble riffle habitats, and provide for the passage of climbing fish, especially eels".*[2]

23. The Freshwater Ecological Assessment provides indicative designs of diversion channels in its Appendix 11, which are expanded upon in its Appendix 14 draft Stream Diversion and Development Plan. It states that "The stream gradient may be difficult to maintain fish passage for general fish species, so the design should allow the passage of migrating eels, allowing them to access the remaining upstream habitat" (18.1.7). Fish salvage is proposed before diversion works are undertaken, as described in the ELMP.

Southern Uphill Diversion Channel Extension / Ruahorehore Stream

24. The Southern Uphill Diversion Drain is a proposed diversion of 2,118 m of Ruahorehore Stream and associated tributaries and canals to form 2,503 m of diverted watercourse around the Tailings Storage Facility 3 (TSF3). This diversion will be an extension to the existing Southern Uphill Diversion Drain which currently starts behind TSF1A and runs behind the Eastern Stockpile.

25. Ecological values of the Ruahorehore Stream within the proposed TSF3 footprint are of moderate and high value, with the presence of native fish and kōura. The following fish species were detected in the stream:

Table 2. Freshwater fish detected at Ruahorehore Stream and tributaries.

Common name	Scientific name	New Zealand Threat Classification Status
Common bully	*Gobiomorphus cotidianus*	Not Threatened
Shortfin eel	*Anguilla australis*	Not Threatened
Longfin eel	*Anguilla dieffenbachii*	At Risk: Declining
Kōura	*Paranephrops planifrons*	Not Threatened
Rainbow trout	*Oncorhynchus mykiss*	Introduced and Naturalised

26. The application proposes to create a stream diversion that is ecologically functional: *"The design of the diversion channel is planned to replicate aquatic habitat attributes with a range of suitable stable microhabitats for fish and invertebrates, including the creation of stable pool habitats, the inclusion of gravel and cobble riffle habitats, and provide for the passage of climbing fish, especially eels".*[3]

[2] Section 18.1.7 of B.43

[3] Section 17.1.10 of B.43

27. The Freshwater Ecological Assessment provides indicative designs of diversion channels in Appendix 11 and in the draft Stream Diversion and Development Plan. It states that *"the stream gradient may make it difficult to maintain (upstream and downstream) fish passage for general fish species, so the design should allow the passage of migrating eels, and other native fish with climbing abilities, allowing them to access the remaining upstream habitat"*.

28. Fish salvage is proposed before diversion works are undertaken, as described in the ELMP.

29. The Freshwater Ecological Assessment describes that the lower 1,800 m of the diversion are anticipated to replicate a fully formed ecologically functional watercourse that is connected to the Ruahorehore Stream proper. This will not be the case for the upper part of the diversion: *"The diversion channel is not anticipated to be 'ecologically functional' in the upper reaches but will still enable fish passage for Anguilliforms and some climbers up into the upper reaches of the Ruahorehore Tributary".*[4]

Overview of DOC's report

30. DOC's assessment can be summarised into the following key points:

- The applicant's assessments indicate the affected waterways have a relatively small native freshwater fish fauna, comprising three native freshwater fish species, and kōura (freshwater crayfish). Of these species, only longfin eels are At Risk: Declining. Others are Not Threatened.
- Both the TB1 and Ruahorehore streams have reasonably small catchment areas upstream of the proposed diversions, with fair to good habitat quality.
- An indicative channel design and objectives are provided, but detailed plans for the proposed diversions have not been provided, and the Stream Diversion and Development Plan is still in draft form.
- While the proposed high level channel design principles and fish passage objectives appear appropriate for the ecological context, there is not enough information provided to adequately assess how and if fish passage will be provided through the diversions.
- DOC therefore strongly recommends that conditions are included that require design standards to follow the NZ Fish Passage Guidelines.
- To measure whether fish passage objectives are met, DOC recommends a condition that monitoring is undertaken following NZ Fish Passage Guidelines[5].

Assessment

31. Schedule 9, clause 4 of the Act sets out what this report must include.

[4] P 8 of B.43 (part 2) Appendix 14.

[5] Franklin, P., Baker, C., Gee, E., Bowie, S., Melchior, M., Egan, E., Aghazadegan, L., & Vodjansky, E. (2025). New Zealand fish passage guidelines: Recommended standards for the design and restoration of instream infrastructure to provide for fish passage (Version 2.03). National Institute of Water & Atmospheric Research (NIWA). https://niwa.co.nz/freshwater/fish-passage-home/new-zealand-fish-passage-guidelines.

The alignment of the proposed activity with best practice and the New Zealand Fish Passage Guidelines

32. The New Zealand Fish Passage Guidelines set out the best-practice approaches and design standards for providing fish passage at instream structures. The Guidelines provide a basis for developing suitable infrastructure designs in the majority of situations regularly encountered in New Zealand.

