Waihi North [FTAA-2504-1046] – s51 FTAA Covering Report – Department of Conservation

Introduction

1. The Department of Conservation (DOC) has prepared four reports on behalf of the Director-General of Conservation, in accordance with section 51 of the Fast-Track Approvals Act 2024 (FTAA), in response to each of the Panel-Convener's four Minutes of 22 May 2025. The four s 51 reports relate to:
    a. an approval described in section 42(4)(e) (concession)
    b. an approval described in section 42(4)(h) (wildlife approval)
    c. an approval described in section 42(4)(j) (complex freshwater fisheries activity)
    d. an approval described in section 42(4)(l) or (m) (access arrangement).
2. These reports (the conservation approval reports) are set out in Appendices C to F.
3. DOC has also prepared a report (the weighting report), on behalf of the Director-General, advising how the weighting of relevant matters should be approached (requested in each of the four Minutes of 22 May 2025). This report is provided in Appendix A.
4. This preliminary section (the Covering Report) addresses matters that relevant to all four of the conservation approval reports and should be read as forming part of each of the reports.

Technical expert credentials

5. DOC has sought input from a range of technical experts to inform the preparation of the conservation approval reports. These experts and their credentials are listed in Appendix B, together with an indication of the topics to which they have contributed.

Engagement with the applicant

6. DOC has engaged with the applicant, OceanaGold (New Zealand) Limited (OGNZL) on this project since approximately 2017. Since OGNZL lodged its application under the FTAA, DOC has continued to engage with OGNZL on an ongoing basis. This has included a number of workshops with OGNZL, including technical workshops and conditions workshops.
7. The engagement has been constructive, and many issues have been resolved and/or appropriately addressed to DOC's satisfaction. The conservation approval reports identify where outstanding issues remain.

Engagement with iwi

8. DOC has acted in good faith by engaging with Treaty partners to inform the preparation of the DOC s 51 reports.

9. DOC has engaged with the following iwi who are tangata whenua and hold mana whenua interests within the project area (including the proposed area for the proposed Biodiversity Project): Ngāti Hako, Ngāti Hei, Ngāti Tara Tokanui, Ngāti Maru, Ngāti Tamaterā, Ngāti Porou, Ngāti Tumutumu, Ngāi Tai ki Tamaki and Te Rūnanga o Ngāti Pū. These iwi are all represented via the relevant Māori groups listed in Attachment 3 of the section 18 report. DOC has established avenues for engagement with the relevant iwi and has therefore undertaken its engagement using these existing avenues rather than specifically with the entities identified in Attachment 3. All the Māori groups identified in Attachment 3 of the s 18 report have been invited to provide comments pursuant to s 53.[1]

10. DOC commenced initial engagement via email on 27 May 2025, inviting iwi to engage with DOC and to identify their preferred method of engagement. Responses were received from Ngāti Hako, Ngāti Pū and Ngāti Tara Tokanui, and their respective issues and their concerns are summarised below. DOC has remained open to further feedback up until the time of writing.

11. Ngāti Hako has stated that Wharekirauponga is an area of high cultural significance. Their primary concerns relate to potential impacts from vibration, on groundwater, and on taonga species, particularly Archey's frogs. They relayed their view that the Biodiversity Project is an offset and cannot mitigate the potential impacts of underground mining. They consider it is important for DOC and others to be involved in the Biodiversity Project discussions to co-design outcomes with iwi.

12. Ngāti Tara Tokanui are concerned that the FTAA process may bypass rigorous, evidence-based evaluations essential for iwi engagement. They also commented that the FTAA process removes legal checks, Mana Whakahaere and technical / mātauranga Māori assessments from the approval process. They are concerned that the Biodiversity Project is limited and does not address Ranginui (atmosphere) or long-term impacts on Papatūānuku (earth). They stated that a balanced approach using mātauranga Māori is essential to measure and understand mining impacts in real time within Te Waahi Rāhui ki Papakauri.

13. Ngāti Pū has expressed a desire for better outcomes to protect waterways, whenua and taonga at Wharekirauponga. They are concerned about DOC being excluded from Biodiversity Project discussions and believe there should be a collective voice and collaboration to protect te taiao.

Approach to draft conditions and management plans

14. Each of the four Minutes issued on 22 May 2025 directed the Director-General of Conservation "to respond to the draft conditions, including any management plan attached to the application recommending track-changed amendments (if any)."

[1] Minute 1 of the Expert Panel, 28 July 2025.

Draft conditions

15. OGNZL's application as lodged included a draft set of conditions for each of the conservation approvals. As noted above, the engagement DOC has undertaken with OGNZL since its application was lodged has included specific workshops on conditions. These workshops have also been informed by the ongoing technical workshops.

16. OGNZL has continued to update its condition sets to reflect feedback received from DOC and other administering agencies (i.e. the relevant councils). DOC received the latest suite of conservation approval related conditions on 25 July 2025, and the resource consent conditions on 29 July 2025. OGNZL provided clean copies of these condition sets to the Panel on 28 July.

17. Many of DOC's issues with the original proposed conditions have been resolved through the engagement process. Other issues remain unresolved. As part of its reports therefore, DOC has provided comments on the conditions sets based on the latest versions provided to the Panel on 28 July. In the time available, DOC has marked up these versions to red-line track changes where possible; and provide commentary on issues that remain outstanding and where DOC considers further engagement is needed with the Applicant and/or other participants before drafting can be proposed.

18. Specific matters are addressed individually in the s 51 reports as relevant to each approval. OGNZL's approach to the use of management plans for the purposes of the conservation approvals is addressed generally below.

