

BEFORE THE EXPERT CONSENTING PANEL

**CONCERNING AN APPLICATION BY KNIGHT INVESTMENTS LIMITED FOR
RESOURCE CONSENTS FOR THE CONSTRUCTION AND OPERATION OF
A BUSINESS PARK FOR LIGHT INDUSTRIAL AND BUSINESS USES IN
BEACHLANDS, AUCKLAND**

IN THE MATTER

of the COVID-19 Recovery (Fast-Track
Consenting) Act 2020 (FTCA) and the
deliberations and final decision of the Expert
Consenting Panel appointed under clauses 2, 3
and 4 of Schedule 5 of the FTCA to consider an
application for consents for for the construction
and operation of a business park for light industrial
and business uses in Beachlands, Auckland

Expert Consenting Panel: Theresa Le Bas (Chair)
Anthony Tawhiwhi Barrett (member)
Tim Hegarty (member)

**Comments received
under clause 17(2) of
Schedule 6 of the FTCA:** 9 April 2024

**Details of any hearing
(if held) under clause 21
of Schedule 6 of the
FTCA:** No hearing was held (refer clause 20, Schedule 6
FTCA)

Date of Hearing (if held): Not applicable

Date of Decision: 27 August 2024

Date of Issue: 27 August 2024

**RECORD OF DECISION OF THE EXPERT CONSENTING PANEL UNDER
CLAUSE 37 OF SCHEDULE 6 OF THE FTCA IN RELATION TO
A BUSINESS PARK IN BEACHLANDS**

CONTENTS

PART A: EXECUTIVE SUMMARY	3
PART B: INTRODUCTION AND PROCEDURE	3
2. Site description	3
3. Locality description	7
4. Project summary	8
5. Procedure	11
6. Site visit and meetings	11
7. Invitations to comment	11
8. Appointment of Special and Technical Advisors	11
9. Suspensions of the Application	12
10. Further information requests	12
11. Amendments to the Application	13
12. Hearing	14
PART C: LEGAL FRAMEWORK AND PRELIMINARY LEGAL MATTERS	14
13. Role of the Panel	14
14. Activity Status	17
PART D: MANA WHENUA	17
15. Statutory requirements relating to iwi authorities	17
16. Te Tiriti o Waitangi, Treaty Settlements, and Iwi Management Plans	18
Treaty Settlements	18
17. Treaty Settlement and Treaty Settlement Entities	19
18. Cultural Impact Assessments and Iwi Consultation	21
19. Cultural Impact Assessment and Consultation: Ngāti Te Ata Waiohū	22
20. Cultural Impact Assessment, Consultation and Cultural Values Assessment: Ngāi Tai ki Tāmaki	23
21. Protected Customary Rights or Customary Marine Title.	23
22. Iwi Management Plans	24
23. Treaty of Waitangi	24
24. Consultation With Iwi	25
PART E: EFFECTS EVALUATION	26
25. Introduction	26
26. Earthworks	27
27. Construction effects (dust, vibration, noise, and traffic)	29
28. Contaminants	34
29. Stormwater management and flood hazards	37
30. Land Stability	42

31. Ecology	45
32. Traffic effects	50
33. Landscape, natural character and visual effects	52
34. Operational Lighting	57
35. Operational Noise	57
36. Archaeological effects	59
37. Cultural Effects	61
38. Positive effects	63
39. Offsetting or compensation	65
PART F: STATUTORY DOCUMENTS	65
40. Introduction	65
41. National Policy Statements	65
42. National Environmental Standards	75
PART G: AUCKLAND UNITARY PLAN (OPERATIVE IN PART)	76
43. Introduction	76
44. Auckland Regional Policy Statement	76
45. Auckland Unitary Plan objectives and policies	80
46. AUP: overall assessment	93
PART H: OTHER CONSIDERATIONS	93
47. Trade Competition and Written Approvals	93
48. Other Matters	93
PART I: CONDITIONS	93
49. Conditions	93
PART J: OTHER SECTIONS OF THE RMA	94
50. Introduction	94
51. Sections 104A to 104D – Determination of applications	94
52. Section 105 – Discharge Permits	98
53. Section 106 – Subdivision consent restrictions	99
54. Section 107 – Discharge permit restrictions	99
PART K: STATUTORY PURPOSES AND PART 2 OF THE RMA	100
55. Introduction	100
56. The purpose and principles of the RMA	100
57. The purpose of the FTCA	100
PART L: FINAL DECISION	101
58. Decision	101
APPENDIX A – CONDITIONS OF CONSENT	102

DECISIONS MADE BY THE PANEL

PART A: EXECUTIVE SUMMARY

- 1.1 This decision relates to an application by Knight Investments Limited (**Applicant**) for resource consents (**Application**) to construct and operate a business park for light industrial and business uses in Beachlands, Auckland (the **Project**). The Project is a referred project under the COVID-19 Recovery (Fast-Track Consenting) Act 2020 (**FTCA** or **Act**).¹
- 1.2 The overall Project is a non-complying activity. As a non-complying activity, the restrictions in s104D of the Resource Management Act 1991 (**RMA**) apply through clause 32(1) of Schedule 6 of the FTCA before the Panel can proceed to consider and decide the Application under clause 31 of Schedule 6.
- 1.3 The Panel finds, for the purposes of s104D of the RMA, that the adverse effects of the Project on the environment will be minor. The Panel has therefore proceeded to consider and decide the Application under clause 31 of Schedule 6 of the FTCA.
- 1.4 For the reasons recorded in this Decision the Panel grants the resource consents sought in the Application, subject to the conditions recorded in Appendix A of this Decision.

PART B: INTRODUCTION AND PROCEDURE

2. Site description

General Description

- 2.1 The Applicant has provided a detailed description of the Application site (the **Site**) and surrounding environment². The Panel generally concurs with the description provided and notes the following key environmental features.
- 2.2 The Site is a working quarry and fill site located at Beachlands, Auckland, occupying two land parcels (885 and 867 Whitford-Maraetai Road).
- 2.3 885 Whitford-Maraetai Road is occupied by a quarry and managed fill site with a private accessway running from Whitford-Maraetai Road downwards toward the main body of that site. As a working quarry and managed fill facility, this part of the Site is largely devoid of vegetation and has numerous open quarry faces, terraces, and earth stockpiles. Also present is an office/staff amenities building and an associated informal parking area.
- 2.4 867 Whitford-Maraetai Road is largely discrete from the quarry and is occupied by a large residential dwelling, grassed fields and a swimming

¹ The Te Puru Business Park is listed in Schedule 108 of the COVID-19 Recovery (Fast Track Consenting) Referred Projects Order 2020. It was inserted on 7 July 2024, by cl 4(a) of the COVID-19 Recovery (Fast-track Consenting) Referred Projects (Hobsonville Road Retirement Village, The Pitau, and Te Puru Business Park) Amendment Order 2023 (SL 2023/168).

² Section 2, AEE.

pool. Boundary fencing separates the respective land uses from each other, and they effectively operate on an independent basis.

- 2.5 The Site also features a water bore, which is situated in the quarry. This bore feeds two 30,000L raw water tanks, followed by a small water treatment plant. The treated water is transported via a DN100 watermain to a filling station on Whitford-Maraetai Road for sale to the general public.³

Biophysical Properties of the Site

- 2.6 While large portions of the Site are occupied by active areas of the quarry and fill operations, there are also some areas of vegetation. This vegetation includes both native and exotic species, not least puriri (*Vitex lucens*), rewarewa (*Knightia excelsa*) and nīkau (*Rhopalostylis sapida*). This vegetation is concentrated around the boundaries of the Site, as well as within riparian margins⁴.
- 2.7 Native avifauna have been observed at the Site, including kotere (*Halcyon sancta*) and kererū (*Hemiphaga novaeseelandiae*). No native bats were identified by the Applicant's ecologist, although the Site is possibly home to native lizards, like the copper skink (*Cyclodina aenea*).
- 2.8 There are two watercourses of note - Te Ruangaingai Stream (formally known as Te Puru Stream) and a permanent tributary known as 'Pony Club Creek'. Both watercourses are located (in part) within an Auckland Unitary Plan (Operative in Part) (**AUP(OP)**) significant ecological area (**SEA**) due to their ecological values.
- 2.9 Te Ruangaingai Stream lies alongside the Site's eastern boundary, running northwards towards its mouth at Kelly Beach some 1.3 km from the Site. The margins of this stream are well vegetated, and it features a series of large pools and runs⁵.
- 2.10 Te Ruangaingai Stream's catchment is generally rural and is fed (in part) by runoff from the surrounding sites and pasture. The upper catchment is also fed by the treated effluent discharge from Watercare Services Limited's (**Watercare**) Maraetai-Beachlands wastewater treatment plant.
- 2.11 Although Te Ruangaingai Stream receives a discharge from Watercare's treatment plant, it can still be described as having high ecological, landscape and cultural values.
- 2.12 Pony Club Creek runs along the southern boundary of the Site. It has experienced some historic degradation, most recently during the 2023 extreme weather events. Kōura/Freshwater crayfish (*Paraneophrops planifrons*), tuna (*Anguilla dieffenbachii*) and banded kōkopu (*Galaxias fasciatus*) have been identified in its upper margins⁶.
- 2.13 The Site, while modified though quarry operations, slopes downhill from Whitford-Maraetai Road towards Te Ruangaingai Stream, dropping from approximately 42 m RL to 5 m RL.

³ Para 2.47 - 2.48, AEE

⁴ Para 2.31 - 2.34, AEE.

⁵ Para 2.19, AEE

⁶ Para 2.24, AEE.

Natural Hazards

- 2.14 The Site has several overland flow paths, which convey stormwater flows through to adjoining sites and watercourses. Some of these flow paths have been culverted where vehicles need to cross them.
- 2.15 The Applicant has detailed that three stormwater catchments are present at the Site, with part of the site in the 1 in 100 year flood plain, primarily within the quarried areas of the Site. During our site visit, the Applicant advised the Panel that the quarry pit was extensively flooded during the 2023 Flood Events in Auckland.
- 2.16 Surface flow and floodwaters from the Site are discharged into Te Ruangaingai Stream and then on to the Hauraki Gulf. To enter the Hauraki Gulf, Te Ruangaingai Stream crosses beneath a bridge of the Whitford–Maraetai Road.

Landscape

- 2.17 The Applicant has provided a Landscape and Visual Assessment (**LVA**) by Transurban which describes the existing environment. The Panel concurs with the description of the physical landscape context⁷.

Contamination

- 2.18 The Panel concurs with the Applicant's description of the current status of the Site in terms of contaminated land matters⁸.

Noise Environment

- 2.19 The Panel concurs with the Applicant's description of the Site's existing noise environment⁹.

Transport

- 2.20 As mentioned above, the Site is accessed from Whitford – Maraetai Road by way of a private accessway. This accessway abuts a slip lane of that road. Whitford – Maraetai Road is a two-lane arterial corridor with an 80 km/h speed limit. A traffic survey has found that the daily traffic volume was approximately 11,00 vehicles per day (**vpd**), with a morning peak of 300 vehicles per hour (**vph**) and an evening peak of 270 vph¹⁰.
- 2.21 The road corridor does not feature any formed footpaths, but cycle lanes are provided for within the road's shoulders albeit without any protection or separation from general road traffic. There are also no bus stops in proximity to the Site¹¹.

Auckland Unitary Plan (Operative in Part)

⁷ Pg 16 – 29, LVA

⁸ Para 2.49 - 2.51, AEE

⁹ Para 2.52, AEE.

¹⁰ Pg 4, ITA

¹¹ Para 2.18, AEE

- 2.22 The Site is subject to numerous AUP(OP) controls, layers and zones as detailed by the Applicant¹². The Panel concurs with the Applicant's description of AUP(OP) map features, noting the presence of an SEA (AUP reference: SEA_T_432) and the Whitford Precinct overlay.

Existing resource consents

- 2.23 The Applicant has detailed the range of existing resource consents associated with the Site, as well as their potential conflicts with the activities sought as part of this current Application¹³. To summarise, the existing consents relate to the following activities:
- a. Quarrying¹⁴
 - i. Regional and district land use consents (Permit 32855 and LUC602720241) to undertake land disturbance, earthworks and clean filling;
 - ii. A discharge permit to air to emit dust (Permit 33120);
 - iii. Regional consent for works in a watercourse (Permit 33121), including culverts and diversions;
 - iv. Regional consent for dewatering (Permit 33685); and
 - v. Each of these regional consents have 35-year durations.
 - b. Rehabilitation Operations
 - i. A variation of conditions to LUC602720241 (LUC602720241-A) altering rehabilitation activities from a cleanfill to a managed fill; and
 - ii. A new discharge permit associated with the managed fill (DIS60319240).
 - c. Stream Diversion
 - i. An application is currently with Auckland Council to vary the alignment of a stream with the diversion.
 - d. Water Take and Distribution
 - i. A resource consent was issued in 2019 for a groundwater bore and use of the Site as a filling station for bulk domestic supply. The consent provided for up to 248m³/day and 61,285m³/year, and expires in January 2047; and
 - ii. A land use consent was issued in 2021 for filling station infrastructure, including storage tanks and a sealed filling station within the road reserve.
- 2.24 The Applicant has advised that variations to these consents may be required following a determination of the Application. This includes variations associated with the stream diversion, the rehabilitation of the

¹² Para 2.56 - 2.61, AEE

¹³ Section 3 of the AEE.

¹⁴ Referred to by the Applicant as the "2012 Quarry Permits".

quarry, the location of bulk water filling infrastructure, bunding and the position of the groundwater bore¹⁵.

- 2.25 Further to these consents, the Applicant has identified that a consent notice associated with 885 Whitford-Maraetai Road was cancelled in November 2023¹⁶. The consent notice related to a restriction on building positions at this Site. Given its cancellation, that consent notice no longer forms part of the existing environment, and the Panel has not considered it further.

3. Locality description

- 3.1 As with the Site description, the Applicant has provided a detailed description of the locality that the Panel generally concurs with¹⁷. As such, the following highlights the key features of the locality rather than providing an exhaustive description.
- 3.2 The surrounding area is a mixture of land uses in varying degrees of establishment. Starting with the properties adjoining the Site, land uses are generally based on rural activities. This includes rural lifestyle blocks and pastoral farming. Also present is a Council reserve at 855 Whitford-Maraetai Road, which is occupied by a pony club. The immediate visual catchment can be best described as agrarian, interspersed with stands of mature vegetation and watercourses.
- 3.3 To the west of the site across Whitford-Maraetai Road is an urban area that forms the southern extent of Beachlands. Beachlands is a coastal settlement, predominantly consisting of a mix of residential typologies. There is also a commercial hub orientated around a Woolworths Supermarket, a "Mega Mitre 10" hardware store and smaller commercial tenancies that abut Whitford-Maraetai Road.
- 3.4 To the immediate south of Beachlands is the Formosa Country Club. This is a large semi-urban site, with a golf course and clubrooms. It has been subject to a private plan change (Plan Change 88) (**PC88**) to the AUP(OP) to rezone 307 ha of land for a variety of urban land uses, including commercial. PC88 was approved by a panel of independent commissioners on 12 April 2024 and is currently subject to appeal.
- 3.5 Beachlands is also subject to Plan Change 78 (**PC78**), an Auckland Council led plan change that has been prepared in response to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021. While PC78 does not apply to the Site, it identifies that there are transport and wastewater infrastructure constraints in Beachlands. Hearings for PC78 have taken place since 2023, but no decision has yet been notified.
- 3.6 The main transport link for the locality is Whitford-Maraetai Road. As previously described, this arterial road connects Beachlands to the Auckland urban area via Whitford and onwards to Flatbush and Northpark. A ferry service from Pine Harbour to Central Auckland also operates on a regular basis. This road corridor runs eastwards to

¹⁵ Para 3.10 - 3.14, AEE

¹⁶ Para 3.20, AEE

¹⁷ Para 2.62 - 2.90, AEE

Maraetai via a bridge over Te Ruangaingai Stream, downstream of the Site.