33. There are not yet any detailed plans for the proposed diversions. The application states that the principles for the diversion design are to be ecologically functioning diversions that replicate the habitat of a stream. It is noted that they would maintain or improve on the ecological functioning of the stream reaches that will be lost and would provide a range of suitable stable microhabitats for fish and invertebrates, including stable pool habitats and gravel and cobble riffle habitats, while conveying water.

34. In terms of fish passage, it is stated that the diversions will provide passage for climbing fish species, especially eels.6 As a fish passage objective, this appears to be appropriate given the expected fish fauna (more detail is provided below).

35. Passage (and habitat) for trout is proposed to be provided for in the design for the lower reaches of the Ruahorehore Stream diversion, given that the wider Ohinemuri River catchment is classified as a significant trout fishery.[7]

36. An indicative channel design and objectives are provided.8 In principle, these could provide appropriate stream habitat but they only give a general description of the overall design objectives, and two indicative cross sections for the 2,765 m of stream diversion proposed to be created. They have also noted issues with providing fish passage, in particular that '*the stream gradient may make it difficult to maintain fish passage for general fish species'*, and therefore that the design should allow for the passage of migrating eels (for TSF3 and NRS/TB1) and other native fish with climbing abilities (for TSF3) to allow them to access the remaining upstream habitat.9 However no description of how fish passage will be facilitated or how fish passage constraints (such as how the steep gradient will be incorporated into the design) have been provided.

37. There are existing natural waterfalls at both sites that form barriers to passage of 'swimming' species fish between the lower and upper reaches of the affected waterways. This supports the objective to provide passage only for 'climbing' fish species and eels in the upper reaches of the diversions.

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[6] pp 160 & 178 of A.05, p5 of B.43 (part 2) Appendix 14.

[7] p130 of B.43 (part 1).

[8] B.43 (part 2) Appendix 11 and Appendix 14 (pp 5–8).

[9] pp 83 & 90 of B.43 (part 1).

38. Overall, while the proposed high level channel design principles and fish passage objectives appear appropriate for the ecological context, there is not enough information provided to adequately assess how and if fish passage will be provided through the diversions.

39. During post-lodgement engagement, DOC recommended to OGNZL that it includes a condition to follow the NZ Fish Passage Guidelines to ensure that design standards are followed that have a high chance of successfully enabling fish passage. This has not been adopted in the revised conditions.

40. DOC recommends the following:

    - That conditions should include a requirement to follow the best practice design standards as outlined in the NZ Fish Passage Guidelines, in particular setting clear fish passage objectives and performance standards (section 3), incorporating appropriate design standards to provide passage for the target fish species (including sections 4, 5.5.3 and 7.3.5, and Appendix A), and monitoring fish passage success (section 8).
    - That the conditions should include the criteria for nature-like fishways (table 7.3 of the NZ Fish Passage Guidelines) to ensure that fish passage objectives are met throughout the diversion channels. Flows through the channel should allow for the life history stages of the applicable fish species. Aspects of the design specifications for rock ramp fishways (table 5.4), culvert design methodology (considering fish swimming ability, e.g. figure 4.8) could be used to aid design.

41. Further discussion on this point is in the Conditions section of this report.

The management of risks to freshwater values or habitat, including prevention of access to or spread of invasive species

42. The application seeks dispensation from providing a fish facility, since both the Northern and Southern Uphill Diversion Drains will be designed to maintain fish passage to a similar standard as existing.

43. DOC agrees with this reasoning in general, however as the application does not contain enough detail to confidently say whether fish passage will be provided, it is not possible to adequately assess the risks to freshwater values or habitat in relation to fish passage.

44. The applicant is proposing various effects mitigation for the diversions and freshwater impacts, e.g. salvage and relocation of freshwater fauna prior to dewatering the existing stream reaches, erosion and sediment management and control measures, and some specific recommendations in relation to the stream diversions (sections 17.1.10 and 18.1.7 of B.43). These are broadly appropriate. DOC recommends that robust conditions are included containing more detail, to ensure that effects are appropriately managed and monitored.

45. DOC supports conditions proposed that restrict instream works during peak migration times and that no wet concrete is used within flowing water.

46. Biosecurity measures are included in the updated condition set. However, DOC recommends that these are further improved to ensure consistency with best practice “check, clean, dry” standards.

47. There is mention of excluding trout *‘from the upper reaches or non-preferable tributary streams [to] provide benefit for native fish and fauna (e.g. stream TB1)’ and that ‘passage for trout to the upper reaches of the Ruahorehore Stream diversions is less likely to be achievable and less desirable, thus providing more habitat for the native fish fauna’*[10]. However, given the detail for the diversions has not been provided, DOC is unable to assess how this might be implemented in the diversion design.

The availability and quality of the habitat upstream and downstream from the proposed activity

48. The applicant has conducted surveys at the upper and lower reaches of the proposed diversions but has not provided much description of the quality and quantity of habitat upstream of the affected diversion reaches. To address this gap, DOC has used available GIS imagery to better understand the upstream habitat and its potential to support freshwater fish.

49. Surveys and aerial imagery indicate that the TB1 and Ruahorehore streams have small catchment areas upstream of the proposed diversions – approximately 1,000 m^2 for TB1 and 500 m^2 for Ruahorehore. These areas vary in habitat quality, as outlined in the following sections.