Site selection protocol

19. Conditions relevant to site selection have been a key aspect of discussion between DOC and OGNZL during technical and condition workshops. The proposed site selection protocol is appended to the conditions of the Norther concession and Wharekirauponga access arrangement approvals.

20. DOC considers that the proposed site selection protocol will not adequately address potential impacts on frogs and lizards. DOC recommends that the site selection protocol would benefit from expert conferencing to agree on the appropriate methodology to avoid, remedy and mitigate these impacts – all of which are canvassed in the respective reports.

Draft management plans

21. The condition sets for each conservation approval refer to various management plans. OGNZL's application included most, but not all, of these draft management plans. The naming of these management plans aligns with the management plans provided as part of the proposed resource consent approval conditions. At the time of writing, DOC has not received OGNZL's proposed final suite of management plans, and so DOC has been unable to provide red-lined relevant management plans. Where relevant to specific approvals, DOC has made comments in relation to the draft management plans in the conservation approval reports.

Conditions relating to management plans

22. One of the issues DOC has raised with OGLNZ during engagement on conditions is the proposed use of management plans.

23. Most of the management plans referred to in the conservation approvals are plans that OGNZL proposes will be "certified" by the Panel as part of the approval process (i.e. those management plans listed in condition C4 of the combined Hauraki District Council (HDC) and Waikato Regional Council (WRC) conditions). The Native Frog Monitoring Plan is referred to in condition C5 of the combined HDC and WRC conditions as a plan that will be certified (for the purposes of the resource consent approval) by HDC and DOC,[2] following the Panel's decisions. Conditions C8 and C8A of the combined HDC and WRC conditions set out the process for amendment of the management plans for the purposes of the resource consent approvals.

General principles relating to the use of management plans

24. Management plans are routinely imposed as conditions of resource consent and can be imposed as conditions of resource consent approvals under the FTAA.[3] There does not appear to be any reason why management plans cannot also be imposed as part of conditions of FTAA conservation approvals, in the same way.

25. In accordance with case law that has developed in the context of management plans in the context of the RMA, an FTAA panel, when setting conditions under s 81(1)(a) of the FTAA, can delegate the administrative function of ensuring that appropriate standards are met to a third party (such as an officer of a consent authority or DOC official) i.e. a power of certification, via a condition. However, conditions must be sufficiently certain. While a condition can leave certifying detail to such a delegate, it cannot lawfully delegate the making of substantive decisions.[4]

26. The completion or amendment of management plans via certification after consent has been granted creates a risk of unlawful delegation. The Environment Court in *Crest Energy Kaipara Ltd v Northland Regional Council* said:[5]

    The question of whether consent should be granted at all hinges on an ability to create an EMP that will adequately address the issues. We are not prepared to effectively transfer responsibility for this crucial area of assessment to a delegated officer of the respondent.

27. Conditions can allow an officer to "certify" the completion of a management plan or amendments to management plans in appropriate circumstances,[6] but certification must not, in effect, constitute

[2] Note that the requirement for DOC's certification of the Native Frog Monitoring Plan is referred to as an advice note to condition C5. This is a matter DOC will address in its s 53 comments.

[3] s 108 of the RMA applies to the Panel, subject to all necessary modifications: Fast-track Approvals Act 2024, Sch 5, cl 18.

[4] See, for example *Mount Field Ltd v Queenstown Lakes District Council* [2012] NZEnvC 262 at [77], citing *Royal Forest and Bird Protection Soc v Gisborne DC* (W26/2009).

[5] *Crest Energy Kaipara Ltd v Northland Regional Council* EnvC Auckland A132/2009, 22 December 2009 at [222]. See also *Director-General of Conservation v Marlborough District Council* [2004] 3 NZLR 127 (HC) at [28].

[6] *Turner v Allison* [1971] NZLR 833 (CA) at 856 line 24.

approval. It is for the Panel to make a final decision, and it is the Panel, that can exercise the power to grant approvals under the FTAA.

DOC's role for amendments to the management plans is unclear

28. As noted above, OGNZL proposes that most of the management plans referred to in the conservation approval conditions will be certified as part of the Panel's decisions. Assuming the Panel takes that approach, a key issue for DOC is the process by which amendments to these management plans will be made, for the purposes of the conservation approvals.

29. In the latest condition sets that have been provided to DOC for the proposed wildlife approval and Wharekirauponga access arrangement OGNZL has proposed conditions that address amendments to the management plans referred to within the conditions. The conditions provide:[7]

> 3. In accordance with Conditions C8A – C8C of Resource Consent [to link in the consent number of the Combined HDC and WRC Conditions] the Approval holder may make amendments to any of the management plans referred to in Condition 2 at any time, provided that:
>
> a. The Approval holder must invite the Manager[8] to participate in a collaborative workshop with the Approval holder to discuss the proposed amendments.
>
> *Advice Note: The collaborative workshop may occur as a standalone workshop, or it may be combined with other collaborative workshops required by this Authority if practical.*
>
> b. If the Manager agrees to participate in a workshop:
>
> i The Approval holder must provide a copy of the amended management plan to the Manager at least 15 working days before the workshop;
>
> ii The Approval holder must circulate a record of the workshop discussions to the Manager within 5 days of the completion of the workshop; and
>
> iii The Manager must be given an opportunity to provide written feedback to the Approval holder on the management plan amendments within 15 working days of the completion of the workshop.
>
> c. If the Manager declines the opportunity to participate in a collaborative workshop, the Approval holder must provide a copy of the amended management or monitoring plan to the Manager and give the Manager 15 working days to provide written feedback to the Approval holder on the proposed amendments.
>
> d. If the Manager has not, within 15 Working Days of receipt of the amendment, advised the consent holder that Condition 3(e) applies, any Works associated with the amendment may proceed.
>
> e. Except where Condition 3(b) applies, until an amendment is approved, any work must be conducted in accordance with the existing management or monitoring plan.