4. Project summary

4.1 The Applicant has provided a detailed description of the Application, including the construction phase works (e.g. earthworks); streamworks, new buildings, internal roading and access, parking arrangements, stormwater treatment and discharge, water take, potentially hazardous substance activities, utilities and landscaping¹⁸. The Panel notes that the wastewater treatment and discharge activities initially sought by the Applicant have been withdrawn from the Application now that suitable capacity has been obtained at Watercare's Beachlands - Maraetai wastewater treatment plans¹⁹.

4.2 The following summarises the Panel's general understanding of the Project's key features:

Construction

- a. Bulk earthworks of 71,000m³ of cut, 479,140m³ of fill and 5000m³ of topsoil respreading to form new building platforms, accessways and the other built features of the Project²⁰;
- b. These earthworks will be in addition to the earthworks associated with previously approved rehabilitation works and will occur across an area of 7.13 ha²¹;
- c. A bund will be constructed alongside the Whitford-Maraetai Road²²;
- d. These earthworks will be staged over at least two construction seasons²³;
- e. The earthworks will be undertaken in accordance with Auckland Council's Guidance Document 05 "Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region" (**GD05**). They will also be subject to monitoring by a suitably qualified geotechnical engineer and in accordance with NZS 4431 "Code of Practice for Earth Fill for Residential Development"²⁴;
- f. The relocation of an existing overland flow path (**OLFP**) at the southern boundary of 867 Whitford-Maraetai Road, as well as the filling of some flood plain areas on-site²⁵;

¹⁸ Section 4, AEE

¹⁹ Memorandum of Counsel – Update on Wastewater Matters, 26 July 2024

²⁰ Table 1, Pg 31, AEE

²¹ Para 4.14, AEE

²² Para 4.19, AEE.

²³ Para 4.16, AEE.

²⁴ Para 4.20 - 4.22, AEE

²⁵ Para 4.19, AEE

- g. Earthworks within 100m of natural inland wetlands primarily associated with the removal of the existing accessway. Works will also occur within 20m of Te Ruangainga Stream²⁶.

Buildings and Structures

- h. Four retaining walls up to 7.5m in height and 154m long²⁷;
- i. Five buildings to house industrial activities. Building A would be freestanding, while the remaining Buildings B – E would be constructed in semi-detached arrangements²⁸;
- j. Seven outdoor yards, ranging from 1600m² to 4800m². Each yard would contain unsealed hardstand, with each having a small standalone building for ancillary office activities²⁹; and
- k. The building that was to house the now withdrawn wastewater treatment plant is to be retained as a storage building for maintenance equipment³⁰.

Signage

- l. Signage plinths will be provided for future tenants to use. These plinths will be attached to the buildings, with a height of 2.5m and widths between 0.7 - 1m. Other signage will include wall-mounted signs³¹; and
- m. The content of each sign will be subject to conditions and provided by tenants.

Roading, Parking and Access

- n. Access to the Project will be provided from a new roundabout to the south of an existing roundabout on Beachlands-Maraetai Road³²;
- o. An internal road will run from the new roundabout and down through the Site before terminating in the yard area. This road will be a private road with a 21m wide reserve³³;
- p. Three internal accessways will provide access to the industrial buildings connected by a one-way lane³⁴;
- q. 48 car parking spaces will be provided, two of which are for accessible users and a further two will feature electric vehicle charging stations³⁵;

²⁶ Para 4.27 - 4.28, AEE.

²⁷ Para 4.29 - 4.31, AEE

²⁸ Para 4.33 - 4.35, AEE

²⁹ Para 4.36 - 4.38, AEE

³⁰ Para 1.3(d), Appendix A, Applicant's response to request 2 and 3, 2 August 2024.

³¹ Para 4.39 - 4.40, AEE

³² Para 4.44 - 4.47, AEE.

³³ Para 4.48 - 4.50, AEE.

³⁴ Para 4.51 - 4.53 AEE.

³⁵ Para 4.54, AEE

- r. 10 loading spaces for the industrial units³⁶; and
- s. Bicycle storage³⁷.

Subdivision

- t. The subdivision of 867 Whitford Maraetai Road to create a road reserve³⁸, and
- u. New access and stormwater easements³⁹.

Stormwater

- v. A new stormwater network, including underground storage tanks and treatment devices/assets⁴⁰.

Potable Water

- w. New potable water infrastructure, including two 30,000L tanks and a small water treatment plant⁴¹.

Landscaping

- x. A range of landscape mitigation plantings and works. This will include planting to address the visual and landscape effects of the new buildings, bund and retaining walls⁴².

- 4.3 The Project will be potentially used by a range of commercial and light industrial activities. This could include wholesalers, marine retail, freight, motor vehicle sales and rural industries⁴³.
- 4.4 The proposed hours of operation are:
 - a. 6am to 7am – Restrictions on heavy vehicles and no operational activities provided for, other than noise limited activities like staff meetings;
 - b. 7am to 6pm – Operations permitted subject to noise limits;
 - c. 6pm to 10pm – No operations, other than noise limited activities like staff departures and cleaning; and
 - d. 10pm to 6am – No operations, other than those required for emergencies, maintenance, or repairs.^{44,45}
- 4.5 The Project will provide for industrial trade activities and the use of hazardous substances. The Applicant has advised that the stormwater

³⁶ Para 4.55, AEE.

³⁷ Para 4.57, AEE.

³⁸ Para 4.62, AEE

³⁹ Para 4.63, AEE

⁴⁰ Para 4.64 - 4.69, AEE

⁴¹ Para 4.90 - 4.101, AEE.

⁴² Para 4.105 - 4.109, AEE.

⁴³ Para 4.113 - 4.116, AEE.

⁴⁴ Para 4.118, AEE.

⁴⁵ Para 6.6, Response to Request for Information, 31 May 2024.

system has been designed to meet the controlled activity standards of the AUP(OP)'s Chapter E33 (Industrial and Trade Activities.)⁴⁶.

5. Procedure

- 5.1 The Panel confirms that it has considered the Application in accordance with clauses 31, 32 and 35 of Schedule 6 of the FTCA, and that this Decision addresses the matters in clause 37 of Schedule 6. In performing these tasks and in completing its final decision, the Panel has endeavoured to apply the direction in section 10 of the FTCA.
- 5.2 The Panel records the following procedural matters.

6. Site visit and meetings

- 6.1 The Panel conducted a site visit on 5 April 2024. The site visit took in the Site itself, together with the surrounding areas. The site visit assisted the Panel to understand the Site itself, and the broader context within which the Site falls.
- 6.2 The Panel held a number of virtual meetings between March and August 2024.
- 6.3 Much of the Panel's correspondence, deliberations and decision-making occurred through its virtual meetings and by email.

7. Invitations to comment

- 7.1 The Panel issued Minute 1 on 15 March 2024 inviting comments on the Application from:
 - a. Persons required by clauses 17(6) and (7) of Schedule 6 of the Act; and
 - b. Additional persons the Panel considered appropriate to invite comments from under clause 17(8) of Schedule 6 of the Act.
- 7.2 The Panel, in accordance with clause 36(1) of Schedule 6 of the Act, issued Minute 12 on 8 August 2024 inviting comments on draft resource consent conditions from the Applicant and every person who provided comments on the Application in response to the Panel's Minute 1.

8. Appointment of Special and Technical Advisors

- 8.1 In accordance with clauses 10(3) and (4) of Schedule 5 of the FTCA, the Panel appointed the following special and technical advisers to assist it with the Application:
 - a. Richard Storey of Wildlands;⁴⁷
 - b. Emily Collings of Civix;⁴⁸
 - c. Peter Christensen and Tom Parsons of Storm Environmental;⁴⁹

⁴⁶ Para 4.119 - 4.123, AEE.

⁴⁷ Minute 7, 1 July 2024 at [11].

⁴⁸ Ibid.

⁴⁹ Minute 8, 15 July 2024 at [3].

- d. Carolyn Wratt of Wratt Resource Management Planning Ltd;⁵⁰ and
 - e. David Stafford of Pattle Delamore Partners.⁵¹
- 8.2 The following peer review reports were consequently prepared for and provided to the Panel for its consideration:
- a. Review of ecological information for a fast-track resource consent application at 885 Whitford-Maraetai Road and 867 Whitford Maraetai Road in Beachlands, Auckland (updated);⁵²
 - b. Development of 867 and 885 Whitford-Maraetai Road, Beachlands, Wastewater Peer Review;⁵³
 - c. FTC125 Te Puru Business Park – stormwater advice;⁵⁴
 - d. Te Puru Business Park – Geotechnical Peer Review.⁵⁵
- 8.3 The Applicant's withdrawal of that part of the Application seeking resource consent to authorise a proposed onsite wastewater treatment and disposal system on 1 August 2024⁵⁶ means that the Panel did not proceed to consider the peer review report on wastewater matters.
- 9. Suspensions of the Application**
- 9.1 Pursuant to clause 23 of Schedule 6 of the FTCA, the Applicant requested, and the Panel agreed to, the suspension of the processing of the Application during the following periods:
- a. 18 April to 20 May 2024;
 - b. 14 June to 2 July 2024;
 - c. 17 July to 2 August 2024; and
 - d. 15 to 22 August 2024.
- 9.2 The Applicant's respective suspension requests and the Panel's decisions on those requests are recorded in Minutes of the Panel.⁵⁷
- 10. Further information requests**
- 10.1 The Panel requested, and the Applicant provided, further information on the Application under clause 25 of Schedule 6 of the FTCA on the following dates:
- a. 31 May 2024 on iwi consultation, Private Plan Change 88, the Applicant's assessment of effects on the environment, comment on the Supreme Court decision in *Royal Forest and Bird*

⁵⁰ Ibid.

⁵¹ Minute 10, 22 July 2024 at [3].

⁵² Wildlands, 10 July 2024.

⁵³ CIVIX, 8 July 2024.

⁵⁴ Storm Environmental, 17 July 2024.

⁵⁵ Pattle Delamore Partners Limited, 17 July 2024.

⁵⁶ Memorandum of Counsel on Behalf of Knight Investments Limited, Updated Application Material, 1 August 2024 at [1].

⁵⁷ Minutes 4, 5, 6, 7, 9, 11, 14 and 15.

Protection Society of New Zealand Inc v NZTA [2024] NZSC 26 (11 April 2024) and proposed conditions;⁵⁸

- b. 5 July 2024 on ecological matters;⁵⁹ and
 - c. 11 July 2024 on wastewater and ecological matters.⁶⁰
- 10.2 As a result of the Panel's receipt of further information from the Applicant and information from its special and technical advisers, the Panel directed expert conferencing on ecological, wastewater, stormwater and geotechnical engineering matters.⁶¹
- 10.3 The Applicant signalled to the Panel on 26 July 2024 the imminent withdrawal of that part of the Application seeking resource consent to authorise a proposed onsite wastewater treatment and disposal system.⁶² For this reason, expert conferencing on wastewater matters did not proceed.
- 10.4 The Panel subsequently received the following Joint Witness Statements as a result of the directed expert conferencing:
- a. Expert Ecological and Planning Conferencing Joint Witness Statement, 24-25 July 2024;
 - b. Expert Geotechnical and Planning Conferencing Joint Witness Statement, 26 July 2024;
 - c. Expert Stormwater, Ecology and Planning Conferencing Joint Witness Statement, 26 July 2024; and
 - d. Additional Expert Ecological and Planning Conferencing Joint Witness Statement, 31 July 2024.

11. Amendments to the Application

- 11.1 As noted earlier in this Decision, the Applicant amended its Application on 1 August 2024 to incorporate changes, including the following:
- a. It withdrew those parts of the Application seeking resource consent to authorise a proposed onsite wastewater treatment and disposal system;
 - b. It confirmed the Project will be connected to and serviced by Watercare's reticulated wastewater network; and
 - c. It proposes to utilise the building that was proposed to house the wastewater treatment plant for maintenance activities associated with the Business Park.⁶³

⁵⁸ Letter of the EPA to the Applicant, 31 May 2024.

⁵⁹ Letter of the EPA to the Applicant dated 5 July 2024.

⁶⁰ Letter of the EPA to the Applicant dated 11 July 2024.

⁶¹ Minute 10, 22 July 2024 at [10] to [15].

⁶² Memorandum of Counsel on Behalf of Knight Investments Limited – Update on Wastewater Matters, 26 July 2024 at [4].

⁶³ Updated Proposal – Removal of WWTP and Discharge, Tollemache Consultants Ltd, 1 August 2024.

12. Hearing

- 12.1 The Panel exercised its discretion not to require a hearing on any issue under clause 20 Schedule 6 of the FTCA.
- 12.2 The Panel concluded that it is able to adequately consider all issues based on the information available to it including information in the Application, comments received, responses to comments, further information provided by the Applicant, peer review reports and Joint Witness Statements produced in the course of expert witness conferencing.
- 12.3 The material issues involved were comprehensively addressed in the information provided, resolving technical expert differences of opinion. Residual issues were sufficiently clear for the Panel to consider. The Panel is also mindful of the emphasis on time-limited decision-making in the present process and the purpose of the FTCA including to promote urgent employment.

PART C: LEGAL FRAMEWORK AND PRELIMINARY LEGAL MATTERS

13. Role of the Panel

- 13.1 The role of expert panels appointed under the FTCA has been comprehensively set out in the decision on *Matawii Water Storage Reservoir at Kaikohe* on 27 October 2020.⁶⁴ However, that decision was in respect of a listed project.
- 13.2 This Project is a referred project referred to the Panel by an Order in Council decision by the Minister for the Environment, taking into account the criteria and related matters in sections 18 and 19 of the FCTA.
- 13.3 As the Project was referred, it follows that the Minister is satisfied that the Project would be consistent with the purpose of the FTCA. This Panel is not bound by the Minister's referral decision under the FTCA and must independently determine whether the Application for those resource consents required to authorise the Project should be granted or declined.
- 13.4 The process for referred projects was carefully described in the decision of the expert consenting panel on the Kohimarama Retirement Village.⁶⁵ For the purposes of this Decision on the Project, we adopt the position as set out in the Kohimarama decision.
- 13.5 Section 12 of the FTCA sets out the relationship between the Act and the RMA. If an application is made under the FTCA, the process for obtaining a resource consent under Schedule 6 of the Act applies in place of the usual process under the RMA.
- 13.6 The Panel's decision on the Application under the FTCA is subject to the purpose and principles of the RMA, as well as the purpose of the FTCA recorded in section 4:

⁶⁴ This decision can be found here: <https://www.epa.govt.nz/fast-track-consenting/listed-projects/matawii-water-storage-reservoir/decision-and-appeal/>.

⁶⁵ Kohimarama decision, 12 May 2021.

4 Purpose

The purpose of this Act [the FTCA] is to urgently promote employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.

[Our clarification added.]

- 13.7 The purpose of the FTCA does not 'trump' the purpose of the RMA – the two statutory purposes are to be considered together "on an equal footing".⁶⁶
- 13.8 Clause 31 in Schedule 6 of the FTCA lists those matters that the Panel must and must not have regard to when considering the Application. The function of clause 31 in the Panel's decision-making process under the FTCA is similar to the function of s104 in the decision-making process under the RMA:

31 Consideration of consent applications for referred projects

Matters to which panel must have regard

- (1) When considering a consent application in relation to a referred project and any comments received in response to an invitation given under section 17(3), a panel must, subject to Part 2 of the Resource Management Act 1991 and the purpose of this Act, have regard to—
 - (a) any actual and potential effects on the environment of allowing the activity; and
 - (b) any measure proposed or agreed to by the consent applicant to ensure positive effects on the environment to offset or compensate for any adverse effects that will or may result from allowing the activity; and
 - (c) any relevant provisions of any of the documents listed in clause 29(2); and
 - (d) any other matter the panel considers relevant and reasonably necessary to determine the consent application.
- (2) In respect of the matters listed under subclause (1), a panel must apply section 6 of this Act (Treaty of Waitangi) instead of section 8 of the Resource Management Act 1991 (Treaty of Waitangi).
- (3) If a consent application relates to an activity in an area where a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011 applies, a panel must have regard to any resource management matters in that document until all obligations under section 93 of that Act have been met by the relevant local authority.