Ohinemuri tributary / TB1

50. The headwaters of TB1 are located in pastural land. The stream channels are narrow and incised, with a substrate dominated by silt and sand, and occasional patches of gravel and bedrock. Macrophytes are common throughout this reach. A two-metre fenced riparian buffer is present along part of the TB1 tributary, although it is unclear whether this buffer extends along all headwater reaches. Riparian vegetation is predominantly pasture grasses.

51. Downstream of the proposed diversion, there is a short reach of approximately 190 m before the stream joins the Ohinemuri River. Aerial imagery suggests that this section is similar in character to the lower survey reach, with a relatively wide channel, slow-flowing water, and large, deep pools. The substrate is predominantly silt and sand, with occasional small gravel. The riparian margins are fenced and contain a continuous strip of approximately 10 metres width of native planting on both banks. Some areas show signs of active bank erosion and slumping. Macrophytes are rare but present.

[10] pp 129–130 of B.43 (part 1).

52. Macroinvertebrate surveys conducted by the applicant found that the TB1 stream is dominated by pollution-tolerant taxa, although some pollution-sensitive mayflies and caddisflies (EPT[11] taxa) were also present. This indicates that the water and habitat quality is generally fair.

53. Only shortfin eel (Anguilla australis, Not Threatened) was detected in fish surveys. A natural waterfall downstream of the site likely acts as a barrier to upstream migration for most species, as outlined in the previous sections.

54. The applicant notes that the TB1 waterway is itself a previous diversion, although DOC is unclear when this was undertaken. Diverting the stream again will result in additional impacts on this section of stream that would already be recovering from the previous diversion. Due to these ongoing impacts the freshwater habitat and communities at this location are not necessarily indicative of a natural waterway state.

Ruahorehore Stream

55. The upstream habitat of the Ruahorehore Stream is located in an area of regenerating forest. The applicant's report describes this reach as relatively high quality, with a substrate composed mainly of large boulders and a mix of pool, run, cascade and waterfall habitats. No macrophytes or bank erosion were observed. Riparian vegetation is dense and includes a mix of native species, such as black tree fern, and some exotic species, including remnant mature pine trees.

56. Downstream of the proposed diversion, the stream flows through pastureland. This section is fenced and includes riparian vegetation dominated by exotic shrubs and pasture grasses, with some areas of riparian planting. The stream banks are relatively high, and the substrate is primarily silt, sand and small gravel. There are areas of active erosion and bank slumping.

57. Macroinvertebrate surveys show that the upper forested reaches support a community dominated by EPT taxa, indicating good water and habitat quality. In contrast, the lower reaches are dominated by more pollution-tolerant taxa, reflecting the more impacted nature of this part of the catchment. Fish surveys detected shortfin eel, longfin eel (*Anguilla dieffenbachii*, At Risk - Declining), common bully, kōura, and rainbow trout. The presence of longfin eel and sensitive macroinvertebrate taxa in the upper reaches highlights the ecological value of maintaining access to these habitats.

The presence of threatened, data-deficient, or at-risk species under the New Zealand Threat Classification System in the vicinity of the proposed activity

58. The applicant's assessments indicate the affected waterways have a relatively small freshwater fish fauna (see Tables 1 and 2), comprising three native freshwater fish species, rainbow trout and kōura

[11] EPT: Ephemeroptera (mayflies), Plecoptera (stoneflies) and Trichoptera (caddisflies), the most sensitive aquatic macroinvertebrate species indicative of good water quality and habitat.

(freshwater crayfish). Of these species, only longfin eels are At Risk: Declining. Other species are classified as Not Threatened, or in the case of rainbow trout, Introduced and Naturalised.

59. For the Ruahorehore Stream, the New Zealand Freshwater Fish Database (NZFFD) indicates that three other native freshwater fish species have been recorded nearby in the wider catchment. These are banded kōkopu (*Galaxias fasciatus*; Not Threatened), kōaro (*Galaxias brevipinnis*; At Risk - Declining) and Cran's bully (*Gobiomorphus basalis*; Not Threatened). Introduced species brown trout (*Salmo trutta*), rudd (*Scardinius erythrophthalmus*) and goldfish (*Carassius auratus*) have also been recorded.

60. For TB1, the NZFFD indicates that longfin eel, Cran's bully, common bully and kōura are present nearby in the catchment (in nearby reaches of Ohinemuri River). Introduced rainbow trout, brown trout and rudd have also been recorded.

61. TB1 and Ruahorehore streams are close to each other, so the banded kōkopu, kōaro and goldfish recorded in the wider Ruahorehore catchment could also be expected to reach TB1.

The advantages and disadvantages of providing fish passage upstream or downstream of the proposed activity

62. Although there is only a small amount of habitat upstream of the proposed diversion reaches, these will provide important small stream habitat for freshwater fish within the catchment. The applicant is also proposing riparian planting along some of the upstream reaches, which will improve the available habitat. Ensuring that native freshwater species have access to this habitat will be beneficial.