30. It is unclear what is meant by the words "until an amendment is approved" in condition 3(e). Specifically, it is unclear whether: (i) the DOC Manager is to retain an approval (or certification) role for amendments, or (ii) whether, given the wording of the chapeau to Condition 3 and the cross-reference to the process provided for in the resource consents (i.e. the reference to

[7] Wildlife Approval conditions, Schedule 3, condition 3, This is the same formulation in the Wharekirauponga access arrangement conditions, Schedule 2, condition 2.2.

[8] Defined as the Department of Conservation Manager.

conditions C8A – C8C), "approved" is referring to the certification process for amendments under the resource consent approvals. In the second scenario, the role of the DOC Manager would be limited to participating in a workshop and/or providing comments and not approving or certifying the amendments themselves.

31. The latest condition set for the Northern Area Concession includes a similarly worded provision (Schedule 3, Condition 3), but there is no cross-reference to Conditions C8A – C8C of the resource consent conditions, despite the fact that a number of the management plans referred to in Condition 2 are the same as those listed in the wildlife approval and Wharekirauponga access arrangement conditions. This is also the case in the condition sets for the Favona access arrangement[9] and Willows concession.[10] It is not clear whether this difference is intentional or not.

32. DOC considers this requires clarification from OGNZL before it can comment on whether or not it considers the approach is appropriate.

Purpose of conditions setting out 'objectives' of management plans is unclear

33. The proposed wildlife approval conditions and the Wharekirauponga access arrangement conditions now incorporate specific proposed conditions relating to the relevant management plans, including the stated objectives of these management plans and related monitoring conditions. See for example Schedule 3 of the wildlife approval:

    - ***Condition 4:*** "The objective of the Terrestrial Ecology Management Plan is to describe (and outline actions) the ecological management actions to appropriately minimises and mitigates [sic] the potential terrestrial ecological effects associated with vegetation and habitat clearance for the WUG."
    - ***Condition 9:*** "The objective of the Native Frog Monitoring Plan is to outline the frog monitoring undertaken with incorporation of success indicators."

34. Because DOC's role in relation to proposed amendments to the management plans for the purposes of the conservation approvals is not clear (discussed above), the purpose of including these conditions is unclear: if the conditions specified that DOC was required to certify amendments on the basis that an amended plan met the requirements for management plans as set out in the conditions, it would make sense to include these provisions, but that is not stated or provided for. If DOC does not have a certification role, then it is possible that OGNZL's intention is that the objectives will inform the comments DOC provides to the applicant as part of the participatory process provided for, but that is not stated.

35. For the Northern Concession approval, conditions setting out objectives for the listed management plans and associated reporting conditions have not been included. It is not clear why, when these conditions have been included in the access arrangement approval, and the Northern Concession approval authorises activities which are also authorised under the access arrangement approval.

[9] Favona access arrangement conditions, Schedule 2, condition 92.
[10] Willows concession conditions, Schedule 3, condition 3.

Likewise the Favona access arrangement conditions and Willows concession approval conditions do not incorporate conditions setting objectives for the relevant management plans.

36. DOC considers this requires clarification from OGNZL before it can adequately comment on whether it considers the approach is appropriate.

Proposed conditions are uncertain

37. Even if OGNZL's proposal is that DOC retains a certification role for amendments to the management plans, and for certification to occur if the requirements of the conditions relating to the management plans are met, DOC considers the current drafting is insufficient for this approach to be appropriate.

38. DOC considers that the objectives for the various management plans and accompanying conditions would not allow DOC to "certify" any amendments against an appropriate standard. There appears to be a high risk that what is proposed amounts to an unlawful delegation, as it is for the Panel to identify how effects are to be addressed as part of the Panel's decision, not officials within the administering agencies. Under the conditions as proposed, the applicant's approach for variations would, in effect, delegate the function of determining requirements for mitigation of adverse effects and the extent of effects that are acceptable. What is considered acceptable is fundamental to whether consent can and should be granted in the first place. DOC considers reliance should not be placed on unenforceable qualitative objectives of the management plans.

39. It remains unclear whether OGNZL proposes DOC would have a role in amendments to management plans. If not, then these issues identified are compounded by the fact that a Council official, not a DOC official, would be assessing amendments for variations against inappropriate conditions. DOC's concerns in relation to the certification processes under the resource consent approvals will be addressed in its s 53 comments.

40. DOC considers this requires clarification from OGNZL before DOC can comment on whether or not the approach is appropriate.

Inconsistency between objectives for management plans included in conservation approval condition sets and RMA approval condition sets

41. DOC has identified instances where the objectives included in the conservation approval condition sets for the identified management plans differ from the objectives stated for the corresponding management plans under the resource consent approval conditions. For example, in contrast to the draft condition at paragraph 9 above, the objective of the Native Frog Monitoring Plan in condition 174 of the Hauraki District Council conditions is:

> The objective of the Native Frog Monitoring Plan is to ensure appropriate monitoring is being undertaken with regard to potential vibration, dewatering, and pest control effects on native frogs, and to determine whether pest control measures are achieving a net gain in native frogs within the WAPMA, and set out:
>
> a. The actions and methods required to minimise and mitigate adverse vibration, dewatering, and pest control effects on native frogs;

b. The monitoring programmes and trigger levels required to ensure the best practicable options are being utilised to minimise and mitigate adverse effects on native frogs; and

To describe how the Hauraki District Council is able to determine that the activities are being undertaken in a manner which appropriately minimises and mitigates adverse effects on native frogs, and which enables determination as to whether pest control measures are achieving a net gain in native frogs within the WAPMA.