⁶⁶ Kohimarama decision, 12 May 2021 at [41].

- 13.9 The Applicant advises that there are no customary marine titles which apply to the Project area.⁶⁷ The Panel has no evidence before it which rebuts this advice. Clause 31(3) is not therefore relevant to the Panel's consideration of the Application.
- 13.10 Matters that the Panel may or must disregard are recorded in clauses 31(4)-(6) of Schedule 6. In particular, clause 31(5)(a) provides that the Panel must not have regard to:
- a. trade competition or the effects of trade competition; or
 - b. any effect on a person who has given written approval to the Application.
- 13.11 The Panel has not been advised of any trade competition effects.
- 13.12 The Application records that "Written approval from 867 [Whitford-Maraetai Road] is implicit, as it is in the ownership of the applicant."⁶⁸ The Panel has not been advised of any other written approvals relevant to the Application.⁶⁹
- 13.13 Clause 31(5)(b) of Schedule 6 directs that the Panel must not grant resource consent that is contrary to:
- a. section 107 of the Resource Management Act 1991 (restriction on grant of certain discharge permits); or
 - b. section 217 of that Act (effect of water conservation order); or
 - c. an Order in Council in force under section 152 of that Act (relating to authorisations for coastal tendering); or
 - d. any regulations made under that Act; or (v) wāhi tapu conditions included in a customary marine title order or agreement; or
 - e. section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011 (effect of protected customary rights on resource consent applications).
- 13.14 The Panel is satisfied that, for the purposes of clauses 31(8)-(9) of Schedule 6, the information provided by the Applicant is adequate to determine the Application.
- 13.15 In its decision-making, the Panel has considered all relevant Treaty settlements and considered any relevant obligations when determining the Application under clauses 31(10) and (11) of Schedule 6. The Panel does not consider, for the purposes of clause 31(12), that declining consent is necessary to comply with section 6 of the FTCA relating to Te Tiriti o Waitangi (the **Treaty**).
- 13.16 Clause 32(1) in Schedule 6 of the FTCA states that sections 104A to 104D, 105 to 107 and 138A(1), (2), (5) and (6) of the RMA apply to the

⁶⁷ AEE at [19.44].

⁶⁸ AEE at [4.150].

⁶⁹ The Panel acknowledges receiving further information from the Applicant that some parties no longer object to the Application in principle. The Panel has not categorised this information as a formal written approval for the purposes of s104(3)(a)(ii) of the RMA. However, the Panel has had regard to this information as a matter "...relevant and reasonably necessary to determine the application" for the purposes of s104(1)(c) of the Act.

Panel's consideration of the Application. The Panel has applied all relevant matters recorded in these provisions to its consideration of the Application.

- 13.17 Clause 35 in Schedule 6 states a panel may grant resource consent subject to any conditions considered appropriate, to which sections 108, 108A to 112 and 220 of the RMA apply. This Decision discusses appropriate conditions and includes a final set of conditions in **Appendix A**.

14. Activity Status

- 14.1 The Project involves a number of activities with different activity statuses in the AUP(OP), the National Environmental Standard for Freshwater and the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health. On the basis that the activities are closely related, the Applicant has applied the well-established 'bundling' principle and identified the Project to be a non-complying activity. The Panel agrees.

PART D: MANA WHENUA

15. Statutory requirements relating to iwi authorities

- 15.1 Section 6 of the Act requires all persons performing functions and exercising powers to act in a manner that is consistent with the principles of the Treaty and any Treaty Settlements, as well as the following clauses in Schedule 6 (and other relevant clauses mentioned in this section of the decision):

Section 9 – Information required in resource consent applications

- Clauses 9(1)(h) and 9(2)(g) regarding a planning document recognised by a relevant iwi authority and lodged with a local authority.
- Clause 9(1)(i) regarding information about Treaty Settlements.
- Clause 9(5) which requires applications for resource consent to include a Cultural Impact Assessment (**CIA**) or a statement of reasons given by the relevant iwi authority for not providing a CIA.
- Clause 9(6)(b) regarding customary marine title groups.

Section 10 – Information required to assess environmental effects

- Clause 10(1)(c) if the activity includes the discharge of any contaminant, a description of (i) the nature of the discharge and (ii) any possible alternative methods of discharge.
- Clause 10(1)(d) a description of any mitigation measures.
- Clause 10(1)(e) and (f) regarding iwi or hapū consultation and responses.
- Clause 10(1)(g) a description of how the effects will be monitored.
- Clause 10(1)(h) regarding protected customary rights.

Section 11 – Matters to be covered in the assessment of environmental effects

- Clause 11(a) requires an assessment of any cultural effects on the people in the neighbourhood and, if relevant, the wider community.
- Clause 11(d) requires an assessment of any effects on natural and physical resources having historical, spiritual or cultural value for present or future generations.
- Clause 11(e) any discharge of contaminants into the environment and options for the treatment and disposal of contaminants.

Section 31 – Consideration of consent applications for referred projects

- Clause 31(2) which requires the application of s 6 of the Act instead of s 8 of the RMA when having regard to the matters listed under cl 31(1).
- Clause 31(10) regarding whether there are any Treaty settlement obligations imposed on a local authority when determining the application for a resource consent and, thereby, on the Panel as if it were the local authority.

16. Te Tiriti o Waitangi, Treaty Settlements, and Iwi Management Plans

Treaty Settlements

16.1 Clause 9(1)(i) of Schedule 6 of the Act requires an application to provide:

- (i) Information about any Treaty settlements that apply in the project area, including:
 - (i) the identification of the relevant provisions in those Treaty settlements; and
 - (ii) a summary of any redress provided by those settlements that affects natural and physical resources relevant to the project or project area.

16.2 Section 7(1) of the Act defines Treaty settlements as including relevant Treaty settlement Acts and Treaty settlement deeds and a relevant iwi authority for a referred project as an iwi authority whose area of interest includes the area in which a project will occur.

16.3 The Ministry for the Environment Report prepared in accordance with section 17 of the Act, identifies, via the Te Puni Kokiri viewer, the Te Kāhui Māngai website and Auckland Council's databases, the relevant iwi authorities for the Project area as (in no particular order):

- a. Ngāi Tai ki Tāmaki Trust, representing Ngāi Tai ki Tāmaki iwi.
- b. Ngāti Tamaoho Trust, representing Ngāti Tamaoho iwi.
- c. Te Patukirikiri Iwi Trust, representing Te Patukirikiri iwi.
- d. Ngāti Pāoa Iwi Trust and Ngāti Pāoa Trust Board, representing Ngāti Pāoa iwi.
- e. Te Ākitai Waiohū Iwi Authority, representing Te Ākitai Waiohū iwi.

- f. Ngaati Whanaunga Incorporated Society, representing Ngaati Whanaunga iwi.
- g. Ngāti Maru Runanga Trust, representing Ngāti Maru (Hauraki) iwi.
- h. Ngāti Tamaterā Treaty Settlement Trust, representing Ngāti Tamaterā iwi.
- i. Hako Tupuna Trust, representing Ngāti Hako.
- j. Te Whakakitenga o Waikato, representing Waikato Tainui Iwi.⁷⁰

Other iwi authorities, Treaty settlement entities and parties which may have an interest in the Project

- 16.4 It has been identified from the database sources that the representative iwi authorities for Ngāti Ata and Te Ahiwaru Waiohū may have an interest. The report by Ministry for the Environment recommended to include each as 'other parties' which may have an interest in the Project area.⁷¹
- 16.5 The Project site lies in the Ngāti Koheriki area of interest. The report by Ministry for the Environment recommended including Ngāti Koheriki as an 'other parties' which may have an interest.⁷²

17. Treaty Settlement and Treaty Settlement Entities

- 17.1 The Ministry for the Environment identified the Treaty settlements that relate to the Project area and relevant Treaty settlement entities, in accordance with sections 17(3)(b) and 17(3)(a) of the FTCA respectively.
- 17.2 Under the FTCA, a Treaty settlement includes both a Treaty Settlement Act and a Treaty Settlement Deed which is signed by both the Crown and the representative Māori group.
- 17.3 The Project site falls within the area of interest covered by Treaty settlements with the iwi outlined below.

Ngai Tai ki Tamaki Claims Settlement Act 2018

- 17.4 Only Crown assets are involved in redress offered to Ngāi Tai ki Tāmaki, and the Statutory Acknowledgements are over Crown-owned land only; therefore, the Site is unaffected by the redress offered.
- 17.5 The Applicant notes that one of the Statutory Acknowledgement areas relates to areas of the Coastal Marine Area (**CMA**). Although the Site does not directly adjoin the coastal environment, the CMA is located north of the Site, and it is acknowledged that the coastal environment is the ultimate receiving environment for sediment control/stormwater discharges. The Applicant also states that:

⁷⁰ Report prepared in accordance with Section 17 Covid-19 (Fast-track Consenting) Act 2020, p4.

⁷¹ Ibid.

⁷² Ibid, p5.

- a. Appropriate provision is made for the management of stormwater runoff (and the quality of runoff);
- b. Earthworks are managed to address erosion and sediment generation and accord with current best practise techniques;
- c. The proposal includes enhancement of native vegetation including alongside the Te Ruangaingai stream which contributes to water quality and ecosystem values; and
- d. As set out in Attachment 23 (including the response letter from Ngāi Tai ki Tāmaki in Attachment 23.3 to the Application) engagement with Ngāi Tai ki Tāmaki is ongoing.⁷³

Ngāti Tamaoho Claims Settlement Act 2018

- 17.6 Only Crown assets are involved in redress offered to Ngāti Tamaoho, and the Statutory Acknowledgements are over Crown-owned land only; therefore, the Application site is unaffected by the redress offered.
- 17.7 The Applicant notes that one of the Statutory Acknowledgement areas relates to areas of the CMA. Although the Application site does not directly adjoin the coastal environment, it is acknowledged that the coastal environment is the ultimate receiving environment for sediment control, stormwater, discharges, and measures as outlined above have been implemented.
- 17.8 As set out in Attachment 22, Ngāti Tamaoho has not engaged substantively with the proposal.

Te Patukirikiri Deed of Settlement 2018

- 17.9 Only Crown assets are involved in redress offered to Te Patukirikiri, and the statements of association are over Crown-owned land only; therefore, the application site is unaffected by the redress offered.
- 17.10 The Applicant notes that the settlement does not provide for redress in relation to the Hauraki Gulf. Agreement between iwi and the Crown has been reached to address the relationship in the future.
- 17.11 In addition, as outlined in Attachment 22 to the Application, Te Patukirikiri were consulted in respect of the Project and confirmed “Te Puru is not a Patukirikiri area”.

Ngāti Paoa Deed of Settlement 2021

- 17.12 Only Crown assets are involved in redress offered to Ngāti Pāoa, and the overlay classifications, statutory acknowledgments and statements of association are over Crown-owned land only; therefore, the Application site is unaffected by the redress offered.
- 17.13 The Applicant notes that the settlement does not provide for redress in relation to the Hauraki Gulf. Agreement has been reached to address the relationship in the future.
- 17.14 As set out in Attachment 22 to the Application, Ngāti Pāoa has not engaged substantively with the proposal.

⁷³ AEE pp 163-164.

Te Ākitai Waiohūa Iwi Settlement Trust Deed of Settlement 2021

- 17.15 Only Crown assets are involved in the redress offered to Te Ākitai Waiohūa, and the statutory acknowledgements/statements of association/leaseback agreements are over Crown-owned land only. The Application Site is therefore unaffected by the redress offered.
- 17.16 It is noted that the settlement does not provide for redress in relation to the Manukau or Waitematā Harbours. Agreement between iwi and the Crown has been reached to address this relationship in the future.
- 17.17 It is noted that one of the Statutory Acknowledgement areas relates to areas of the CMA. Although the Application site does not directly adjoin the coastal environment, it is acknowledged that the coastal environment is the ultimate receiving environment for sediment control/stormwater discharges, and measures as outlined above have been implemented.
- 17.18 As set out in Attachment 22 to the Application, Te Ākitai Waiohūa has not engaged substantively with the proposal.

Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014

- 17.19 The Panel considers it unlikely that the Project will directly affect any of the cultural or commercial redress provided to the post-settlement governance entities under the Tāmaki Collective arrangements. On this basis, the Panel have not identified the Tāmaki Collective redress entities as relevant Treaty settlement entities for the Project.

18. Cultural Impact Assessments and Iwi Consultation

- 18.1 Clause 9(5) of Schedule 6 of the Act requires that a resource consent application must include:
- (a) A cultural impact assessment prepared by or on behalf of the relevant iwi authority; or
 - (b) If a cultural impact assessment is not provided, a statement of any reasons given by the relevant iwi authority for not providing that assessment.
- 18.2 Clauses 10(1)(e) and 10(1)(f) of Schedule 6 of the Act requires identification of persons who may be affected by the Project and any response to the views of any persons consulted, including the views of iwi or hapū that have been consulted in relation to the Project. If iwi or hapū elect not to respond when consulted on the Project, any reasons that they have specified for that decision.
- 18.3 Full identification of all iwi and hapū who have been consulted and their responses is provided below:
- a. Hako Tupuna Trust - No response;
 - b. Ngāti Maru Runanga Trust - Defer to Wai o Hua;
 - c. Ngāti Pāoa Iwi Trust - No response;
 - d. Ngāti Pāoa Trust Board - No response;
 - e. Ngāti Tamaoho Settlement Trust - No response;
 - f. Ngāti Tamaterā Treaty Settlement Trust - No response;

- g. Te Ara Rangatu o Te Iwi o Ngāti Te Ata Waiohua - Provided a CIA;
- h. Te Ākitai Waiohua - No response;
- i. Te Ākitai Waiohua Iwi Authority - No response;
- j. Te Patukirikiri Iwi Trust – Advised that Te Puru is not a Patukirikiri area. It is a Ngāti Tamaterā area. Suggested contacting Ngati Tamatera;
- k. Te Whakakitenga o Waikato Incorporated - No response; and
- l. Ngāi Tai ki Tāmaki - Has been in constant contact with the Applicant. Ngai Tai ki Tamaki expressed its preference to provide a CIA / cultural values assessment once it has seen the finalised Application and technical reports.

Panel Findings

- 18.4 The Panel finds that the Applicant has adequately recorded the consultation undertaken and complied with clauses 10(1)(e) and 10(1)(f) of Schedule 6 of the Act.
- 19. Cultural Impact Assessment and Consultation: Ngāti Te Ata Waiohua**
 - 19.1 A CIA was prepared by Ngāti Te Ata Waiohua (a copy of which is provided in Attachment 22.1 to the Application) which outlines the key areas where the Project has the potential to affect Mana Whenua values.
 - 19.2 The CIA is focused on the potential Taiao impacts.⁷⁴
 - 19.3 The Panel notes that adherence to the recommendations of this CIA is on-going with some recommendations incorporated into the resource consent stage of design (e.g. best practices for sediment and erosion control, stormwater management, revegetation of stream margins), while other recommendations are ongoing and will be implemented via management plans secured by consent conditions, detailed design at engineering plan approval stage and/or on-site during the construction phases.
 - 19.4 The CIA from Ngāti Te Ata included recommendations as to mitigation.
 - 19.5 Ngāti Te Ata recommend that this CIA does not override (supersede) the position and recommendations of the aahi karoa Mana Whenua iwi.
 - 19.6 The Applicant incorporated a number of these recommendations into its Application and provided a response dated 7 December 2023, which outlines how the Project and/or proposed consent conditions (which form part of the fast-track proposal) will address the mitigation outlined in the CIA.

⁷⁴ Attachment 22 to the Application, Ngāti Te Ata Waiohua Cultural Impact Assessment Report, p2.