63. Providing passage through the diversion reaches will be beneficial for all native species present, to enable unobstructed movement through habitats necessary to complete their life cycles.

64. The application notes that 'the stream gradient may make it difficult to maintain fish passage for general fish species' and proposes to provide for passage for *'climbing fish species, especially eels'*. It also notes that both waterways include natural waterfalls within the proposed diversion reaches (c. 150 m downstream of the TB1_upper survey site; and between the RUA_upper and RUA_forest survey sites).[12]

65. Providing passage primarily for climbing species is an appropriate fish passage objective given the location of the streams in the catchment, the fish fauna present both in the streams and in nearby waterways, and the amount of habitat available upstream.

66. However, the application lacks detail on the fish passage constraints such as details of the waterfalls or what the gradient is of the existing streams and proposed diversions. This prevents a specific assessment of whether fish passage for swimming species will be adequately provided within the diversions where possible.

[12] B.43 (part 1), pp 85 & 90 of the PDF.

67. The application also indicates that passage and habitat for trout is intended to be provided for in the design for the lower reaches of the Ruahorehore Stream diversion, given the importance of the wider Ohinemuri catchment as a trout fishery. Additionally, there is mention of excluding trout "*from the upper reaches or non-preferable tributary streams [to] provide benefit for native fish and fauna (e.g. stream TB1)*" and that "*passage for trout to the upper reaches of the Ruahorehore Stream diversions is less likely to be achievable and less desirable, thus providing more habitat for the native fish fauna*". Detail on how this would be achieved is not provided.

68. Overall, the fish passage objectives (i.e. providing appropriate passage for native species, and passage for trout to some of the habitat, but restricting access of trout and other introduced species to headwater habitat) are appropriate given the fish fauna present and the location in the wider catchment. However, DOC's ability to comment on the feasibility of reaching these objectives is limited due to the lack of detail in the application.

Additional information

Conservation legislation, statutory planning documents, and policy

69. The Conservation Act 1987 is relevant to consider alongside the freshwater fisheries approval sought for this Project.

70. The FFR are deemed to be administered under the Conservation Act 1987. A function of the Department under the Conservation Act 1987 is *"to preserve so far as is practicable all indigenous freshwater fisheries, and protect recreational freshwater fisheries and freshwater fish habitats"* (s 6(ab)). A key component of preserving indigenous freshwater fisheries is ensuring native fish have access unobstructed by man-made barriers to habitats required to complete their life cycle. This function supports the resolution of issues identified in this report by way of conditions.

Treaty of Waitangi settlement considerations and obligations

Treaty of Waitangi settlement obligations

71. Under section 7 of the Act the Panel must act in a manner that is consistent with obligations arising under existing Treaty Settlements.

72. The Ministry for the Environment (MfE) provided a report which sets out the section 18 matters it considered relevant to the application. DOC was consulted by MfE on this report.

73. DOC has read the section 18 report prepared by the Ministry of the Environment. Potential considerations that may be relevant for the Panel in assessing the freshwater fisheries approval

include the consultation requirements for conservation approvals in the Ngāi Tai Ki Tamaki Deed of Settlement and Pare Hauraki Collective Agreement Deed of Settlement. Although high-level, the conservation relationship agreement provisions in the Ngāti Tara Tokanui deed of settlement are also of relevance.

Treaty of Waitangi principles

74. For this application, this has included:

- DOC has engaged with the following Treaty partners on the application: Ngāti Maru Ruunanga, Ngāti Tara Tokanui Trust, Ngāti Porou ki Hauraki, Te Rūnanga o Ngāti Pū, Ngāti Whanaunga Iwi Trust, Ngāti Hei Trust, Ngāti Tamaterā Treaty Settlement Trust and Hako Tūpuna Trust.
- DOC notes this has occurred within the context of the fast-track process with prescribed timeframes, and where the applicant has an obligation to consult and Treaty partners have a right to be invited to comment. The scope of engagement also recognised DOC's role to provide reports and comments on the application, and not in its usual role as decision-maker.
- Identifying for the Panel any relevant information from Protocols or relationship agreements prepared in accordance with Settlements (e.g. taonga species), and
- Ensuring that the information in this report is fully informed by any information from Treaty partners and the impact the activity would have on their interests.

75. Responses to DOC's engagement, relevant to freshwater considerations, are summarised below. No comments specifically relating to fish passage were received.

76. Ngāti Hako expressed ongoing concerns about the Waihi North Project's cultural and ecological risks to whenua (land) and wai (water). Specific concerns relate to the potential contamination of groundwater and the protection of taonga species. Ngāti Hako strongly supports a collaborative approach whereby iwi, DOC and others are involved in co-designing and co-implementing aspects of the project.

77. Ngāti Pū emphasised the need to minimise harm to waterways and taonga through collective strategies and shared knowledge, stressing that biodiversity planning must include broader voices to ensure the best outcomes for te taiao. Ngāti Pū agreed that if the project proceeds, long-term collaboration, including on water management, is essential, and they expressed the desire for the Panel to formally require OGNZL to work with both DOC and iwi to implement mitigation measures.