42. These differences may relate to the scope of activities for which OGNZL is seeking approval under the relevant conservation approvals compared to the RMA approvals, but DOC is unclear as to the reason for these differences. Clarification from OGNZL as to what is intended is required before DOC can comment on whether or not the approach is appropriate.

Summary of issues with management plan approach

43. Overall, while DOC and OGNZL have engaged constructively on these issues, and it appears that OGNZL have made changes that attempt to address concerns DOC has raised during engagement, DOC considers there are still fundamental aspects of OGNZL's proposed use of management plans for the purposes of the conservation approvals that remain unclear. Other issues, including the framing of the objectives and standards (both for the purposes of the conservation approvals and the resource consent approvals) also need to be further worked through.

44. DOC considers further targeted workshopping would be beneficial. DOC considers that prior to any workshopping, OGNZL should be directed to provide further explanation as to its intended approach to management plans for the purposes of the conservation approvals, in particular how it proposes amendments to the management plans for the purposes of each of the conservation approvals are to be made. Given these outstanding issues, the DOC has not attempted to re-draft the management plan related conditions and has limited comments on those conditions in the individual reports to specific issues that go beyond these general issues.

LIST OF ATTACHMENTS

APPENDIX A: Weighting of relevant matters to be taken into account

APPENDIX B: Technical expert credentials

APPENDIX C: Concession Report

APPENDIX D: Wildlife Approval Report

APPENDIX E: Complex Freshwater Fisheries Report

APPENDIX F: Access Arrangement Report

APPENDIX A: Weighting of relevant matters to be taken into account

Introduction

1. This report responds to each of the Panel Convener's four Minutes dated 22 May 2025, directing the Director-General to "file a report advising how weighting of matters … should be approached, having regard to relevant senior court decisions."

2. The Minutes respectively refer to the matters set out in Schedule 7, Clause 3 of the FTAA (wildlife approval); Schedule 6, Clause 4 of the FTAA (concession); Schedule 9, Clause 4 of the FTAA (freshwater fisheries regulations approval); and Schedule 11, Clause 4 of the FTAA (access arrangement). The matters listed in the schedules are those which the FTAA directs must be addressed by the Director-General's s 51(2) reports.[11] For reasons of efficiency, this report responds to all four Minutes collectively.

Weighting generally

3. Generally, the weighting to be accorded to relevant considerations by a statutory decision maker is for that decision maker to determine,[12] however where a statute directs the weight to be given to a matter, that direction must be given effect to.[13]

4. The senior courts have recognised that apparently disproportionate, inadequate or undue weight attached to a relevant factor can lead to judicial consideration of whether the weighting applied was within the limits of reason, and hence, whether the ultimate decision was unreasonable in an administrative law sense. A court may set aside an administrative decision which has failed to give adequate weight to a relevant factor of great importance, or which has given excessive weight to a relevant factor of no great importance.[14]

5. Accordingly, mandatory relevant considerations must be given genuine consideration and weighting by statutory decision makers.

[11] The schedule clauses referenced in the Minutes exclude consideration of the purpose of the FTAA from the ambit of the request. However, in order to respond to the Panel Convener's request in relation to consideration of weighting, it is necessary to refer to the purpose of the FTAA given the statutory directive that this consideration be given "the greatest weight" relative to other mandatory considerations (i.e. relative to the matters that must be addressed by the Director General's s 51 reports). This advice has therefore been prepared on that basis.

[12] See, for example *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR (HC) 188 at 223: The weight to be given to the evidence in the balancing exercise … is a matter for the primary tribunal and the Planning Tribunal on appeal.

[13] *Quarantine Waste (New Zealand) Ltd v Waste Resources Ltd* [1994] NZRMA 529 (HC) at 540: "Unless the statute otherwise directs, the weight to be given to particular relevant matters is one for the consent authority, not the Court, to determine."

[14] See, for example *Thames Valley Electric Power Board v NZFP Pulp and Paper Ltd* [1994] LGHNZ 17 (CA).

Weighting under the Fast-track Approvals Act 2024

6. The Schedules to the FTAA list mandatory considerations that decision-making Panels must take into account, when determining applications for the various approvals that can be granted under the Act.[15]

7. The only directive regarding weighting contained in the FTAA, is that the "greatest weight" is to be given to the purpose of the FTAA.[16]

8. While described in the FTAA as "criteria",[17] the mandatory matters to be taken into account can be described as "factors", in the sense that they are matters to be assessed on the basis of their qualities, rather than quantities. They establish the foundation for assessment rather than the outcome of it.[18] Accordingly, the criteria, or factors, are not tick-boxes to be crossed off a list but are matters that must be qualitatively assessed.

9. The FTAA does not direct how much relative weight should be given to, or between, relevant matters other than the purpose of the FTAA. Nor does the FTAA specify how much greater weight should be accorded to its purpose relative to other mandatory considerations. It may be the case (as set out in the s 51 reports for the conservation approvals for the Waihi North Project) that some of the factors listed in the relevant clauses may be found to have no relevance. Consequently, that factor will have no weight accorded to it in the balancing exercise.