- 19.7 In a letter dated from Karl Flavell Manager Te Taiao Ngaati Te Ata Waiohū⁷⁵ to Doyle Smith, the Applicant's Project Manager, Ngāti Te Ata confirms that "The measures proposed are agreed to satisfy the CIA mitigation".⁷⁶

20. Cultural Impact Assessment, Consultation and Cultural Values Assessment: Ngāi Tai ki Tāmaki

- 20.1 The Panel agrees with Ngāti Te Ata's recommendation and recognizes Ngāi Tai ki Tāmaki as the ahi kā roa Mana Whenua iwi.
- 20.2 Initially Ngāi Tai Ki Tāmaki indicated that its preference was to provide a CIA once it had seen the final resource consent application and technical reports. The Applicant has explained to Ngāi Tai Ki Tāmaki that this would occur post-lodgement.⁷⁷
- 20.3 The Applicant and Ngāi Tai ki Tāmaki have recently agreed a Memorandum of Understanding which recognises and acknowledges Ngāi Tai ki Tāmaki standing and records the parties' commitment to develop a long-term working relationship in relation to the Project.

Cultural Values Assessment: Ngāi Tai ki Tāmaki

- 20.4 On 1 August 2024, the Applicant received a letter from Ngāi Tai ki Tāmaki regarding the preparation of a Cultural Values Assessment (CVA) following the receipt of updated technical reports and confirmation that the Applicant now plans to connect the Project to Watercare's public wastewater network.
- 20.5 Ngāi Tai ki Tāmaki has confirmed that, based on the information provided, it has no objections to the Application in principle.
- 20.6 While Ngāi Tai ki Tāmaki wishes to complete a CVA, it understands that it will not be submitted to the Panel within the statutory timeframes available under the FTCA.
- 20.7 The challenge for the Panel is that without having the CVA, the Panel are unable to consider this in its decision-making. Ngāi Tai ki Tāmaki were a party invited to provide comment, although no comments were received.

Panel Findings

- 20.8 The Panel agree that the Applicant has satisfied sections 9(1)(i) of the FTCA regarding information about Treaty Settlements and 9(5) which requires applications for resource consent to include a CIA or a statement of reasons given by the relevant iwi authority for not providing a CIA or CVA.

21. Protected Customary Rights or Customary Marine Title.

- 21.1 If an activity is to occur in an area covered by a planning document prepared by a customary marine title group, then clause 9(6)(b) of

⁷⁵ The Panel notes that from the content of the letter it is clear that the correct date of the letter is "12/06/24".

⁷⁶ Response on Behalf of Knight Investments Limited to Request for Information Dated 31 May 2024, 27 June 2024, Appendix A.

⁷⁷ Attachment 22.3 of the Application.

Schedule 6 of the FTCA requires a resource consent application to include an assessment against that planning document.

- 21.2 No parts of the Project will occur in the coastal marine area. This means that the provisions of the Marine and Coastal Area (Takutai Moana) Act 2011, or any other Act pertaining to the grant of protected customary rights or customary marine title, do not apply to the Project.⁷⁸

22. Iwi Management Plans

- 22.1 Clauses 9(1)(h) and 9(2) of Schedule 6 of the FTCA require a consent application to include an assessment against any relevant provisions of a planning document, including any planning document recognised by a relevant iwi authority and lodged with a local authority.
- 22.2 Clause 31(1)(c) of Schedule 6 of the Act then requires a Panel, when considering an application in relation to a referred project and any comments received in response to an invitation to comment, to have regard to any relevant provisions of any of the documents listed in clause 29(2).⁷⁹ These include a planning document recognised by a relevant iwi authority and lodged with a local authority.⁸⁰
- 22.3 There is no planning document that the Panel could find. The Applicant confirmed that no other iwi management plans relating to the iwi consulted in respect of this project are known.⁸¹

Panel findings

- 22.4 Consequently, the Panel finds that the Applicant has complied with subclauses 9(1)(h) and 9(2)(g) of Schedule 6 of the Act.
- 22.5 Based on the discussion above, and the following discussion on cultural impact assessments and cultural effects, the Panel confirms that it has had regard to subclauses 31(1)(c) and 29(2)(g) of Schedule 6 of the Act in regards to iwi management plans.

23. Treaty of Waitangi

- 23.1 Clause 31(2) directs the Panel to apply section 6 of the FTCA instead of section 8 of the RMA. Section 6 provides:

6 Treaty of Waitangi

In achieving the purpose of this Act, all persons performing functions and exercising powers under it must act in a manner consistent with -

- (a) the principles of the Treaty of Waitangi; and
- (b) Treaty settlements.

- 23.2 Clause 31(10) requires the Panel to comply with any Treaty settlement obligation imposed on Auckland Council or another decision making when deciding the Application.

⁷⁸ Section 17 Report – Application 2023-160 Te Puru Business Park Project, p3.

⁷⁹ FTCA, cl 31(1)(c).

⁸⁰ FTCA, cl 29(2)(g).

⁸¹ Para 18.22, AEE.

- 23.3 The Panel does not have any evidence before it that Auckland Council has any relevant Treaty settlement obligation with which the Panel must comply.

Panel findings

- 23.4 The Panel has considered the information before it and agrees that:
- a. The Applicant has addressed the principles of the Treaty of Waitangi in the preparation of the Application;
 - b. The Applicant recognises the kaitiakitanga role that Mana Whenua has with respect to indigenous biodiversity;
 - c. The Applicant recognises the bonds of Mana Whenua as kaitiaki, and in particular for whakapapa relationships; and
 - d. The Panel notes that the Applicant has had regard to the statutory acknowledgement for areas in the CMA in favour of Ngā Tai ki Tāmaki.⁸²
- 23.5 Based on the evidence provided, the Panel concludes that in reaching its decision, the Applicant has acted in a manner that is consistent with the principles of the Treaty and relevant Treaty Settlements, as required by section 6 of the FTCA.
- 23.6 The AEE discussed the above Settlement Acts or Deeds of Settlement.⁸³ It does acknowledge that there are still outstanding matters in the CIAs that are being worked through to resolution. In relation to Settlement Acts and Deeds of Settlement, the AEE concluded that the settlement redress involves Crown assets (and so not private property or private property rights). Therefore, *“the application site is unaffected by the redress offered.”*
- 23.7 The Panel has not been made aware whether, as noted in clause 31(10) of Schedule 6 of the Act, there are any Treaty settlement obligations imposed on a local authority when determining the application for a resource consent and, thereby, on the Panel as if it were the local authority. Therefore, this matter is not considered further.
- 23.8 Based on the evidence provided, the Panel concludes that in reaching its decision, it has acted in a manner that is consistent with the principles of the Treaty and any Treaty Settlements, as required by section 6 of the Act.
- 24. Consultation With Iwi**
- 24.1 Attachment 22.3 to the Application provides an iwi consultation record and states that 15 iwi entities were initially identified for consultation using Te Puni Kōkiri’s Te Kāhui Māngai website. Five iwi confirmed they did not have an interest in the Site. Eight iwi did not provide a response, or did not respond following the Applicant’s provision of additional material. Following lodgement with the Environmental Protection Authority, the Applicant was made aware of another four iwi that it should contact. No response was received following those contacts.

⁸² AEE at 144.

⁸³ AEE at 142-146.

Panel findings

- 24.2 The Panel finds that the Applicant has adequately recorded the consultation undertaken and complied with clauses 10(1)(e) and 10(1)(f) of Schedule 6 of the Act.

PART E: EFFECTS EVALUATION

25. Introduction

- 25.1 Clause 9(4) of Schedule 6 of the FTCA requires a consent application to provide an assessment of an activity's effects on the environment including and covering the information in clauses 10 and 11. The Applicant provided a comprehensive assessment of these matters in the AEE⁸⁴.
- 25.2 Commenters also raised a range of actual and potential effects.
- 25.3 Based on the Application provided and the comments made, the Panel has identified the following main categories of actual and potential effects on the environment for consideration:
- a. Earthworks;
 - b. Construction effects (dust, noise, vibration, traffic);
 - c. Contaminants (contaminated land and discharges from industrial trade activities);
 - d. Stormwater management and flood hazards;
 - e. Land stability;
 - f. Ecology;
 - g. Traffic effects;
 - h. Landscape, natural character and visual effects;
 - i. Operational lighting;
 - j. Operational noise;
 - k. Archaeological effects;
 - l. Cultural effects; and
 - m. Positive effects.
- 25.4 For clarity, the Panel notes that the Application, as lodged, included an on-site wastewater treatment plant and associated discharge. The Assessment of Environmental Effects (**AEE**) and supporting technical documents included assessments of the related wastewater effects, such as odour, ecology and cultural effects. As already noted, the Applicant confirmed the withdrawal of this part of the Application on 1 August 2024.
- 25.5 Given that the Project's wastewater will now be diverted to and treated at Watercare's Beachlands-Maraetai Wastewater Treatment Plant,

⁸⁴ Section 7, AEE.

which is subject to its own consent conditions, the Panel has not undertaken any further assessment in relation to wastewater effects.

26. Earthworks

Potential effects

- 26.1 Large volumes of earthworks are required to recontour the Site. These earthworks will provide new platforms for the proposed buildings and yards, enable the construction of new utilities and provide for vehicle access and circulation.
- 26.2 The Applicant has detailed the earthworks which can be summarised as:
- a. 71,000m³ of cut and 149,410m³ of earthworks across 7.13 ha;
 - b. Cuts of up to 3m depth and filling of up to 6m;
 - c. The importation of fill that meets geotechnical engineering specifications;
 - d. Works within proximity to wetlands and watercourses; and
 - e. The establishment of a 2m high bund along Whitford-Maraetai Road⁸⁵.
- 26.3 To address the potential effects associated with sediment discharges and erosion that can occur during earthworks of this scale, the Applicant has detailed a range of measures that will be employed during the Project's earthworks. These measures include:
- a. The preparation and certification of an Erosion and Sediment Control Plan (**ESCP**);
 - b. The preparation and certification of a Chemical Treatment Management Plan (**ChTMP**);
 - c. Clean water diversions; and
 - d. Staged earthworks⁸⁶.
- 26.4 The Applicant proposes that the earthworks controls employed on the Project will be undertaken in best practice and in accordance with '*Auckland Council's Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region – Guidance Document 2016/005*' (**GD05**).⁸⁷
- 26.5 The AEE states:⁸⁸
- Land modifications of the site will result in a permanent change to the visual appearance of the Site, however, this is a site (sic) has been undergoing visual changes (via the quarrying and managed fill activities) for a number of years. The earthworks do not inappropriately raise levels adjacent to third party sites in a manner that would result, with the development of dwellings, in adverse dominance or privacy effects. While some large retaining is proposed adjacent to common

⁸⁵ Para 4.11 – 4.19, AEE.

⁸⁶ Para 7.8, AEE.

⁸⁷ Para 4.20 and 7.7 - 7.8, *ibid*.

⁸⁸ Para 7.6, *ibid*.

boundaries, amply (sic) vegetation (both existing and proposed) will ensure these do not appear visually dominant from any adjacent sites.

26.6 Further to the effects associated with earthworks, the AEE details:⁸⁹

The proposed earthworks could have potential adverse effects on the downstream receiving environment (Te Ruangaingai Stream, Pony Club Creek and ultimately the Hauraki Gulf) particularly given the immediacy of the streams within the site. The erosion of soil and the transfer of sediment into the receiving environment can have adverse effects on the life-supporting capacity of the waterways, lake and other aquatic environments. Clays, silts and sand washed from exposed areas during construction can enter freshwater streams either directly or after treatment via sediment control devices. Sediment, which does not settle in the freshwater receiving environment will eventually settle out in estuaries or is transported to open coastal waters. Once in the water column, sediment can cause a variety of effects including smothering of habitat, invertebrates, fish and plants as well as changes in the physical stream characteristics.

26.7 Further to the effects associated with earthworks, the AEE has assessed potential land stability effects. This is a matter the Panel has considered as part of the Project's hazard effects and have addressed further in its Decision.

Comments received

26.8 Auckland Council provided comment on the proposed earthworks, stating that the overall earthworks proposal was supported. The Council's technical expert noted that while an ESCP had been provided, it was lacking some details, although the missing information could be addressed by way of consent conditions⁹⁰.

26.9 The Council also raised some confusion regarding whether consent was being sought for stream works as part of the Application. The Panel has relied on the matters for consent listed in the Application and the description of works in the AEE which do not include an application for stream works under s13 of the RMA⁹¹.

26.10 Mr Willan also provided comment on the proposed earthworks in relation to stormwater and landscaping matters⁹². Given the specificity of Mr Willan's comments, the Panel has considered them later in its Decision in its consideration of stormwater and landscape effects respectively.

Further information requests

26.11 No further information requests were made by the Panel in regard to erosion and sediment control matters. The proposed earthworks were subject to a geotechnical assessment on behalf of the Panel by PDP⁹³. However, the Panel has addressed the geotechnical aspects of the proposal in its discussion of hazard effects.

⁸⁹ Para 7.10, *ibid*.

⁹⁰ Shanelle Beer, Senior Specialist – Earthworks and Streamworks, Auckland Council Specialist Unit

⁹¹ Sections 3 and 5, AEE

⁹² In particular, Para 36 – 38 and Para 50, Comments of Donald Willan.

⁹³ Geotechnical Peer Review by Pattle Delamore Partners, 17 July 2024.

Panel findings

- 26.12 The Panel is satisfied that the Project's earthworks can be undertaken in a manner that will ensure that the potential adverse effects from earthworks on the Site on the downstream freshwater and coastal environments will be temporary and less than minor. The use of an ESCP and the measures detailed in GD05 are accepted industry practice and the Panel is not aware of any unusual or unique characteristics associated with the proposed earthworks that would warrant a different effects management approach.
- 26.13 However, the Panel has modified the Applicant's proposed condition set in relation to the earthworks controls, including:
- a. Condition 6A – Introduced a requirement for the Applicant to provide the draft ESCP to Mr Willan and Mr McKay for comment prior to its certification by Council; and
 - b. Condition 6A - Introduced a requirement for the Applicant to provide the draft ESCP and ChTMP to Ngāi Tai ki Tāmaki for comment prior to its certification by Council.

27. Construction effects (dust, vibration, noise, and traffic)

- 27.1 Construction effects are those effects such as dust, vibration, noise, and traffic, that result directly from the construction works. These effects occur only during the construction period and are therefore temporary effects. Each of these effects is addressed below.

Dust

Potential effects

- 27.2 The AEE identifies that dust during construction can arise from:⁹⁴
- a. Stripping and stockpiling, or re-spreading of topsoil;
 - b. Windblown material from stockpiles;
 - c. Removal of topsoil by excavation and loading onto trucks, or screening and loading onto trucks; and
 - d. The movement of earthmoving machines along a constant track, which in dry weather can cause dust.

- 27.3 The Applicant has also elaborated on these dust sources and their management:⁹⁵

If earthworks are undertaken during dry periods, there may be even more potential for dust generation and erosion by wind from unstabilised site areas. Accordingly, it is proposed to implement measures to control wind erosion and to minimise the spread of airborne dust, and any nuisance created by it. Where a dust nuisance occurs, the exposed areas will be dampened with a water cart or other suitable system. The contractor shall also take advantage of particular wind directions with respect to adjacent dwellings and carry out works

⁹⁴ Para 7.18, *ibid.*

⁹⁵ Para 7.19 – 7.20, *ibid.*

accordingly. The contractors will also control the route and speed of all vehicles traversing the site.

Should this not prove satisfactory, the site contractor may carry on with some other earthworks operations until conditions are suitable (i.e. wind decreased in strength or changes direction); and / or install wind break fences; and / or cover stockpiles with geofabric. The Civil Plan EESC Report details these dust management techniques.

Comments received

- 27.4 Mr McKay raised that dust nuisance has been an ongoing issue with the current quarry operation and is a concern for the Project, not least Stage 1⁹⁶⁹⁷. Mr McKay has identified that such dust effects will materially affect the amenity of surrounding properties.
- 27.5 Auckland Council also commented that dust should be avoided or limited in a such a way to prevent nuisance outside the site boundaries.⁹⁸

Further Information Request

- 27.6 The Panel asked the Applicant how it proposes to manage any discharge of particulate matter to air from earthworks⁹⁹.