78. Ngāti Tara Tokanui have raised concerns generally about the Fast-track Approvals Act process. They note the complexity of the application, and the outstanding need to reconcile scientific data with iwi mātauranga.

79. Although not the decision maker, DOC has acted in good faith by engaging with Treaty partners. This engagement is linked to the principles of partnership and informed decision-making, and feedback can be used to understand Māori interests that may require active protection (e.g., by way of conditions).

In this case, freshwater values are known to be important to local Māori. However, no concerns specifically relating to fish passage were received. DOC understands that Māori authorities will have the opportunity to review DOC's agency reports and provide comments for the Panel to consider, although acknowledges that the timeframes will be short.

Proposed conditions

Engagement with OGNZL on conditions

80. OGNZL provided draft conditions with the substantive application as attachment D.06.

81. As encouraged by the Panel Convener, DOC has engaged with OGNZL on conditions. Condition workshops were held on 21 May 2025 and 3 July 2025.

82. DOC provided the following advice relevant to this report to OGNZL on 3 June 2025:

- *We recommend that conditions should include a requirement to follow the good practice design standards as outlined in the NZ Fish Passage Guidelines, in particular setting clear fish passage objectives and performance standards (section 3), incorporating appropriate design standards to provide passage for the target fish species (including sections 4, 5.5.3 and 7.3.5, and Appendix A), and monitoring fish passage success (section 8).*
- *We recommend that the conditions should include the criteria for nature-like fishways (table 7.3 of the NZ Fish Passage Guidelines) to ensure that fish passage objectives are met throughout the diversion channels. Flows through the channel should allow for the life history stages of the applicable fish species. Aspects of the design specifications for rock ramp fishways (table 5.4), culvert design methodology (considering fish swimming ability, e.g. figure 4.8) could be used to aid design.*
- *Various effects mitigation is proposed, e.g. salvage and relocation of freshwater fauna prior to de-watering the existing stream reaches, erosion and sediment management and control measures, some specific recommendations in relation to the stream diversions. Recommend including conditions that these effects are adequately managed and monitored. Also that the proposed conditions include biosecurity measures (clean down of equipment between sites to prevent spread of freshwater and other pests, etc.).*

83. Additional conditions were recommended to OGNZL on 7 July 2025:

- *No instream works during peak migration times.*
- *No wet concrete within flowing water.*
- *Monitoring of fish passage to ensure fish passage objectives have been met.*
- *Biosecurity measures (check clean dry, and best practise biosecurity protocols followed, e.g. clean down of equipment between sites to prevent spread of freshwater and other pests; biosecurity risk assessments before any translocation, e.g. assessing fish for signs of sickness and disease, etc.).*

84. DOC also requested at the second conditions workshop that conditions were framed more clearly, ensuring that they were enforceable.

Revised condition set

85. OGNZL provided the final revised conditions to DOC on 25 July 2025.

86. Compared to the conditions (D.06) supplied with the substantive application, conditions have been added that;

- *All works are to be undertaken in accordance with the provisions of the Aquatic Fauna Salvage and Relocation Plan and the Stream Diversion and Development Plan. OGNZL have stated that the Waihi ELMP has been amended so that both plans are now included.*
- *Diversions must be designed in accordance with the diversion design resource consent conditions, specifically G22 of the WRC conditions. G22 includes the following conditions:*
    - *Stream diversion and enhancement measures must be consistent with Type 1, Type 2 or Type 3 diversions shown in the ELMP referred to in Condition C2 and incorporate the following design elements:*
        a. *Stream diversions are to convey clean water, or surface water treated to remove silt (i.e., uncontaminated by construction or operational activities);*
        b. *The design of the diversion channels must create a range of stable microhabitats for fish and invertebrates, including stable pool habitats and gravel and cobble habitat, sufficient to achieve a level of stream function equivalent to that predicted through the mitigation calculations set out in the Boffa Miskell Freshwater Ecological Assessment, dated 26 February 2025;*
        c. *The diversion channel around TSF3 must allow the passage of migrating eels and other native fish with climbing abilities;*
        d. *Riparian vegetation should extend to at least 10 m either side (where this occurs on land owned by the Consent Holder) of the channel and must include low-growing species with overhanging cover;*
        e. *Where possible, diversions should be constructed prior to the reclamation of the original channel;*
        f. *Where a diversion is required but it is not possible to replicate the existing habitat value (such as the upper reaches of the Ruahorehore Stream Tributary diversion channel) or where construction is taking place, then a clean water cut off drain must be created;*
        g. *The diversion around TSF3 must include provision for a 1.2 ha wetland to the east of the TSF3.*
- *Instream works will not be undertaken during peak migration times and wet concrete will not be used in flowing water.*
- *Equipment is clean and dry prior to use.*
- *Best practice biosecurity protocols will be followed.*

- *Biosecurity risk assessments of any fish to be translocated will be undertaken.*