10. While the purpose of the FTAA is to be given the greatest weight, the purpose of the FTAA does not automatically outweigh all other considerations. By listing other considerations besides the purpose of the FTAA, it is implicit that weight be attached to them, and that they should receive genuine consideration where relevant.[19]

11. Accordingly, while the greatest weight is to be accorded to the purpose of the FTAA, it does not follow that when qualitatively assessed, the regional or national benefits of a project must necessarily outweigh other considerations, in combination or in isolation, such as the adverse environmental effects of a project. The extent of regional or national benefits will vary between projects. Also, adverse effects will vary between projects in nature and severity. Each factor must be qualitatively assessed and those assessments weighed. Where they pull in different directions, they must be weighed against each other.

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[15] See Schedule 7, Clause 5 (wildlife approval); Schedule 6, Clause 7 FTAA (concession); Schedule 9, clause 5 (complex freshwater fisheries activities approval); and Schedule 11, Clause 7 (access arrangement).

[16] This directive occurs multiple times in the FTAA, including at Schedule 6, Clause 7 (concessions); Schedule 7, Clause 5 (wildlife approval); Schedule 9, Clause 5 (complex freshwater fisheries activities approval); and Schedule 11, Clause 7 (access arrangement).

[17] This is the terminology used in the titles for each of the relevant clauses listed in fn 5.

[18] *Western Bay of Plenty District Council v Bay of Plenty Regional Council* [2017] NZEnvC 147, at [117]-[118].

[19] See also s 85(3)(b)of the FTAA which provides for the decline of a FTAA application if the adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered.

12. The issue of legislatively directed weighting was considered by the Court of Appeal in *Enterprise Miramar Peninsula Inc v Wellington City Council*,[20] when considering the application of s 34 the Housing Accords and Special Housing Areas Act 2013 (HASHAA). Section 34 provides:

> **34 Consideration of applications**
>
> (1) An authorised agency, when considering an application for a resource consent under this Act and any submissions received on that application, must have regard to the following matters, giving weight to them (greater to lesser) in the order listed:
>
> (a) the purpose of this Act:
>
> (b) the matters in Part 2 of the Resource Management Act 1991:
>
> (c) any relevant proposed plan:
>
> (d) the other matters that would arise for consideration under—
>
> (i) sections 104 to 104F of the Resource Management Act 1991, were the application being assessed under that Act:
>
> (ii) any other relevant enactment (such as the Waitakere Ranges Heritage Area Act 2008):
>
> (e) the key urban design qualities expressed in the Ministry for the Environment's *New Zealand Urban Design Protocol (2005)* and any subsequent editions of that document.

13. The Court held that all the listed matters must first be individually assessed prior to the exercise of weighing them in accordance with the prescribed hierarchy. The listed matters in subsection (1)(b)–(e) cannot properly be weighed alongside the purpose of HASHAA under subs (1)(a) if that purpose has first been used to effectively neutralise the matters listed in subs (1)(b)–(e).[21]

14. Applying that approach to the FTAA, the relevant matters should first be individually assessed, uninfluenced by the purpose of the FTAA, "before standing back and conducting an overall balancing" where the purpose of the FTAA is to be given greatest weight.[22] It would be an error of law to use the purpose of the FTAA to eliminate or reduce individual assessment of the other specified mandatory relevant considerations.[23]

[20] *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541.

[21] *Enterprise Miramar Peninsula Inc*, at [53].

[22] *Enterprise Miramar Peninsula Inc*, at [52]. Note that the FTTA does not take the same cascading hierarchy of "greater to lesser" weight, but only that the "greatest weight" be given to the purpose.

[23] *Enterprise Miramar Peninsula Inc*, at [55]-[59].

APPENDIX B: Technical expert credentials

DOC has relied on the advice of the following technical experts:

a. Dr Benjamin Bell (frogs)

b. Dr Jennifer Germano (frogs)

c. Amanda Haigh (frogs)

d. Dr Rhys Burns (frogs, lizards, avifauna)

e. Natasha Petrove (freshwater ecology)

f. Jacob Williams (freshwater ecology)

g. Dr Ilse Corkery (offsetting and compensation)

h. Rachael McMillan (visitors)

i. Cathryn Barr (heritage)

j. Thomas Emmit (threats/predators)

Their credentials are set out below.

Dr Benjamin Dean Bell

My qualifications are Bachelor of Science (Honours) in Zoology, University of Nottingham, UK, 1963; PhD in Zoology, University of Nottingham, UK, 1968.

I was formerly employed by the School of Biological Sciences at Victoria University of Wellington until my retirement in 2012, having previously held positions there as an Associate Professor and as the first Director of the University's Centre for Biodiversity and Restoration Ecology (2006–2012).

My knowledge of Leiopelmatid frogs is substantial. I have studied them for 53 years and I discovered many aspects of their behaviour and ecology that are well-known today.

I initiated the first national distribution survey of New Zealand frogs in the 1970s, confirming the species of native and introduced frogs occurring here. These survey data were later transferred to DOC's Amphibian and Reptile Distribution Scheme (ARDS).

I led a DOC contract to scientifically investigate a sudden and progressive decline of Archey's frog in the central and northern areas of the Coromandel Peninsula over 1996–2001, reported in Biological Conservation (2004). On the Coromandel, I have continued long-term monitoring of Archey's frog on Tapu-Coroglen ridge (mark-recapture) and on Tokatea ridge (transect), finding that the species persists but at markedly lower densities than before the 1996–2001 decline.

I have been a member of DOC's Native Frog Recovery Group since it was established. The Recovery Group provides oversight of the national frog recovery programme, prepares the national frog recovery

strategy, and gives strategic and technical advice to support contributors to frog conservation. In this context, I also contribute to, and co-author, the New Zealand Threat Classification System rankings for frogs.