Response to comments and further information request

- 27.7 The Applicant responded to dust matters as follows: ¹⁰⁰

In response to the Panel's question as to how any discharge of particulate to air from earthworks is proposed to be managed, KIL proposes, in addition to proposed condition 24, a Dust Management Plan ("DMP") be required as a condition of consent. A draft DMP is included at Appendix H, and a condition requiring is (sic) preparation, certification and implementation by the consent holder is included in the Updated Proposed Conditions (see condition 10A).

Panel findings

- 27.8 The Panel considers that the dust management measures proposed by the Applicant, including the use of a Dust Management Plan (**DMP**) are suitable and appropriate for a project of this scale. Dust management is a common practice on large construction projects, and the Panel considers that the Applicant's measures are a practicable approach to dust control.
- 27.9 The Panel also acknowledges the interest that dust management may have for other parties. Consequently, the Panel has imposed a condition requiring the Applicant to provide the draft DMP to those parties prior to its certification by Auckland Council. We consider that that this requirement will ensure that the certified management plan appropriately addresses those parties' concerns, as well as that DMP addresses local conditions. The Panel therefore considers that the mechanisms applied

⁹⁶ Para 42, Lindsay McKay.

⁹⁷ Para 53, *ibid*.

⁹⁸ Pg 18, Council comments (Maria Baring).

⁹⁹ Panel's Request for Information, 31 May 2024.

¹⁰⁰ Para 4.14, Applicant's response of 27 June 2024.

through the conditions to manage dust are sufficient to ensure that adverse effects arising from dust are minor.

Noise and vibration

Potential Effects

- 27.10 The AEE acknowledges that the construction of the Project has the potential to generate noise effects. The AEE further notes that NZS 6803:1999 “Acoustics – Construction Noise” provides current accepted standards in relation to this matter¹⁰¹.
- 27.11 The Applicant goes on to state that: ¹⁰²
- Construction noise and vibration can be managed to only have minor effects on the amenity of adjoining residents. Construction duration is limited to Monday to Saturday daytimes (7.30am – 6.00pm) only. The activity is temporary in terms of the overall project, and construction activities will move around the site so there is not a constant exceedance or inappropriate level of noise permanently occurring on adjoining boundaries.
- 27.12 However, the Applicant identified that construction noise standards will be exceeded for a short time while ‘retaining wall 1’ is built in proximity to the dwelling at 865 Whitford-Maraetai Road. Modelling undertaken by Styles Group Consulting estimated noise 5dB above 70 dB LAeq at 1m from the façade of the dwelling during its placement¹⁰³.
- 27.13 Similarly, Styles Group Consulting (**Styles Group**) identified that some construction works at the Site’s boundary may result in exceedance of vibration amenity limits for short periods. The maximum exceedance identified by the Applicant will be less than 1mm/s for a period of no more than two days per receiver. No exceedances to building damage vibration standards were identified by the Applicant¹⁰⁴.
- 27.14 In addressing these effects, the Applicant has stated: ¹⁰⁵
- The above demonstrates that there will be short periods during demolition, earthworks and piling stages when it will not be practicable for the construction noise levels to comply outside the nearest dwellings if they are occupied during the works. Short term exceedances are very common for construction projects in New Zealand and these levels are not considered to be “typical” for the works within the site, instead represent a “worst case” scenario, which the receiver may experience on a very irregular basis. The total duration of earthworks phase of the development is expected to be approximately 18 weeks. Over this time the plant will be moving around the site and high noise levels will only be experienced at any one receiver when works are required within 10m of their respective boundary.
- It is considered that with the implementation of mitigation measures proposed for noise and vibration on adjacent landowners (use of machinery, preparation of a management plan, communication on timings of work and suitable scheduling/restrictions etc) in accordance

¹⁰¹ Para 7.22, AEE

¹⁰² Para 7.25, AEE.

¹⁰³ Para 7.26 - 7.27, AEE

¹⁰⁴ Para 7.28, AEE

¹⁰⁵ Para 3.18 – 3.19, AEE.

with the recommendations of the Construction Noise and Vibration Report will ensure that the amenity of all adjacent sites is mitigated to an acceptable level.

- 27.15 The Panel notes that the Applicant has proposed to address these effects through the use of a Construction Noise and Vibration Management Plan (**CNVMP**)¹⁰⁶.

Comments received

- 27.16 Mr Willan raised concerns that construction noise will be greater in intensity than the operational noise proposed. He considers that inadequate assessment of construction noise effects on his property have been undertaken¹⁰⁷.
- 27.17 Mr McKay also raised similar concerns regarding construction noise¹⁰⁸.
- 27.18 Auckland Council agreed with the Applicant's assessment, methodology and conclusions regarding construction noise and vibration. The Council stated that the use of a CNVMP is an appropriate method to address these effects¹⁰⁹.

Panel findings

- 27.19 The Panel agrees with the Council, in that the construction and vibration effects of the Project can be managed through a CNVMP. The Panel is aware that CNVMPs are a common measure to manage such effects on large construction projects in Auckland and can be practically employed to minimise these effects.
- 27.20 The Panel is also conscious that these effects can be disruptive for sensitive receivers and can impact the amenity of surrounding sites. Given this, the Panel considers it appropriate for both Mr Willan and Mr McKay to have the opportunity to review and comment on the CNVMP prior to its certification by Council. As such, we have included this requirement as a condition of consent.
- 27.21 The Panel is satisfied that the levels of noise and vibration modelled, and the development of a CNVMP (which must be certified by Council) are appropriate in ensuring that adverse effects arising from noise and vibration will be minor.

Traffic

Potential effects

- 27.22 The AEE stated that: ¹¹⁰

Vehicle movements associated with the importation of additional fill material, and effects on the traffic environment resulting from road works has been addressed by the ITA and will be addressed via a Construction Traffic Management Plan as a condition of consent.

¹⁰⁶ Para. 7.33.

¹⁰⁷ Including Para 31, Mr Willan

¹⁰⁸ Including Para 54, Mr McKay

¹⁰⁹ Andrew Gordon – Senior Specialist, Noise and Vibration

¹¹⁰ Para 7.32 – 7.23, AEE.

Daily traffic movements are expected from construction workers and the delivery of equipment and building materials to the site, along with the importation of additional fill during the initial construction period. Noise effects resulting from these movements can be managed through the construction traffic management plan and the CNVMP.

- 27.23 The AEE statement is elaborated upon by the Integrated Transport Assessment (**ITA**) prepared by Flow Transport Specialists Limited (**Flow**)¹¹¹. Flow stated that construction traffic can be addressed via a Construction Traffic Management Plan (**CTMP**) that details the following matters:
- a. A description of the construction site and a programme and scope of the works;
 - b. Routes to be used by construction traffic to access and egress the site and the adoption of any measures on these routes to ensure a safe environment for all road users, including existing residents and pedestrians to ensure that the surrounding road network will continue to operate in an efficient manner;
 - c. The amount of construction traffic expected during each phase of construction;
 - d. Access for construction vehicles onto the road network from the site and measures to be adopted at these access points to ensure a safe traffic environment for other road users, especially pedestrians; and
 - e. Parking for contractor vehicles on the development site thereby ensuring that the on-street parking effects as a result of the construction activity are minimised.¹¹²

- 27.24 The Panel notes that the Applicant's proposed conditions require a CTMP that incorporates the matters identified by Flow.

Comments received

- 27.25 Auckland Transport (**AT**) commented on construction traffic, and specifically sought the following information:
- a. A Traffic Impact Assessment of the additional heavy vehicle traffic on the roads.
 - b. Pre earthwork and post-earthwork inspection prior to cut and fill starting, by suitably qualified engineers.
 - c. Details of any potential damages to the road pavement, kerb and channel, footpath and berms including how the applicant intends to mitigate and repair these damages.
 - d. Details of any potential commercial vehicle crossings to be used for construction access and future accessways.
 - e. Information regarding the turning points to be provided for the heavy vehicles to enable the vehicles to turn on site without using other private vehicle crossings.

¹¹¹ Attachment 14, AEE.

¹¹² Pg 33, ITA

- f. Information concerning the maintenance and safe management of existing road, footpath and berms. Specifics regarding the parking arrangement for heavy vehicles and the provision of a safe thoroughfare for other public traffic.¹¹³

27.26 The Panel note that New Zealand Transport Agency Waka Kotahi (**NZTA**) deferred to AT on transport matters.

Panel findings

- 27.27 The Panel is satisfied that construction traffic from the Project can be appropriately managed through a CTMP. Furthermore, based on AT's comments, the Panel has modified the Applicant's CTMP condition to incorporate a requirement to identify heavy vehicle routes, associated road pavement assessment road pavement monitoring details and proposed road pavement repair measures. We consider the inclusion of these requirements, as well as the certification process for the CTMP, are sufficient to address AT's comments.
- 27.28 The Panel is also conscious of the disruption that construction traffic can cause to the amenity of nearby sites. Given the proximity of heavy construction traffic to the properties of Mr McKay and Mr Willan, the Panel has imposed a requirement for both these parties to be provided with an opportunity to review and comment on the draft CTMP prior to its certification by Council.
- 27.29 On this basis, the Panel considers that the effects arising from construction traffic will be minimal.

28. Contaminants

Contaminated Soils

- 28.1 The Applicant has provided both a Preliminary Site Investigation (**PSI**) and Contaminated Site Investigation (**CSI**) given the presence of Hazardous Activities and Industries List (**HAIL**) activities at the Application Site and the proposed change of land use¹¹⁴.
- 28.2 The AEE summarised these investigations, as they relate to the Project's earthworks, stating: ¹¹⁵

The CSI identified that the land is suitable for the intended development. Under the consenting framework for these existing managed fill activities within the site, the quality of the soil imported is restricted to contaminant concentrations which are compliant the NES soil contaminant standards for a commercial/industrial land use. As a result, following the completion of managed fill activities onsite, and closure in accordance with the resource consent requirements / conditions (and being subject to any subsequent site management controls generated by the site closure reporting), the CSI concluded that the soil quality onsite is highly unlikely to pose a risk to human health/end land users or the receiving environment under the proposed commercial / industrial land use.

¹¹³ Pg 7, Comments from Auckland Transport.

¹¹⁴ Attachment 16, AEE.

¹¹⁵ Para 7.42, AEE.

- 28.3 The AEE then followed on to advise that the controls present in the Site's existing resource consents can be considered appropriate and practicable to manage any related adverse environment effects.

Comments received

- 28.4 Auckland Council provided comment on contaminated soil matters, identifying that a discretionary activity consent was required under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (**NES-CS**) and that the proposal required standalone consent conditions rather than relying on conditions related to other consents. Beyond these technical matters, the Council was of the view that any environmental risks associated with contaminated soil could be addressed through the Council's recommended consent conditions¹¹⁶.
- 28.5 Mr Willan also made the following comments in regard to the Applicant's contamination assessment:
- a. Inadequate reporting and monitoring of the current and earlier operations means that contaminated materials may be present; and
 - b. Contaminants from the Site have affected Te Ruangaingai Stream.

Applicant's response

- 28.6 The Applicant's response to Auckland Council confirmed the discretionary activity status under the NES-CS, although noting that the bundled activity status of the Project remained unchanged as a non-complying activity. The Applicant was also of the view that relying on a Site Closure Report under another resource consent (i.e. the consent for the quarry activity itself) was appropriate¹¹⁷.
- 28.7 In regard to Mr Willan's comments, the Applicant advised that historic operations at the Site do not form part of the current Application¹¹⁸.

Panel findings

- 28.8 The Panel is satisfied that contaminated soil matters can be appropriately managed through the implementation of the Applicant's proposed conditions. Further to this, this Panel is of the view that it is also appropriate in this instance to provide the Site Closure Report through the auspices of the underlying consents. The Project is reliant on the quarry closure, which itself is managed in part through a requirement to provide the Site Closure Report.
- 28.9 Furthermore, while there may have been historic dumping and/or inadequate reporting of fill material at the Site, the Panel is satisfied that the Applicant's contamination monitoring and management measures will adequately address any such material uncovered during

¹¹⁶ Fiona Rudsits, Senior Contamination Specialist – Contamination, Air & Noise Team, Auckland Council.

¹¹⁷ Appendix A, Applicant's response to the comments received – 17 May 2024.

¹¹⁸ Appendix A, Applicant's response to the comments received – 17 May 2024.

construction. We return to the related water quality issues in our discussion of ecological effects later in this Decision.

- 28.10 On this basis, the Panel consider that soil contamination effects are minimal.

Discharges from Industrial Trade Activities

Potential effects

- 28.11 The Project includes provision for industrial trade activities on-site. As such, the AEE has commented:¹¹⁹

The Industrial Area's drainage has been designed to ensure that industrial trade activities are located within buildings where possible, and outdoor areas that which have a high risk of stormwater contamination have suitable treatment measures.

Future land use activities will need to meet the permitted activity standards for new uses (which also addresses storage of hazardous chemicals), and any activity which requires treatment beyond the devices provided or cannot meet the permitted standards (for both hazardous chemical storage and industrial and trade activities new uses) will be required to obtain additional consents.

Comments received

- 28.12 Auckland Council commented on industrial trade activities, noting that the effects of any low or medium activities can be addressed by the Council's recommended conditions¹²⁰. These conditions included new tenants to submit to Council (for certification) comprehensive assessments against the AUP(OP)'s industrial trade activities permitted activity standards, as well as a consent condition requiring any new activity that does not comply with those standards to obtain a resource consent.

Applicant's response

- 28.13 The Applicant adopted the Council's recommended industrial trade activities consent conditions¹²¹.

Panel findings

- 28.14 The Panel accepts the Applicant's adoption of the Council's recommended industrial trade activities conditions, with minor edits. Principally, the Panel considers that Condition 68A must be imposed on the consent holder, rather than prospective tenants, as those tenants are third parties, and any consent requirement imposed on them through a condition would be *ultra vires*.
- 28.15 Based on those minor edits, the Panel is of the view that the effects arising from discharges related to industrial trade activities will be minimal.

¹¹⁹ Pg 78, AEE.

¹²⁰ Hillary Johnston – Consultant Stormwater Specialist, Stormwater Wastewater and Industrial Trade Activities

¹²¹ Appendix A, Applicant's response to the comments received – 17 May 2024.

29. Stormwater management and flood hazards

Potential effects

- 29.1 The Applicant has provided an assessment of the proposed stormwater discharge, which includes an Infrastructure Report and Stormwater Management Plan Report both prepared by CivilPlan Consultants Ltd, as well as the AEE itself¹²². The AEE has assessed stormwater discharge effects through three discrete categories:
- a. Stormwater mitigation;
 - b. Stormwater reticulation; and
 - c. Water quality.
- 29.2 The AEE also provided a separate assessment of flooding as part of its discussion on hazard risks.
- 29.3 Turning first to stormwater mitigation, the AEE explained that the Project has been subject to a Stormwater Design Report that has considered the two stormwater catchments that will be used to manage stormwater flows and provide treatment prior to discharge into the surrounding environment¹²³.
- 29.4 The Western Catchment includes the new internal road, accessways and Yard 2. An Eastern Catchment will take stormwater generated by Yards 3 to 8. The Applicant has proposed attenuation for all roof areas, as well as extended detention and retention for all paved areas. The AEE further states: ¹²⁴
- The overall catchments have been checked to ensure that no downstream areas are water shorted as a result of this development. Flows into the Pony Club Creek shall be maintained, and there are no adverse downstream effects resulting from the development during 2yr, 10yr and 100yr storm events. All designs have allowed for climate change.
- 29.5 The AEE further discussed the stormwater reticulation infrastructure that is proposed. This includes common stormwater infrastructure assets like catchpits and pipes, which connect to a series of underground tanks for storage. Stormwater is then passed through a centralised filter for treatment. This network has been designed to accommodate 10 year AEP storm events, as well as the projected effects from 3.8°C of climate change¹²⁵.
- 29.6 The AEE also detailed that the lowest part of the proposed stormwater network has been designed to accommodate 100 year projected flows, which are collected via scruffy domes and piped to discharge into Pony Club Creek at two outfall locations. Those outfalls will feature riprap to prevent stream erosion. The Applicant noted that the stormwater works within Pony Club Creek were approved under Permit 33121¹²⁶.