87. A condition to adhere to the NZ Fish Passage guidelines has not been included. OGNZL provided the following comments on this matter:

> *"The application does not seek to establish any new structures that would impede fish passage in any capacity with the diversion channels maintaining fish passage and habitats to a standard that aligns with what is currently in place. As such, there is no need for the NZFPG to be included in these provisions".*
>
> *"The Stream Diversion and Development Plan includes requirements for an ecologist to assist with ensuring the diversions maintain fish passage and habitats to a similar standard as existing. Reference to this plan has been linked into this condition, and amendments have been made to the Waihi ELMP to include this plan (and the Stream Enhancement Riparian Planting Plan)".*

88. A condition requiring monitoring of fish passage has also not been included.

DOC's comments on revised conditions

89. DOC's recommendation for a condition to follow the NZ Fish Passage Guidelines is to ensure that design standards are followed that have a high chance of successfully providing fish passage. The information provided by OGNZL does not adequately demonstrate that fish passage will be met. DOC considers the diagrams provided to be inappropriate for the length of stream diversions proposed and maintains that a condition requiring adherence to the NZ Fish Passage Guidelines is necessary.

90. DOC considers that monitoring is necessary to understand whether fish passage objectives have been met, and to trigger improvements if they are not.

91. The draft Stream Diversion and Development Plan does include a section (7) on monitoring, stating *"fish passage along the length of the channel should be inspected. Any issues identified must be brought to the attention of the stream design and construction team, and a remedy found*". Given the lack of detail about the channel design, it is important to have robust and enforceable conditions on monitoring to ensure that fish passage is provided. The NZ Fish Passage Guidelines contains a section on monitoring, which provide appropriate methods and standards.

92. DOC has proposed revisions to the condition set, which can be seen in the marked up condition set attached as Appendix 1 to this report.

Appendices

Appendix 1: Freshwater Fisheries Dispensation Proposed Conditions – marked up with DOC's proposed changes.

WAIHI NORTH PROJECT - PROPOSED FRESHWATER FISHERIES DISPENSATION CONDITIONS

DOC marked up version, 11 August 2025

FTAA s42(4)(j) application - Dispensation that would otherwise be applied for under regulation 43 of the Freshwater Fisheries Regulations 1983 in respect of a complex freshwater fisheries activity.

This complex freshwater fisheries activity approval grants, subject to conditions, dispensation from providing a fish facility that would otherwise be required under regulation 43 of the Freshwater Fisheries Regulations 1983 at the following diversion structures:

1. The Northern Uphill Diversion Drain; being a diversion of watercourse TB1 around the Northern Rock Stack (the TB1 Diversion); and
2. The Southern Uphill Diversion Drain; being a diversion of the Ruahorehore Stream around Tailings Storage Facility 3 (the Ruahorehore Diversion).

~~Regulation 43 of the Freshwater Fisheries Regulations 1983 states:~~

> ~~*(1) The Director-General may require that a dam or diversion structure proposed to be built include a fish facility, except if the dam or diversion structure is subject to a water right issued before 1 January 1984 under the Water and Soil Conservation Act 1967.*~~
>
> ~~*(2) A person proposing to build a dam or diversion structure must—*~~
>
> ~~*(a) notify the Director-General; and*~~
>
> ~~*(b) forward a submission seeking the Director-General's approval or dispensation from the requirements of these regulations; and*~~
>
> ~~*(c) supply to the Director-General any information that is reasonably required to assist the Director-General in deciding any requirements that may apply (including plans and specifications of the proposed structure and any proposed fish facility).*~~
>
> ~~*(3) If the Director-General considers that the information supplied under subclause (2)(c) is inadequate, the Director-General may, within 28 days, advise the applicant as to what further information is required.*~~
>
> ~~*[...]*~~

~~There are two diversion structures proposed as part of the Project, which engage Regulation 43. These are:~~

~~a) The "Northern Uphill Diversion Drain"; being a diversion of watercourse TB1 around the Northern Rock Stack (the **TB1 Diversion**); and~~

b) The "Southern Uphill Diversion Drain"; being a diversion of the Ruahorehore Stream around Tailings Storage Facility 3 (the **Ruahorehore Diversion**).

In both cases the diversions are designed and will be constructed to maintain fish passage (and habitats) to a similar standard as existing. Therefore, it is considered that there is no requirement for these diversion structures to include a fish facility, and a dispensation is sought accordingly.

All works are to be undertaken in accordance with the provisions of the Aquatic Fauna Salvage and Relocation Plan and the Stream Diversion and Development Plan included in the Waihi Area Ecology and Landscape Management Plan included in Part H of the application documents.

Summary of Design and Effects

The TB1 and Ruahorehore Diversions and their effects are considered in detail in the WNP Freshwater Ecological Assessment included in Part B of the application documents (Boffa Miskell), and summarised as follows.

TB1 Diversion

The TB1 Diversion will comprise a c.695 m length open channel, which will be designed according to the principles set out in Appendix 1.