Prior to my appointment as Lecturer in Zoology at Victoria University in 1976, I was Assistant Lecturer in Zoology at the University of Leicester, UK (1966–1968), then Research Scientist in the Ecology Division of the former Department of Scientific and Industrial Research (DSIR) in Lower Hutt, NZ (1969–1976). Later, I was also a teaching Professor for Lewis and Clark College (Portland, Oregan, USA) teaching courses on the biodiversity of New Zealand, including the Subantartic (2015–2020).

At Victoria University, I supervised and examined many postgraduate and postdoctoral students, also examining Masters and PhD theses from other universities in New Zealand and overseas.

Since my retirement in 2012, I have been an Adjunct Professor of Biological Sciences at Victoria University of Wellington, continuing to pursue research projects, including studies of native frogs.

More broadly, my research expertise is in vertebrate ecology and behaviour, particularly in herpetology (amphibians and reptiles), ornithology (especially land birds), conservation biology and bioacoustics.

I have published 121 peer-reviewed scientific papers, also 121 conference abstracts, 59 additional research publications and a further 56 research reports. Many of my peer reviewed papers (40%) have been on New Zealand native frogs (first peer-reviewed paper in Herpetologica in 1978). I assisted with editing and contributing to a special issue of the New Zealand Journal of Ecology focusing on native frogs in 2023.

I have international standing in the fields of herpetology and ornithology, serving on a range of international bodies, as well as on national committees in New Zealand.

I was a foundation member of the International Herpetological Committee, then served on that Committee for several terms. I was elected a Life Member of the Society for Research on Amphibians and Reptiles in New Zealand (2018). My contribution to NZ herpetology led to my personal oral history being deposited in the Turnbull Library, Wellington.

I was elected a member of the International Ornithological Committee (1982), serving as Secretary-General to the 20th International Ornithological Congress in Christchurch, NZ (1990), also representing ornithology for the International Union of Biological Sciences.

I was elected a Fellow of the International Ornithological Union (2010) and I also served on the Council of the Ornithological Society of New Zealand for many years.

With DOC personnel, I inspected the OGNZL mine site in Coromandel on 9 October 2023. I am therefore familiar with the area to which its application to establish and operate an underground mine project relates.

Dr Jennifer Marie Germano

I am employed by the Department of Conservation (DOC) as a Senior Science Advisor in the Fauna Science Team. I have worked for DOC since October 2013.

I am an Honorary Research Fellow at the University of Otago and have held that role since 2016. I have supervised or currently supervise postgraduate students and postdocs at Otago, Lincoln, Massey and Auckland Universities as well as students in the USA and Canada researching wildlife translocations, native frogs or herpetofauna mitigation.

My qualifications are Bachelor of Philosophy in Ecology (Miami University, USA; 2003; Honours thesis: Geologic impacts on Mountain Chorus Frog distribution), MSc in Zoology (University of Otago; 2006; Thesis: Impacts of translocation on NZ frogs and a global review of amphibian and reptile translocations), PhD in Zoology (University of Otago; 2010; Thesis: Reproductive biology of the NZ frog, *Leiopelma pakeka*).

Prior to my current role, I worked for the San Diego Zoo's Institute for Conservation Research (led a research team studying reptile translocations, three years) and the Memphis Zoo (postdoctoral researcher, amphibian assisted reproductive technologies, one year; adjunct faculty at Memphis University). I had a one-year research fellowship working with DOC on threatened Grand and Otago skinks. I had several research jobs/internships through the National Science Foundation in the USA. I have work and research experience throughout New Zealand and the USA as well as in various other countries (e.g. Australia, Grenada, Costa Rica, China). My expertise is in herpetology (amphibians and reptiles), conservation translocations and wildlife mitigation translocations, amphibian reproductive technologies and general conservation management and species recovery.

I have been a member of the Native Frog Recovery Group since 2013 and attended meetings as a research student representative for four years during my MSc and PhD prior to 2010. The Native Frog Recovery Group is made up of technical experts internal and external to DOC. The Recovery Group provides oversight of the national frog recovery programme, prepares the national frog recovery strategy, and gives strategic and technical advice to support contributors to frog conservation. In this role, I also help with the New Zealand Threat Classification System rankings for frogs nationally. I am also a co-author on the Auckland regional threat classifications for amphibians.

I am a member of the Lizard Salvage Technical Advisory Group set up within DOC to address issues surrounding lizard mitigation. I have been a member of this group since 2018.

I have been a member of the Lizard Technical Advisory Group since 2021. This group advises and sets strategic priorities for lizard conservation in New Zealand.

I have international standing as a leader in herpetofaunal (amphibian and reptile) translocations. I have led three international symposia on herpetofaunal translocations in Brazil, Canada and New Zealand over the past twenty years. I instigated and co-edited a special issue of the scientific journal Animal Conservation focused on herpetofaunal translocations.

I am the co-chair of the IUCN (International Union for the Conservation of Nature) Amphibian Specialist Group's Committee on Translocations. I co-led the IUCN global Amphibian Conservation Action Plan's section on amphibian translocations.

I am a co-author on the IUCN Amphibian Reintroduction Guidelines, which are international guidelines for amphibian translocations.

I have published over forty scientific papers including numerous papers on reptile and amphibian translocations. These include four reviews on translocations including: a global herpetofauna translocation review; a study on NZ herpetofaunal translocations and inherent biases; a paper I led with international colleagues looking at the issue of wildlife mitigation translocations (aka salvage) globally; and a review paper on New Zealand frog translocations. I instigated and led the editing of a special issue of New Zealand Journal of Ecology focusing on native frogs in 2023. I have numerous other scientific papers published on New Zealand frogs and lizards, translocations and other conservation topics.