¹²² Attachments 9 and 10, AEE.

¹²³ Para 7.52, AEE

¹²⁴ Para 7.54, AEE.

¹²⁵ Para 7.55, AEE

¹²⁶ Para 7.56, AEE.

- 29.7 Regarding water quality, the AEE confirmed that all building roofs will be required to be non-contaminant generating materials. Given this, no treatment is proposed for stormwater from these sources. However, a Stormwater360 storm filter will treat stormwater from the Site's Western Catchment, while a bioretention swale will be used to treat stormwater from the Eastern Catchment. The Applicant also proposes to allow for non-potable reuse, such as irrigation or toilet flushing¹²⁷.
- 29.8 Lastly, the AEE provided an assessment of flood risk in addition to the stormwater assessment detailed above. The assessment highlighted that the Project's design has addressed potential on-site flooding, including overland flow paths and flood plains. The proposed buildings will have freeboard levels that will meet the Council's Stormwater Code of Practice and building code requirements. The AEE concluded that there will be no increase in flooding of downstream properties and that flood attenuation is not required¹²⁸.

Comments received

- 29.9 Comments in regard to stormwater effects, including flooding, were made by Auckland Council, AT and Mr Willan.
- 29.10 Auckland Council firstly raised that given the presence of streams in the downstream environment, the Council ground infiltration should be considered a priority. The Council's reasoning was that infiltration would have attenuation and discharge quality benefits.
- 29.11 The Council also raised whether the proposed stormwater reuse within the proposed buildings would achieve 72-hour draw-down required by Chapter C5 of GD1¹²⁹ and proposed a new condition to address this.
- 29.12 The Council's overall view of the Project's hydrological mitigation was that: ¹³⁰
- ... the proposed hydrology mitigation is considered appropriate in the context of the development and the anticipated contaminants such that the effects of stormwater discharging to the receiving environment will adequately avoided or suitably mitigated.
- 29.13 The Council also highlighted the importance of the protection of the downstream environment given its role in receiving the proposed stormwater discharge. To summarise, the Council found that the Applicant's proposed stormwater treatment train is appropriate and that the anticipated water quality effects will be adequately avoided or suitably mitigated.
- 29.14 Auckland Council was also concerned that the proposed stormwater network would not adequately manage flows associated with 1 in 100 year events, in particular the use of underground piping. The Council

¹²⁷ Para 7.58 - 7.62, AEE.

¹²⁸ Para 7.78 - 7.83, AEE.

¹²⁹ Guideline Document 2017/001 - Stormwater Management Devices in the Auckland Region (GD01)

¹³⁰ Hillary Johnston – Consultant Stormwater Specialist, Stormwater Wastewater and Industrial Trade Activities.

concluded that the stormwater design requires a peer review and confirmation from Auckland Council's Healthy Waters Department to ensure that it adequately addresses flooding hazards.

- 29.15 AT's primary stormwater commentary related to flooding and overland flow paths effects on and adjacent to Whitford-Maraetai Road. This arose from concerns regarding an increase in peak flow rates that could flood Whitford-Maraetai Road, as well as whether the modifications to Whitford-Maraetai Road (including the new roundabout) would result in changes to existing overland flow paths. On this basis, AT sought further information from the Applicant in regard to both these matters.
- 29.16 Mr Willan raised a number of concerns about flooding and stormwater management in his comments, including:
- a. Potential for flooding to worsen during earthworks due to catchments;
 - b. New overland flowpath entering the Willan property;
 - c. Quarry forms part of the floodplain area;
 - d. Flooding downstream onto third party and appears no analysis of upstream effects; and
 - e. Raising the ground level and narrowing of channels will lead to upstream flooding.

Response to comments and further information request

- 29.17 Firstly in regard to Auckland Council's hydrological comments, the Applicant responded that stormwater infiltration into subsoils on-site was not recommended given the potential site stability and failures that occur. However, the Applicant amended Condition 83 based on the Council's comments.
- 29.18 In terms of the Council's flooding hazard comments, the Applicant advised that avoiding the use of underground infrastructure for 100 year flows was not possible given the application site's steep topography and the resulting high surface water velocities/erosion. However, there is adequate capacity in the internal roads and accessways to accommodate upstream 100 year flows prior to them entering the proposed piped network. Given this, the Applicant did not propose any changes to the stormwater design.
- 29.19 The Applicant's response to AT firstly addressed works within the 1 in 100 year flood plain present at the site's lower elevations and potential flooding effects on Whitford-Maraetai Road. The Applicant advised that the filling in of that flood plain was provided for by way of existing resource consents for the quarry.
- 29.20 The Applicant further advised that attenuation was not appropriate given the position of the site in the lower Te Puru Stream catchment and the need to avoid coinciding peak flows. The response to AT further detailed the modelling undertaken for the Stormwater Management Plan, including addressing the projected effects of climate change. Furthermore the pre and post flow scenarios at a total flow of 305m³/s so that no additional flooding risk of the public road was anticipated.

- 29.21 The Applicant also confirmed that none of the works within Whitford-Maraetai Road would result in diversion of those flows onto private property, while in-road flows would be acceptable.
- 29.22 In regard to both flooding and overland flow paths, the Applicant highlighted that the proposed conditions, which require works comply with AT's Transport Design Manual, would address the commentator's concerns.
- 29.23 Turning to Mr Willan's comments, the Applicant confirmed that the proposal will not increase flooding risk to neighbouring sites. The response detailed each of the overland flow paths raised by Mr Willan, and the stormwater design's methodology and modelling when addressing flooding risks.
- 29.24 The Panel noted the comments received from invited parties and the potential for downstream flooding risks, not least on the Whitford-Maraetai Road bridge. Given this the Panel commissioned an external peer review of the Applicant's stormwater and flooding reports by Storm Environmental Limited (**Storm**), while the Panel's Minute 8 requested the following:
- Whether greater certainty can be provided regarding the potential natural hazard effects on the Whitford-Maraetai Road bridge across Te Ruangaingai Stream given the concerns raised by Auckland Transport, the role of the road bridge as a lifeline utility and the related natural hazard objectives and policies of the Auckland Unitary Plan.
- 29.25 Further to the Panel's question, Storm's peer review identified the further information was required to understand the proposal's stormwater effects:¹³¹
- Please provide a difference map for the pre- and post-development 100-year ARI event to allow the identification of any changes between the two development states.
- Please incorporate modelling of the future-state yard runoff and mitigation into the assessment so that the effects of the discharge from this area can be determined. All assumptions made in developing the future-state scenario will need to be clearly articulated.
- Please provide further information on the potential effects of the increased duration of discharge on erosion potential in the receiving waterways, including pre- and post-development flow hydrographs at key points to show whether the proposed mitigation measures will have the required effect.
- Please provide an assessment of the change in contaminant concentrations and loads in the runoff compared to the baseline situation and assess the effects of this change on the receiving environment. This must include an assessment of potential effects as a result of future yard activities.
- 29.26 The Applicant responded this questions as part of Joint Witness Conferencing on 26 July 2024. The outcomes of these conferencing were:¹³²

¹³¹ Storm peer review.

¹³² Joint Witness Conferencing, 26 July 2024

- a. The water quantity assessment is accurate;
 - b. The water erosion assessment is accurate;
 - c. The water quality management associated with building roofs is adequate;
 - d. That the proposed stormwater treatment devices are adequate, but that the conditions relating to detailed design should raise opportunities to improve metal removal;
 - e. No additional flooding hazard is generated on the Whitford-Beachlands Road bridge;
 - f. The stormwater conditions require updating to reflect the shared position of Storm's and the Applicant's engineers. Both are in agreement that stormwater quantity will be appropriately mitigated.
- 29.27 Based on the Joint Witness Statement, the Applicant provided updated stormwater conditions for the Panel's consideration.
- 29.28 The Panel also notes that the Applicant has also been in contact with AT given the further stormwater analysis detailed above¹³³. AT have advised of the following:¹³⁴

The applicant's civil engineer demonstrated in their report the pre and post development stormwater flows are unaltered at Whitford Maraetai Road and the overland flow path depth is 6mm at the location of raised table and energy levels $V \times D$ are less than $0.4\text{m}^2/\text{s}$ which complies with the AT's TDM standards and no pedestrian safety concerns.

Auckland Transport satisfied with the applicant's response regarding flood hazards in relation to this application and AT's stormwater concerns for the fast-track applicant can be closed.

Panel findings

- 29.29 The Panel is satisfied that the proposal sufficiently manages and mitigates the stormwater volumes that are projected to be generated following its completion. The stormwater design has been subject to scrutiny and advice from technical experts who are in agreement that stormwater quantities have been addressed.
- 29.30 We note that the stormwater discharge will also have effects on water quality. We consider that stormwater treatment design meets relevant technical guidelines that relate to stormwater engineering. However, we also acknowledge that the discharge will have potential ecological and cultural effects. We return to those potential effects further on in our decision.
- 29.31 We are further in agreement that stormwater matters raised by AT will be addressed by conditions, not least those conditions requiring compliance with AT's own Transport Design Manual. We do not consider that any bespoke approach to stormwater design, as it relates to roading, is warranted.

¹³³ Appendix D1, 2 August 2024 – Applicant's response to request 2 and 3

¹³⁴ Appendix D2, *ibid*.

- 29.32 Lastly, we consider that the Applicant has addressed the stormwater concerns of Mr Willan, noting the Applicant's detailed response. However, we are conscious that flooding risk and related impacts on land use can have long-term effects on how land is used. Consequently, we have included a requirement for Mr Willan to review and comment on the Stormwater Management Plan(s) prior to their certification by Auckland Council.

30. Land Stability

Potential effects

- 30.1 The AEE notes that the land stability and related natural hazards have been addressed in the report of Land Development Engineering (LDE)¹³⁵. Given the variety of land modification that will be required to render the Site usable for the proposed structures and activities, LDE identified specific works that will require geotechnical engineering. The AEE summarises these works as:
- a. Slope stability and slope construction measures for batter slopes;
 - b. Bearing capacities/settlement of yard bases;
 - c. Removal of existing fill and bearing capacities/settlement for the industrial units; and
 - d. General earthworks.

Batter slopes

- 30.2 The construction and stability of the batter slopes will be managed through:
- a. The use of engineered fill;
 - b. Avoiding management fill placement on significantly wet or organic soils;
 - c. A hardfill toe key;
 - d. Geotechnical drainage;
 - e. Construction staging; and
 - f. Geotechnical modelling of slope heights and batter angles¹³⁶.

Yard bases

- 30.3 The AEE noted that a fill depth of between 40m to 50m will be present upon the closure of the quarry pit. The Applicant proposes to place further engineered fill on top of the existing fill to provide a platform for the yards. However, LDE expect that the yards will be prone to long-term settlement through both weight and decomposition of organic material. The projected rate of settlement has not been determined and

¹³⁵ Attachment 15, AEE.

¹³⁶ Para 83, AEE/

will occur over an extended period of time. Given this LDE have recommended:

- a. The filled land is employed for a limited range of land uses, with unsealed hard stand;
- b. The use of relocatable structures with shallow foundations;
- c. Employing geotechnical instruments to capture and manage land settlement; and
- d. Using engineered fill as a stiff mantle covering the bulk fill¹³⁷.

Industrial Units

- 30.4 The AEE identified that currently the industrial units' proposed location has bulk fill of up to 9m in depth. The Applicant proposes to remove this fill and relocate it elsewhere on-site. Engineered fill will then be used to reinstate ground levels¹³⁸.
- 30.5 LDE have also recommended that an ultimate bearing capacity of 300 kPa for all shallow strip and pad foundations be employed. Finally, LDE advised that floor level load capacities are limited to a maximum of 15 kPa, unless further investigations are undertaken, though a reassessment is proposed by the Applicant as part of the Geotechnical Completion Report¹³⁹.
- 30.6 Lastly, the AEE noted that general earthworks will be managed to control the location and use of fill, while further investigations will occur to substantiate ground conditions associated with the retaining walls.¹⁴⁰

Comments received

- 30.7 Auckland Council provided the following comments on geotechnical conditions: ¹⁴¹
 - a. The geotechnical report has a lack of sufficient soil investigations as a basis for its interpretation;
 - b. It appears that low-strength parameters have been assigned to the clean fill intended for quarry rehabilitation;
 - c. An inspection point was not provided in the proposed counterfort drain detail drawings, and is needed to ensure the drains can be maintained and monitored;
 - d. Inadequate assessment has been undertaken of slope stability, which could result in long-term stability risks;
 - e. Consolidation settlement triggered by the proposed accessway and mechanically stabilised earth retaining wall along the

¹³⁷ Para 7.86 - 7.88, AEE.

¹³⁸ Para 7.89, AEE

¹³⁹ Para 7.90, AEE.

¹⁴⁰ Para 7.91 - 7.92, AEE.

¹⁴¹ Frank Zhou, Senior Geotechnical Specialist and Nicole Li, Principal Geotechnical Specialist of Resilient Land & Coasts, Auckland Council.

southern boundary may occur. This will require additional settlement analysis should be undertaken during monitoring;

- f. Auckland Council agrees that long term settlement of the yards can be expected; and
 - g. The land disturbance must not result in any instability of land or structures at or the boundary of the Application Site.
- 30.8 Based on these issues, Auckland Council requested an extensive list of further information to address the matters raised in their comments. It also suggested edits to the Applicant's proposed conditions.
- 30.9 Mr Willan also provided comments regarding the Applicant's geotechnical reporting, specifically:¹⁴²
- a. The removal of previously dumped fill for the building platforms provides an opportunity to reduce the overall height of the industrial units;
 - b. The proposed landscaping will conflict with the engineered fill;
 - c. Ground settlement should preclude the establishment of the yards; and
 - d. Ground settlement under the yards will result in contaminant discharges.

Further information request and response to comments

- 30.0 In response to Auckland Council, the Applicant provided commentary regarding its proposed conditions:¹⁴³
- a. Stability of neighbouring properties is provided for by proposed condition 43;
 - b. Construction of walls is provided for by proposed condition 46;
 - c. Settlement Monitoring Plan is provided for by proposed condition 29;
 - d. Detailed earthworks methodology is provided for by proposed condition 28;
 - e. Further investigation for the WWTP platform and slope design for the accessway. The response provided by LDE in Attachment C confirms that this concern is addressed by proposed condition 28 (geotechnical earthwork management plan);
 - f. GCR – is provided for by proposed condition 50.
- 30.1 The Applicant considered that while the specific wording between conditions proposed and those recommended by the Council differed,

¹⁴² Para 38 – 40, Comments of Donald Willan.

¹⁴³ Appendix A, Applicant's response to the comments received – 17 May 2024.

there was no material difference. As such, the Applicant was of the opinion that no changes were required.

- 30.2 The Applicant did not provide any further response to the Council's geotechnical comments.
- 30.3 The Applicant also responded to Mr Willan's comments, stating:¹⁴⁴
- a. Adequate assessment of geotechnical conditions has been undertaken; and
 - b. Ground settlement will be addressed through the Applicant's proposed conditions.
- 30.4 Given the technical nature associated with these potential effects, the Panel commissioned PDP to undertake a peer review of the Applicant's geotechnical assessment. PDP were mostly in agreement with the Applicant's assessment and provided recommended changes to the Applicant's conditions. PDP also identified several matters that required further information, including:¹⁴⁵
- a. Providing testing results from the site investigations;
 - b. Further detail on why a stepped groundwater profile was used;
 - c. An explanation on seismic scenario use; and
 - d. Further detail regarding liquefaction and static settlement assessments.
- 30.5 PDP's peer review was followed by an expert witness conference between the Applicant's consultants and PDP. As a consequence, these parties reached agreement (recorded in a joint witness statement) that the matters raised by PDP had been satisfactorily addressed by the Applicant and the Project's land stability effects can be appropriately managed through the consent conditions.¹⁴⁶

Panel findings

- 30.6 On the basis of the Joint Witness Statement, the Panel is satisfied that the land stability effects of the proposal will not be significant and can be managed through consent conditions as proposed by the Applicant. The Panel considers that the effects of stability will be minor, having considered both offsite effects and onsite works.