TB1 has moderate ecological values, being itself an ecologically enhanced stream diversion. The design of the diversion channel is planned to replicate aquatic habitat attributes with a range of suitable stable microhabitats for fish and invertebrates, including the creation of stable pool habitats, the inclusion of gravel and cobble riffle habitats, and it will provide for the passage of climbing fish, especially eels. The stream gradient may be difficult to maintain fish passage for general fish species but allows the passage of fish with climbing abilities (eels, kōura), which have the ability to access the remaining upstream habitat. This mirrors the existing environment, in which the upper reaches of the stream are separated from the lower by a large natural waterfall that currently creates a significant natural fish barrier to swimming fish species. Surveys of the existing stream above this waterfall observed only the shortfin eel, for which access will be maintained by the new structure.

Ruahorehore Stream Diversion

The Ruahorehore Stream Diversion will comprise some 2,503 m of newly created open channel. Again, this will be designed according to the principles set out in Appendix 1.

The existing Ruahorehore Stream is of moderate to high ecological value. The Diversion will replicate existing aquatic habitat attributes with a range of suitable stable microhabitats for fish and invertebrates, including the creation of pools, the inclusion of gravel and cobble riffle habitats, and provision for the passage of climbing fish, especially eels. As with TB1, stream gradient may make it

~~difficult to maintain (upstream and downstream) fish passage for general fish species, but will accommodate the passage of migrating eels, and other native fish with climbing abilities, allowing them to access the upstream habitat. Again, this mirrors the existing environment, in which the reaches of the existing stream to be replaced have a predominance of eels and kōura, and an existing waterfall impedes passage to the upper reaches, in which kōura are the predominant species.~~

~~***Summary***~~

~~The diversion structures are designed to maintain fish passage (and habitat) similar to the existing environment, in which the natural gradient impedes access for fish other than eels and kōura. As the natural condition is preserved, it is considered that there is no need for a fish facility at either diversion, and a dispensation is appropriate.~~

Conditions

Management Plan	
FF1	All works are to be undertaken in accordance with the provisions of the Aquatic Fauna Salvage and Relocation Plan and the Stream Diversion and Development Plan which are included in the Waihi Area Ecology and Landscape Management Plan. ~~(provided in Part H of the application documents).~~
Diversion Design	
FF2	The TB1 Diversion and Ruahorehore Stream Diversion must be designed in accordance with the principles set out in the Indicative Stream Channel Diversion Design provided in Appendix 1. *Advice Note: The design of the TB1 Diversion and Ruahorehore Stream Diversion must be in accordance with the Diversion Design resource consent requirements applying to the "Waihi North Project – Conditions for the Waikato Regional Council".*
Exclusion Conditions	
FF3	The Dispensation holder will not undertake the following activities: *(a) Instream works during peak migration times;* *(b) The utilisation of wet concrete in flowing water.*
Biosecurity Management	
~~FF4~~	~~The Dispensation holder will ensure that all equipment to be used close to or within any surface waterbodies for the establishment of the TB1 Diversion and the Ruahorehore Diversion is clean and dry prior to use.~~
FF~~4~~5	The Dispensation holder must comply with the Ministry for Primary Industry's "Check, Clean, Dry" cleaning method to prevent the spread of didymo (*Didymosphenia geminata*) and other

Commented [A1]: DOC considers there are still fundamental aspects of OGNZL's proposed use of management plans for the purposes of the DOC approvals that remain unclear. Clarification from OGNZL before DOC can comment on whether or not the approach is appropriate.

Commented [A2]: DOC notes that the ELMP (vers. 3 March 2025), as submitted with the substantive application (as H.02), does not include a Stream Diversion and Development Plan, contrary to the statement. DOC has not been provided with a revised ELMP that contains a Stream Diversion and Development Plan.

Commented [A3]: Condition G22 contains at least some specificity regarding microhabitats to be created, riparian vegetation, and that 'the diversion channel must allow the passage of migrating eels and other native fish with climbing abilities'. Given the predominantly only high level design objectives., DOC is not satisfied that this is enough.
DOC notes that G22 specifically refers to TSF3 and questions whether another relevant condition for the NRS/TB1 should be included.

Commented [A4]: DOC considers this condition is unnecessary as covered by revised check, clean, dry condition.

	freshwater pests when moving between waterways. "Check, Clean, Dry" cleaning methods can be found at http://www.biosecurity.govt.nz/cleaning. The Dispensation holder must regularly check this website and update their precautions accordingly. ~~The Dispensation holder will follow best practise biosecurity protocols throughout the establishment of the TB1 Diversion and the Ruahorehore Diversion. This is to include, but not be limited to, the cleaning down of equipment between use at differing sites to prevent the spread of freshwater and other pests.~~
FF~~5~~6	The Dispensation holder will undertake biosecurity risk assessments of any species which are to be translocated throughout the establishment of the TB1 Diversion and the Ruahorehore Diversion.
New Zealand Fish Passage Guidelines	
FF6	The Dispensation holder shall follow good practice design standards as outlined in the NZ Fish Passage Guidelines, in particular setting clear fish passage objectives and performance standards (section 3), incorporating appropriate design standards to provide passage for the target fish species (including sections 4, 5.5.3 and 7.3.5, and Appendix A).
FF7	Diversion channels shall meet the criteria for nature-like fishways in table 7.3 of the NZ Fish Passage Guidelines and copied below.