I attended a visit to the OGNZL mine site in Coromandel on 9 October 2023, so I am familiar with the area to which its application to establish and operate an underground mine project relates.

Amanda Jane Morton Haigh (née Smale)

I am employed by the Department of Conservation (DOC) based in Taupō as a Principal Biodiversity Advisor (job title: Regional Liaison Biodiversity). I have been employed by DOC for over 20 years in numerous herpetofauna ecology and planning roles. I have been in my current role since May 2023.

My qualifications are a Bachelors degree (with Honours) in Resource and Environmental Planning from Massey University (1992) and a Postgraduate Diploma in Wildlife Management (with Distinction) from the University of Otago (1998).

I am the DOC Recovery Group leader for Native Frogs (since 2016, and previously 2007-2009). In this role I lead a panel of experts (scientists and ecologists) and contribute my expert advice on the conservation management of all *Leiopelma* species of frog in New Zealand. The work covers provision of advice on recovery strategies, research priorities and proposals, threat identification and management, priorities and management activities, RMA assessments, Wildlife Act permits, Crown Mineral Act Access Arrangements, best practice, training and capability, captive management, monitoring and survey.

I have extensive experience in both undertaking, and providing advice on, the management and monitoring of terrestrial fauna species (including but not limited to frogs, wētā, kiwi, lizards, whio), including providing advice for the granting of Wildlife Act permits and Access Arrangements under the Crown Minerals Act. In addition to my role as frog recovery group leader, I spent five year's working in specialist roles on native frog ecology, research, monitoring and management, where I led numerous native frog programmes, including three Archey's frog monitoring programmes, the first Archey's frog wild to wild conservation translocation and coordination of Archey's and Hochstetter's frog research and disease surveillance.

My other herpetofauna experience includes lizard monitoring and surveys and monitoring multiple amphibian species in Canada.

I am a member of the Society for Research on Amphibians and Reptiles of New Zealand (SRARNZ) (since 2004) and have published (as lead or co-author) numerous reports.

I have been a member of the assessment panel for the NZ threat classification assessments of New Zealand frog/amphibian species in 2013, 2017 and 2024, and the assessment panel for the IUCN red list assessment for New Zealand frogs.

Dr Rhys James Burns

I am employed as a Technical Advisor (Terrestrial Ecology/Fauna) with the Department of Conservation Te Papa Atawhai (DOC) in the Terrestrial Biodiversity Unit and am based at the Rotorua office. I have held this position, or equivalent positions, since 2004.

My role at DOC is to provide ecological advice to conservation practitioners both within DOC and external to DOC (such as iwi and community groups). I also provide advice to DOC decision-makers in relation to DOC's permissions system. This includes assessments for both Resource Management Act 1991 (RMA) and Wildlife Act 1953 applications. For Wildlife Act applications, I am tasked with providing ecological advice as to whether a permission should be granted and, if so, what conditions should be attached to the permission.

I have a BSc (Hons) and PhD in Biochemistry from the University of Otago. I completed my PhD in 1997. Since working for DOC continuously since 1997, I have accumulated and applied knowledge on the management of New Zealand ecosystems and species.

Between 1997 and 1999 I was based at Pureora Forest Park where I monitored a range of avifauna species (for example, robins, kōkako, fernbird, tomtit and ruru) to assess the impact of pest control on these species, and how their populations responded to management.

Between 1999 and 2004 I monitored a radio-transmitted kiwi population in northern Te Urewera and oversaw the stoat trapping at this site for several years. I was also a contributing or lead author for reports that summarised all the activities occurring in this mainland island ecosystem restoration project.

Between 2004 and 2013, I was a Technical Support Officer (Fauna) for the East Coast Hawke's Bay Conservancy, and then the East Coast Bay of Plenty Conservancy.

I have been in my current role (Technical Advisor - Terrestrial Fauna), or similar roles that includes Ecology and Ecosystems, since 2013. In this role, I have a mandate to deliver advice to DOC staff where needed over the entire country.

I have experience in assessing applications that have the potential to have effects on a variety of Threatened and At Risk (under the New Zealand Threat Classification System) native birds across a range of habitats in New Zealand. This has included the assessment of activities that require resource consents, including the Mt Messenger Bypass, Awakino Tunnel Bypass, Kaiwaikawe windfarm and Dome Valley Waste Management landfill.

I have also gained experience in many projects that have monitored the response of a variety of native birds to various pest control methods as well as assessing many applications under the Wildlife Act, including for translocations and the effects of developmental projects on avifauna.

I am a member of the New Zealand Ecological Society and the Ornithological Society of New Zealand (Birds NZ).

I have been the leader of DOC's Weka Recovery Group for 18 years, the leader of DOC's Kōkako Recovery Group for one year (and member for 9 years) and a member of DOC's Frog Recovery Group for 19 years.

Natasha Katherine Petrove

I hold the role of Senior Technical Advisor (Freshwater) at the Department of Conservation (DOC), based in Wellington. I have been a Freshwater Technical Advisor position at DOC since September 2012. Prior to this, I worked as a contractor for DOC for two years, undertaking indigenous freshwater fish and pest fish surveys in the Taranaki and Whanganui areas. My current role includes providing technical advice on protecting freshwater biodiversity and habitats, with a focus on indigenous freshwater fish and fish passage.

I hold a Bachelor of Science in Ecology (2007) and Master of Science in Conservation Biology (2010), both from Massey University. My post-graduate studies included freshwater ecology and ecosystem health, and my Masters thesis focused on habitat preferences of brown mudfish (*Neochanna apoda*).