31. Ecology

Potential effects

¹⁴⁴ Appendix A, Applicant's response to the comments received – 17 May 2024.

¹⁴⁵ Pg 3 - 4, Geotechnical Peer Review by Pattle Delamore Partners, 17 July 2024.

¹⁴⁶ Expert Geotechnical and Planning Joint Witness Statement – 26 July 2024.

31.1 The AEE details the ecological effects of the proposal based on an ecological assessment undertaken by RMA Ecology Limited. The key areas of potential ecological effects are:

- a. Effects on flora;
- b. Effects on fauna; and
- c. Effects on freshwater habitats.

Effects on flora

31.2 The AEE noted that the primary source of effects on flora will arise from vegetation clearance. This clearance will occur across the Application Site, but will not take place in the SEA. However, some vegetation clearance is proposed to occur within the riparian margins of Pony Club Creek.

31.3 The Applicant primarily proposes to address the effects of this vegetation clearance through a planting plan and associated landscaping. The planting plan will require:

- a. The retention and restoration of the SEA with a 5m buffer;
- b. Retention of other native vegetation, except within the margins of Pony Club Creek (which is currently consented);
- c. No modifications to the alignment of Te Ruangaingai Stream;
- d. A 20m wide planted riparian margin along Te Ruangaingai Stream; and
- e. Native plantings at the margins of the realigned Pony Club Creek¹⁴⁷.

Effects on Fauna

31.4 As detailed by the AEE, fieldwork by RMA Ecology Limited did not find any native skinks, although copper skinks may be present. Habitat for native lizards is limited within the Site given the quarry and fill operations. Both habitat disturbance and pest species have likely impacted any lizard populations¹⁴⁸.

31.5 RMA Ecology Limited have rated the value of the remaining skink habitat as high, although the related magnitude of effect will be low. This is due to the conservation status of the copper skink, as well as the works to a marginal area of habitat¹⁴⁹.

31.6 The Applicant has offered, a lizard management plan (**LMP**) as a condition of consent. The LMP would address vegetation clearance,

¹⁴⁷ Para 7.99 - 7.102, AEE.

¹⁴⁸ Para 7.103, AEE.

¹⁴⁹ Para 7.104, AEE.

lizard salvage operations and lizard relocation to a nearby secure habitat¹⁵⁰.

- 31.7 The other native fauna of value detailed in the AEE is native bats. However, RMA Ecology Limited have advised that the likelihood of any bats at the Site to be nil¹⁵¹.

Effects on freshwater habitats.

- 31.8 The AEE stated that the quantity and quality of stormwater discharges will have less than minor adverse effects on the downstream receiving environment. This is achieved, in part, through stormwater treatment devices like the Stormfilter 360 and swales. Stormwater volumes will be managed through the detention/retention infrastructure proposed, including underground tanks.¹⁵²

Ecological effects summary

- 31.9 The AEE concluded that the Project will have overwhelmingly positive ecological effects. This is a result of the restoration and enhancement measures proposed by the Applicant, including native plantings and stormwater treatment¹⁵³.

Comments received

- 31.10 Auckland Council provided comments on ecological effects; specifically:
- a. The stormwater discharge quality is appropriate;
 - b. Works will be occurring within 100m of a natural inland wetland;
 - c. That further identification of wetlands was required; and
 - d. It would be inappropriate to rely on conditions to identify and protect streams and wetlands¹⁵⁴.
- 31.11 Mr Willan raised concerns regarding the Project's effects on wetlands and habitat loss, of stream modifications and current quarry / fill operations, as well as highlighting the relationship of the Applicant's ecological assessment to the proposed stormwater management¹⁵⁵.
- 31.12 Lastly, comments were received from the Hauraki Gulf Forum, which sought the following: ¹⁵⁶
- a. Pursue a net-positive development which ensures that the Te Puru stream and surrounding environment is enhanced rather than diminished through the construction of the Business Park;
 - b. Continue environmental impact monitoring which is shared with local authorities and Mana Whenua;

¹⁵⁰ Para 7.105, AEE.

¹⁵¹ Para 7.107, AEE.

¹⁵² Para 7.110, AEE.

¹⁵³ Para 7.116, AEE.

¹⁵⁴ Shanelle Beer, Senior Specialist – Earthworks and Streamworks, Auckland Council Specialist Unit.

¹⁵⁵ Including Para 46 – 49, Comments of Donald Willan.

¹⁵⁶ Comments of Hauraki Gulf Forum,

- c. Develop a biodiversity plan which offsets sedimentation and run-off risks; and
- d. Regular water testing and monitoring from the outfalls to the stream.

31.13 The Hauraki Gulf Forum also stated that:¹⁵⁷

The greatest likely environmental stressor from this development is the discharge of sediment into the marine environment via the stream. The Forum trusts that Knight Investments Limited will take all steps above to ensure that loose sediment is retained within the building site and re-used or disposed of sensitively. Any investments that Knight Investments Limited were to make in local catchment health (riparian planting, shellfish-bed restoration, etc) would be warmly welcome.

Further information request and response to comments

- 31.14 In response to Auckland Council, the Applicant advised that it considered the wetland identification and related effects assessment was in accordance with methodology of the National Policy Statement for Freshwater Management (**NPS-FM**) and that no edits were required to the Applicant's conditions¹⁵⁸.
- 31.15 The Applicant responded to Mr Willan's comments, stating that current quarry and related rehabilitation operations are not part of the Application before the Panel¹⁵⁹.
- 31.16 Regarding the Hauraki Gulf Forum, the Applicant commented that:¹⁶⁰
- a. Erosion and sediment control will be in accordance with the best practice under GD05;
 - b. Stormwater treatment will be best practice;
 - c. Riparian planting along the Pony Club Creek realignment and beside Te Ruangaingai Stream will benefit ecological values; and
 - d. These measures are required by the Applicant's conditions.
- 31.17 Following the Applicant's response, the Panel commissioned a peer review of the Application by Wildland Consultants Limited (**Wildlands**). Wildlands' peer review identified a range of issues, including:
- a. Off-setting or compensation for habitat disturbance is unlikely to be required given the scale of proposed works, the retention of established vegetation and restoration planting;
 - b. Greater clarity is needed regarding the location of vegetation clearance;

¹⁵⁷ *ibid.*

¹⁵⁸ Appendix A, Applicant's response to the comments received – 17 May 2024.

¹⁵⁹ *ibid.*

¹⁶⁰ *ibid.*

- c. A detailed LMP should be written, though Condition 31(c) should not be required;
 - d. A more detailed assessment of freshwater ecological effects is needed of Te Ruangaingai Stream and Pony Club Creek;
 - e. Monitoring of the ecological condition of both watercourses before, during construction, and after the development using benthic macroinvertebrates should be made a condition of consent, as should field measurements of water temperature and dissolved oxygen (in Pony Club Creek);
 - f. The assessment of cumulative effects of discharges requires quantitative analysis of contaminant loads and concentrations with versus without the Project;
 - g. Information gaps around the biodiversity of Pony Club Creek needed to be addressed;
 - h. Local records from the NZ Freshwater Fish Database as well as the results of the eDNA survey should be presented for Pony Club Creek;
 - i. If fish habitat will be damaged or removed because of the stream realignment, Wildlands considers that a fish management plan should be a required consent condition; and
 - j. Fish passage should be restored where culverts present a barrier.¹⁶¹
- 31.18 Following the Applicant's response, the Panel requested further information regarding the Project's ecological effects¹⁶². The Panel advised the Applicant that further consideration of the Project's ecological effects were required, particularly given its proximity of the Application Site to the coastal environment and wider Hauraki Gulf.
- 31.19 As a result of the Panel's RFI and Minute 8, expert conferencing occurred between the Applicant's ecologist and Wildlands. The Joint Witness Statements for this conferencing identified:
- a. That the concentrations of the following stormwater contaminants at the 95th percentile flow would be below the ANZECC trigger values for 99% protection of freshwater values: copper, zinc and TPH;
 - b. Annual discharge loads of total suspended solids would have a less than minor impact on the streams and estuarine environments;
 - c. The monitoring of aquatic macroinvertebrates, water temperature or dissolved oxygen monitoring do not need to be undertaken on their own;
 - d. Stormwater discharge monitoring is not required;

¹⁶¹ Review of ecological information for a fast-track resource consent application at 885 Whitford-Maraetai Road and 867 Whitford-Maraetai Road in Beachlands, Auckland, Wildlands Consultant Limited, June 2024

¹⁶² Request for Information – 5 July 2024 and Minute 8 – 15 July 2024.

- e. Any cumulative effects have been addressed given the withdrawal of the wastewater discharge and the proposed stormwater treatment; and
- f. Fish passage is not required;
- g. No additional conditions are required; and
- h. The risk of an adverse effect from stormwater discharges on the receiving environment is low.¹⁶³¹⁶⁴

Panel findings

- 31.20 While the Site does feature some ecological features of value, most notably the two watercourses, the Panel agrees with the Applicant that the overall current ecological values are relatively low. There appears to be limited native biodiversity present, other than around riparian margins and the SEA. This is not unexpected given the historic and current use of the site for quarrying and fill disposal.
- 31.21 However, the Panel is also cognisant of the sensitivity of ecological values to human activity and while historic degradation has occurred, it is important to appropriately care for the remaining biodiversity. The Panel also acknowledges the Applicant's efforts to resolve the freshwater and coastal ecology effects of the Project with the withdrawal of the wastewater discharge from its Application.
- 31.22 The Project's ecological effects have been scrutinised through the invitation for comments from parties, peer review and expert conferencing. The Panel is confident in the outcome of these processes, in that the ecological effects of the Project will be limited and can be addressed by consent conditions. The Panel therefore consider that the combination of the revegetation proposed, along with the management plans and setbacks from the riparian margins will result in less than minor adverse effects on ecology and may well result in a net gain due to the revegetation proposed.

32. Traffic effects

Potential effects

- 32.1 The potential effects of the Project with respect to transportation effects were considered in the AEE¹⁶⁵, and specifically by the ITA provided in Attachment 14 to the Application¹⁶⁶.
- 32.2 The findings of the AEE and the ITA were that traffic volumes could be readily accommodated by the existing transport network (with the new intersection and internal road network as proposed).¹⁶⁷ The proposed road, access ways and their associated vehicle crossings are considered to be functional and will enable safe and efficient movements

¹⁶³ Expert Ecological and Planning Conferencing Joint Witness Statement, 24 – 25 July 2024.

¹⁶⁴ Additional Expert Ecological and Planning Conferencing Joint Witness Statement, 31 July 2024.

¹⁶⁵ Para 7.117-7.134, AEE.

¹⁶⁶ Integrated Transport Assessment, Flow Transportation Specialists Ltd, December 2023.

¹⁶⁷ Integrated Transport Assessment, Flow Transportation Specialists Ltd, December 2023, page 28.

through the development. Onsite car parking, loading and circulation has also been provided for. Cumulative effects from quarry truck movements were also considered.

32.3 More specifically, the ITA considered that the Project will¹⁶⁸:

- a. Generate about 255 vehicle trips per hour during the peak hour, which can be accommodated on the existing road network (based on traditional modelling for trip generation which does not account for a “shift” to more sustainable transport modes);
- b. Help reduce the level of traffic needing to exit the Beachlands area during the peak periods, particularly Whitford-Maraetai Road, resulting from improved employment within Beachlands;
- c. Provide safe access for all modes onto the existing transport network and safe connectivity with the existing residential catchment through the proposed roundabout, bus stops and separated footpath and cycle facilities;
- d. Improve the safety of Whitford-Maraetai Road through the design and placement of the proposed roundabout, as the crash history of the road suggests indicates vehicles losing control on this stretch of rural high speed road;
- e. Improve accesses onto Whitford-Maraetai Road, with the current Site accesses to 867 and 885 Whitford-Maraetai Road being closed and relocated to the new private road; and
- f. Support sustainable travel choices.

32.4 On this basis, the AEE concluded that effects would be less than minor.¹⁶⁹

Comments received

32.5 The comments from Mr Willan and the Franklin Local Board raised specific concerns with the capacity of Whitford Maraetai Road roundabout. The Franklin Local Board also specifically supported the walking and cycling measures in the application.

32.6 AT raised various concerns regarding construction traffic (damage to the road, effects on safety), and commented on several proposed conditions of consent. The Auckland Council transport expert also identified several areas where minor changes be made for manoeuvring, parking etc.

32.7 The comments from Auckland Council recommended a number of minor changes including space for semi-trailer manoeuvring, inclusion of long stay bicycle parking, bollards at the end of Building A to prevent vehicle access and new conditions regarding vehicle crossings, wheel stops and bicycle parking.

¹⁶⁸ Integrated Transport Assessment, Flow Transportation Specialists Ltd, December 2023, section 10.

¹⁶⁹ Para 7.134, AEE.

- 32.8 Flow provided additional commentary¹⁷⁰ in respect of the transport matters and recommended amendments to the conditions of consent in response to the issues raised in comments from invited parties (which were then incorporated in the updated conditions provided with the response).

Further information requests

- 32.9 The Panel considered it had sufficient information on transport and did not request any further information on this matter.

Panel findings

- 32.10 The Panel is satisfied that the traffic movements created by the Project can be accommodated within the existing transport network, with safe connectivity into the network. Alternative transport modes such as cycling, walking and public transport (in the eventuality that bus routes are provided by AT) have been appropriately accommodated in the design.
- 32.11 The Panel agree with the Applicant that the traffic effects generated by the construction phase as well as the eventual landuse activities proposed will be less than minor.

33. Landscape, natural character and visual effects

Potential effects

- 33.1 The potential effects of the Project with respect to landscape, visual amenity and rural character effects were considered the AEE¹⁷¹, and specifically by the LVA prepared by TransUrban and provided in Attachment 20 to the Application.
- 33.2 The actual and potential effects identified by the LVA were changes in topography/retaining structures, visibility of buildings, lighting and introduction of the new private road and roundabout. The LVA considered these potential effects with respect to the viewpoints where the site would be visible, including from adjacent dwellings.
- 33.3 A series of mitigation measures in respect of landscaping were included as part of the Application which have been incorporated as proposed conditions by the Applicant. The landscaping mitigation includes significant native planting and works to be undertaken in a staged manner which align with the release of aspects of the Project (i.e. landscape works to reach a certain height before some buildings can begin construction).
- 33.4 Overall, the assessment concluded that:
- a. the Site is not easily viewed from the surrounding areas due to a combination of the topography and established vegetation, with the more accessible views into the Site coming from the areas immediately adjacent and passers-by on Whitford Maraetai Road.

¹⁷⁰ Responses to the Auckland Council Expert and Asset Owner Transport Related Comments Received, Flow Transportation Specialists Ltd, 17 May 2024.

¹⁷¹ Paras 7.135 - 7.162, AEE.

- b. The change in landscape and character from an industrial quarry style working environment to the significant boundary plantings of the Project represents an outcome which enhances rural character as the Site is viewed from adjoining properties.
- c. The proposed native planting will be effective at reducing the visual effects, particularly over time as the vegetation matures.

33.5 The AEE concluded that effects would be minor.¹⁷²

Comments received

33.6 Two of the adjoining site owners (Mr McKay and Mr Willan) raised a range of concerns with the Project's visual effects, including:

- a. The loss of vegetation, including screening vegetation will give rise to higher than assessed effects;
- b. The Site has experienced higher than assessed vegetation clearance since a 2007 resource consent decision;
- c. The finished ground levels would be higher than previously approved levels;
- d. The Project would generate significant effects on rural and visual amenity;
- e. The proposed yards will be unsightly given the miscellaneous storage and retail activities that will use them;
- f. The amenity for the Council reserve (i.e. the pony club) will be reduced by the proposed road;
- g. There is inadequate space for landscaping around the industrial units and retaining walls;
- h. The phasing of the plantings needs to be undertaken prior to the Stage 1 earthworks;
- i. That the proposed plantings are inappropriate with a low likelihood that they successfully establish and grow; and
- j. That the effects being greater than stated in the LVA and potential visual impacts of the road.^{173 174}

33.7 Mr McKay also helpfully provided photographs of the Site from his property.

33.8 Auckland Council commented on a series of matters, including:

- a. The existing undulating landform is a common feature for the area, which should be maintained where possible;
- b. The LVA's description of the existing environment is largely accurate;

¹⁷² Paras 7.157-7.162, AEE.