Specifications	Design guidelines
Fishway operating range and differential head	The range of flows and differential head over which the fishway operates is a site-specific decision, but the standard criterion of fishway operation up to and including a 1-in-5-year flood is a baseline requirement.
Resting pool	Resting pools are typically used for every 1 m rise in vertical elevation and some designs include oversized resting pools with a range of habitats that provide habitat complexity, and associated protection from predation and resting habitat for all expected species and size classes.
Pool size	The recommended generic pool size for a ridge-style rock fishway is 2 m long (clear space), allowing dissipation of flow to maintain acceptable turbulence levels and appropriately quiet water in fish resting areas. Pool size may be reduced where head loss is also reduced.
Minimum depth	The minimum depth recommended for small-bodied fish is 0.3–0.4 m in at least 50% of the pool area in a continuous path.
Slope	A slope of 1:30–1:50 (vertical: horizontal) is recommended for the passage of small-bodied species, but there is scope to steepen the fishway where head loss and turbulence are low.
Head differential	The head differential for a bypass channel is a site-specific decision, but 75–100 mm (i.e., corresponding to velocities of 1.0–1.22 m s^{-1}) is a starting point for many rock fishways,

Commented [A5]: DOC is proposing a revised wording here, to be consistent with the wording used in other condition sets which is stronger and will ensure ongoing best practice.

Commented [A6]: DOC maintains that condition regarding adherence to the NZ Fish Passage Guidelines are appropriate, given that the Stream Diversion and Development Plan contains only high level design principles. The following conditions are therefore proposed. See further discussion in the freshwater fisheries agency report.

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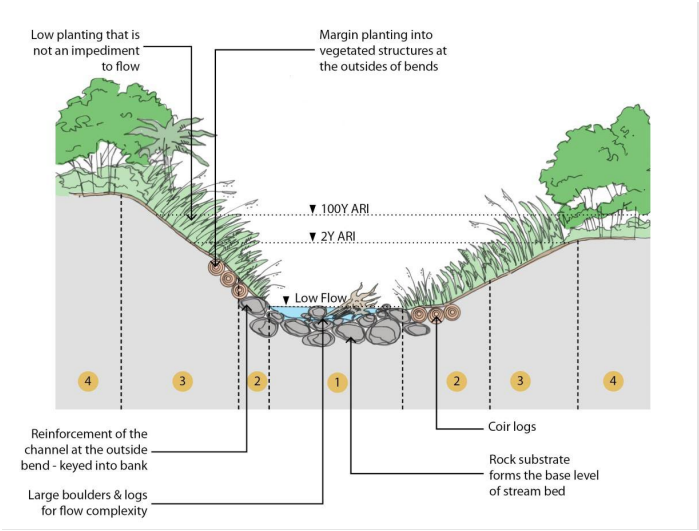
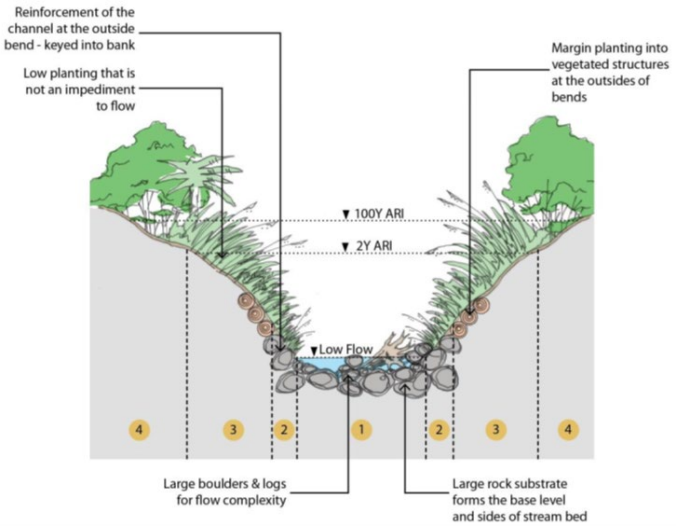
		depending on the fish species present. We suggest that no head loss should exceed 120 mm.
	Hydraulics	Bypass channels must provide 'hydraulic diversity' so that fish can choose their ascent path. Turbulence should be minimised, with little 'white' water in the fishway pools, and if there is an assumption that turbulence can be calculated in the same manner as for a vertical slot, then it should be 25 W m^{-3}.
FF8	Monitoring of fish passage success shall be undertaken following best practice methods and standards in section 8 of the NZ Fish Passage Guidelines. Monitoring results shall be provided to DOC annually by 30 June.	

Appendix 1: Indicative Stream Channel Diversion Design



Stream Diversion Type 1 – Lowland stream cross section



Stream Diversion Type 2 – Steep stream cross section