I am a member of the New Zealand Freshwater Sciences Society, a constituent organisation of the Royal Society of New Zealand.

Jacob Matthew Williams

I am employed by the Department of Conservation based in the Manawatū as a Senior Technical Advisor for Freshwater. I have worked for the Department of Conservation continuously since August 2017, for two years as a Resource Management Planner where my role was to provide planning support to DOC submissions on notified and non-notified consent applications and regional and district plan changes and reviews. I was then engaged as a Technical Advisor Freshwater for six years where I provided advice from a freshwater technical (hydrological, river process and ecological) perspective on notified and non-notified consents and regional and district plan changes and reviews. I have been engaged as a Senior Technical Advisor since the beginning of 2025.

My qualifications are BSc in Geography from Massey University, and a PGDipSci in Geography from Massey University.

Dr Ilse Corkery

I am a Senior Technical Advisor with the Department of Conservation (DOC), based in Whangārei, within the Terrestrial Biodiversity Group.

My qualifications are a BSc (Hons) in Zoology from University College Cork, Ireland (2006), and a PhD in Ecology from Victoria University of Wellington (2012).

I have worked for DOC since 2018. I hold a national-level advisory role, specialising in biodiversity offsetting and compensation. My work involves providing expert guidance on resource consents, regional and district planning processes, and other statutory frameworks. In this capacity, I review ecological assessments, conservation strategies, and mitigation measures for fauna, ensuring alignment with both statutory requirements and best-practice conservation outcomes and have presented expert evidence at both council hearings and the Environment Court.

I previously led the national Kōkako Recovery Group, and I currently lead both the Tara Iti (New Zealand Fairy Tern) Research Advisory Group and the Southern New Zealand Dotterel Technical Advisory Group - two of the country's most critically endangered bird species.

I am an active member of the Ornithological Society of New Zealand and BirdLife International and have served on the Scientific Committee of the Ornithological Society of New Zealand since 2019, where I regularly evaluate research proposals and contribute to advancing ornithological science. I have authored several peer-reviewed scientific publications and serve as a reviewer for international journals.

My previous professional roles include Senior Project Scientist for RaptorLIFE in Ireland, researcher at University College Cork investigating the impacts of plantation forestry on native bird species, and lecturer in Biodiversity Management at NorthTec, where I taught courses such as "New Zealand Conservation," "Conservation Management," and "Environmental Management."

Currently, I also lead the development of an innovative biodiversity offsetting and compensation tool, an accounting model and user interface designed to address global challenges in biodiversity loss. This project has already resulted in two published manuscripts, with another underway.

Rachael McMillan

I am employed by the Department of Conservation as a Senior Visitor Advisor based in the Hauraki, Waikato and Taranaki Region. Since 2018 I have been providing spatial and destination planning, specialist recreation and visitor management advice on public conservation land sites across New Zealand.

I hold a Bachelor of Science majoring in Ecology and Resources and Environment Planning, a PGDip in Environmental Planning, and a Masters of Social Science in Demography, all from the University of Waikato.

My background is in strategic and regional planning, research and demographics across research institutions, local government and central government focused on navigating the complexities between people, environment, society and the economy in a rapidly changing world.

Cathryn Elizabeth Barr

I am employed by the Department of Conservation (DOC) as a Senior Heritage Advisor based in the Hauraki, Waikato and Taranaki Region. I have held this role since May 2019.

I hold a Master of Arts in Anthropology (Archaeology) from the University of Auckland, and a Master of Cultural Heritage from Deakin University, Melbourne. I am a member of the New Zealand Archaeological Association, the Australasian Society for Historical Archaeology and ICOMOS Aotearoa.

I have 35 years' experience as a field archaeologist and heritage advisor. My work has required conducting research, survey, analysis and investigation. I have completed a large number of archaeological and heritage assessments for a wide variety of heritage sites, including early Māori occupation, pā sites, early European occupation sites in Aotearoa and Australia, and 19th and early 20th century gold mining sites.

I have previously written and presented evidence as part of Council hearings, and for Environment Court as part of the consenting process for large infrastructure projects, including Roads of National Significance, windfarms and consents for gold mining operations and infrastructure.

Prior to my current role I have held positions as a Senior Heritage Advisor for consultancies in Aotearoa and Australia, was Regional Archaeologist for Heritage NZ (previously NZ Historic Places Trust) and have held similar roles to my current one within the Department of Conservation, in Waikato and Northland.

Thomas Benjamin Emmitt

I am employed by the Department of Conservation (DOC) as a Senior Technical Advisor, Threats. I have worked for DOC since September 2006. Prior to that I was in tertiary study.

I have extensive knowledge of and experience with a variety of animal pest control methodology including both ground based and aerial methods. I also have experience in a wide variety of predator control monitoring techniques.

During my career in animal pest management, I have led the design and delivery of successful aerial baiting operations, landscape scale ungulate control, bait station and trapping operations for a variety of pests.

In my current role I provide technical advice to threatened species recovery groups (including the Frog Recovery Group), DOC staff and community groups on all aspects of animal pest control.

I am a member of the national predator control programme (NPCP), and Predator Free Banks Peninsula technical advisory groups and am lead technical advisor to Predator Free Chathams. I was also a peer reviewer of the recently published online resource 'Suppress feral pig populations in the Pacific'.

My qualifications are a Bachelor of Resource Management (2005).

From 2012 till 2019 I managed the pest control program at Whareorino Forest for the protection of Archey's and Hochstetter's Frogs and also managed the animal pest control programs for the Maniapoto District. This work involved implementing and adapting best practice animal pest control for the protection species and ecosystems as well as trialling new technologies for continued improvement.