¹⁷³ Para 65 – 71, 74 – 106 – Comments of Lindsay McKay.

¹⁷⁴ 31 – 38, Comments of Donald Willan.

- c. Design changes are required to retaining walls 1 and 4 to address their visual effects;
- d. The boundary planting proposed will overly screen the Site and diminish the openness of the rural landscape;
- e. The proposed bund should not be used; and
- f. The landscape species and size selection can be supported, although *Muldenbeckia complexa* should be removed¹⁷⁵.

Further information request and response to comments

- 33.9 Given the matters raised by commentators, the Panel's first request for further information included queries regarding:
- a. The relationship between the proposed ground levels and finished floor levels for the Project and previously approved ground levels in the quarry's Land Use Consent LUC60270241; and
 - b. Clear identification of the location of native vegetation on the Site.
- 33.10 The Applicant's response to comments and the Panel's RFI was a combination of material by TransUrban¹⁷⁶, a peer review of the LVA by Greenwood Associates¹⁷⁷ and a planning memorandum from Tollemache Consultants Limited¹⁷⁸.
- 33.11 Turning to the comments of Mr McKay, the Applicant's response included:
- a. A landscape strategy has been developed to manage the visual effects of the proposed activities on the Site and is consistent with the revegetation that has occurred in other parts of the wider landscape;
 - b. While views to yard activities within a concentrated area is not consistent with the existing character of the surrounding context from the viewpoint at Mr McKay's dwelling, similar elements (such as water tanks) are present and can be expected in a rural setting;
 - c. The proposed landscaping is appropriate for the scale of the Project's buildings, yards and access;
 - d. The plant species proposed for the Site have been selected referring to existing vegetation on and around the Site, including the revegetating Pony Club Stream. The species selection has also been reviewed by the Project's ecologist; and
 - e. The Project's structures will be integrated into the surrounding landscape.

¹⁷⁵ Chantel Clayton – Specialist Landscape Architect

¹⁷⁶ Attachments E, Ea and Eb of Response to Comments - 17 May 2024.

¹⁷⁷ Attachments F of Response to Comments - 17 May 2024.

¹⁷⁸ Appendix D, Response to RFI – 27 June 2024.

33.12 In response to Mr Willan's comments, the Applicant's response included:

- a. Adequate space is available to undertake landscaping associated with the retaining walls and industrial units;
- b. The pine trees at the Site boundary with Mr Willan will be retained and complemented with further plantings;
- c. While Building A will be visible and Building B may be visible from Mr Willan's dwelling, the proposed contouring and landscaping will assist with the visual integration of these structures;
- d. The proposed screening landscaping is adequate to mitigate the Project's visual effects; and
- e. The Applicant has not relied on screening from vegetation on other sites.

33.13 In response to Council comments, the Applicant's response included:

- a. While efforts have been made to reduce the scale of retaining walls, retaining wall 1 cannot be reduced to heavy vehicle accessway gradient requirements. While this wall will be visible from the Council reserve, 865 Whitford-Maraetai Road and Mr McKay's property, a MSC wall that can be planted has been proposed;
- b. *Mulenbeckia complexa* provides the necessary fast growth and coverage to cover retaining wall 1
- c. Bunding is necessary to minimise the urban appearance of the proposed access road;

33.14 Further to the above, the Applicant has responded regarding ground levels that:

There is a degree of flexibility within the LUC60270241 consent conditions regarding planning for the end use and site closure, and as the Panel will be aware, quarrying and rehabilitation is still ongoing, and will be unlikely to be fully completed for another 1 to 2 years. As such, and for the purpose of this Project, the rehabilitation finished levels agreed between the Knight Investment Limited and the quarry operator are shown on Drawing 200-3 (in Attachment 5 to the Application), which from our evaluation are generally consistent with the finished levels anticipated by LUC0270241. This plan shows that the rehabilitation finished levels for the main platform will be approximately RL25 to 26. This largely relates to the areas associated with "Stage 2" of the Project for the yard spaces, but includes some tie in with the Stage 1 area.

Works associated with the proposed Stage 1 of the Project (i.e. the Industrial units) largely occur on land which has been subject to earthworks under the Water Take consents (BUN60325709) and which have a varied grade of RL38 (at the top of the bund) down to the existing levels of approximately RL29 at the Quarry Zone boundary. These levels are largely unchanged by the quarry rehabilitation although some minor tie in works will be required to match the levels to the Stage 2 main platform which has been accounted for in Drawing 200-3 ...

... Actual and potential effects of the Project have been assessed taking into account the finished levels as shown in Drawings 200-1 and 200-2.

In drawing conclusions some experts have made reference to the existing environment being both the current quarry operations (and water tank activities onsite) and the levels anticipated by Drawing 200-3.¹⁷⁹

- 33.15 In its response to comments received¹⁸⁰, Transurban provided additional commentary (Appendix E to the response) in respect of views from Mr Willan's dwelling and confirmed that the proposed landscape strategy (including the timing of planting prior to construction) would provide mitigation of potential views onto these buildings. The response also clarified that planting is achieved for all retaining structures (to alleviate the concerns of Ms Clayton), however retaining wall 1 cannot be lowered due to the necessary road gradient for heavy vehicles. Landscaping as part of the overall landscape strategy, and the use of a "green" MSE wall in this location will mitigate the potential effects. Transurban also confirm that in its opinion the Panel could decide if the bund along Whitford-Maraetai Road is necessary, particularly as Ms Clayton did not consider it to be necessary.
- 33.16 Finally, the Applicant's LVA peer reviewer generally agreed with the LVA assessment and the response to comments from Transurban (although it did note that the potential dominance effects of the proposed road are likely to be less than that stated by Transurban). In respect of whether the bund along the site frontage should remain or not, Greenwoods have identified that in its opinion it should be provided as the "best measure for screening at this juncture".

Panel findings

- 33.17 It is evident that the Application will result in a change in the landscape. The key question for the Panel is whether the change is acceptable and the mitigation measures sufficient. The visual simulations prepared by Transurban were very helpful in illustrating the changes in landscape and natural character, particularly from a range of viewpoints.
- 33.18 The Transurban response and Attachments to the Ecology JWS have also provided sufficient clarity on the vegetation to be removed within the Site as part of the Project. The Panel also determined that the Applicant had adequately addressed the queries raised by commentators regarding the relationship of the visual assessment to previously approved ground levels.
- 33.19 The Panel accepts that overall, the Project is sufficiently integrated into the existing landscape, seen by a relatively small stationary audience due to the undulating landform, and the abundance of trees which contain views.
- 33.20 The Panel also acknowledges that the Project involves land that has been used for quarrying and as a fill site. While the immediate area is generally rural in character, the current, somewhat industrial appearance of the Site should be considered as part of the existing environment.
- 33.21 The Panel recognise that the Project will cause some adverse landscape and visual effects for neighbouring properties, particularly due to the tall retaining wall required to support the fill for the new road

¹⁷⁹ Para 2.3 - 3.3, Appendix D, Response to RFI – 27 June 2024.

¹⁸⁰ Response to comments, Transurban, 17 May 2024.

(retaining wall 1) and the industrial units which are larger located within land zoned for "Rural Countryside Living". While initially there will a modest adverse effect on landscape, visual and natural character, this will gradually lessen as the vegetation grows.

- 33.22 The Panel also consider that the bund along Whitford-Maraetai Road is a suitable measure to mitigate effects of the proposed road. Given the rural context and receiving environment, the Panel accepts the assessment by the Applicant that the effects are no more than minor.

34. Operational Lighting

Potential effects

- 34.1 While no infringements to the AUP(OP)'s lighting standards are proposed, the AEE acknowledges that artificial lighting is proposed and will be subject to conditions. These conditions include a requirement for a lighting plan associated with the industrial units¹⁸¹.

Comments received

- 34.2 No comments were received on this matter.

Panel findings

- 34.3 The Panel consider that minimal effects will be generated by any of the proposed artificial lighting and that these effects can be appropriately managed and mitigated by the Applicant's proposed conditions. The Panel find that the effects of lighting are less than minor.

35. Operational Noise

Potential effects

- 35.1 The AEE identified that operational noise effects are anticipated given the difference between the land use proposed and the surrounding rural zoning. Rather than intermittent noise from rural activities, the Project will generate noise that will be more constant. Sources of the Project's noise emissions will include mechanical plant, such as that for refrigeration¹⁸².
- 35.2 The AEE relied, in part, on the noise characteristics of the existing environment. This included traffic noise associated with the potable water tanker filling business, quarry blasting and heavy machinery.
- 35.3 In terms of affected parties, the AEE and the Styles Group technical report identified that a noise infringement of 1 dBA will be generated in relation to the dwelling at 865 Whitford-Maraetai Road. However, Styles Group considered that such an infringement is a "worse case" scenario and will not be noticeable or perceivable to any person¹⁸³.
- 35.4 The Applicant has also offered operational noise conditions that:

¹⁸¹ Para 7.164, AEE.

¹⁸² Para 7.176 - 7.169, AEE.

¹⁸³ Para 7.169, AEE.

- a. Manage the business park's hours of operation;
 - b. Sets out operational noise limits;
 - c. Prohibit forklifts using tonal reverse alarms;
 - d. Sets a limit on the cumulative noise levels emitted by fixed external mechanical plant; and
 - e. Requires certification of compliance with the noise limits.
- 35.5 The AEE concluded that the Project's noise emissions will be reasonable and that the noise controls offered are the best practicable option¹⁸⁴.

Comments received

- 35.6 Auckland Council provided comments on operational noise, identifying that the noise assessment methodology employed by the Applicant was appropriate. The Council also agreed with the noise modelling results, as well as the quantum of effects anticipated on 865 Whitford-Maraetai Road and the wider environment. Finally, the Council agreed with the Applicant's proposed conditions, as well as a requirement to construct an acoustic fence in consultation with the owners of 865 Whitford-Maraetai Road¹⁸⁵.
- 35.7 Mr Willan also provided comments, including:
- a. Inadequate space was provided for noise mitigation at the industrial units;
 - b. That the Applicant's noise assessment was inadequate;
 - c. Sudden noise generations and related noise effects on livestock were not addressed; and
 - d. No efforts have been made to avoid, remedy or mitigate noise effects with subsequent impacts on the use and character of the surrounding rural sites¹⁸⁶.
- 35.8 Mr McKay's comments identified that the Site's noise emissions have historically, and would continue to, affect the amenity of surrounding properties, as well as that the access road beside the Pony Club would detrimentally impact the amenity of that site¹⁸⁷.

Further information request and response to comments

- 35.9 The Applicant provided the following responses:
- a. The current quarry operation is compliant with its set noise limits and is not subject to the current Application;
 - b. Noise from the future activities is required by the conditions of consent to meet the AUP(OP) standards for the Countryside Living Zone; and

¹⁸⁴ Para 7.172, AEE.

¹⁸⁵ Andrew Gordon – Senior Specialist, Noise and Vibration

¹⁸⁶ Para 31, 48 – 33, Comments of Donald Willan.

¹⁸⁷ Including Para 97, Comments of Lindsay McKay.

- c. The suite of measures proposed address any potential noise effects resulting from the development and are appropriately managed and compatible with the expected environment.
- 35.10 Given the concerns raised regarding the incompatibility of the Project's operational noise, principally sudden noise emissions and effects on livestock, the Panel requested further information from the Applicant¹⁸⁸.
- 35.11 In response, the Applicant provided an assessment by Agile Engineering Consultants Limited (**Agile**)¹⁸⁹. Agile conducted a literature review of noise effects on livestock and used the Styles Group assessment as a baseline to assess potential noise effects. The Agile assessment found:
- a. For noise to affect livestock, it generally needs to be very loud (>80dB) or very sudden but also relatively unfamiliar;
 - b. Livestock can adapt to loud noise sources; and
 - c. The Project's predicted noise is highly unlikely to affect livestock.
- 35.12 The Applicant also provided a letter from Mr Nakhle in regard to his experience with livestock in high noise locations¹⁹⁰.

Panel findings

- 35.13 The Panel is largely satisfied that the Project's operational noise effects will be minimal. The Panel has noted the appropriateness of the Applicant's proposed controls, including opening hours and set noise limits. The Panel is also satisfied that effects of noise on livestock have been adequately assessed by the Applicant and such effects are unlikely.
- 35.14 However, the Panel is also conscious of the noise related concerns of commentators, which we consider are most likely to occur as the Site is tenanted and operations commence. On this basis, the Panel has added a requirement for the quarry's Community Liaison Group (**CLG**) to be continued for the first five years of the operation of the Business Park. The objective of the CLG's continuation is to provide a forum to enable and address operational effects, including noise.
- 35.15 Lastly, the Panel has not accepted the Council's recommendation for an acoustic barrier condition in relation to 865 Whitford-Maraetai Road. This is due to the non-perceivable nature of the infringement (1 dBA) and the Applicant's certification condition that requires the infringement to be no larger than that sought.
- 35.16 The Panel find that the effects of operational noise will be minor.

36. Archaeological effects

Potential effects

- 36.1 The AEE has detailed the known archaeological features in the surrounding area based on an assessment by CFG Heritage Limited

¹⁸⁸ RFI of 31 May 2024 and Minute 8.

¹⁸⁹ Applicants Response, 2m August – Appendix B.

¹⁹⁰ [Appendix C](#), 2 August 2024 – Applicant's response to request 2 and 3

(CFG)¹⁹¹. CFG have identified the presence of sites along Te Ruangaingai Stream, including four burial sites, pā and a midden, demonstrating the stream was used by pre-contact Māori. Despite the presence of such archaeological sites, the proposed work areas have previously been extensively modified by historic quarry activities and it is unlikely that any archaeological features remain. The AUP(OP) has also not scheduled any archaeological sites, heritage items or historic sites within the Site¹⁹².

- 36.2 On this basis, the Applicant proposes to rely on an Accidental Discovery Protocol should any new archaeological sites be disturbed during the construction of the Business Park. The Applicant has also noted that it will continue to work with Mana Whenua to identify and advise on any sites¹⁹³.

Comments received

- 36.3 The comments from Auckland Council confirmed that no heritage features in the AUP(OP) were located at the Site and that potential effects could be managed through the Applicant's proposed Accidental Discovery Protocol. Furthermore, the Council recommended the inclusion of advice notes relating to the Heritage New Zealand Pouhere Taonga Act, the Protected Objects Act 1975 and AUP(OP)¹⁹⁴.
- 36.4 Heritage New Zealand Pouhere Taonga (**Heritage New Zealand**) commented that it supported the Application and requested changes to the Applicant's pre-construction meeting and archaeological conditions¹⁹⁵.
- 36.5 The Minister of Arts, Culture and Heritage also commented in support of Heritage New Zealand's response¹⁹⁶.

Response to comments

- 36.6 The Applicant response to the above comments were:
- a. To update the proposed advice notes, except for the Accidental Discovery Protocol as it is already provided for by the related proposed condition; and
 - b. Adoption of the wording sought by Heritage New Zealand.

Panel findings

- 36.7 The Panel agrees with both the Applicant and comments received that given the low probability of undiscovered archaeological material being present in work areas, that an accidental discovery protocol is the most appropriate measure to address any related archaeological effects. As

¹⁹¹ Attachment 17, AEE.

¹⁹² Para 7.180, AEE.

¹⁹³ Para 7.182, AEE.

¹⁹⁴ Mica Plowman, Principal Heritage Advisor – Cultural Heritage Implementation

¹⁹⁵ Comments of Heritage New Zealand.

¹⁹⁶ Comments by the Minister of Arts, Culture and Heritage.

such, the Panel considers that the archaeological effects of the Project will be insignificant.

37. Cultural Effects

Potential effects

- 37.1 Ngāti Te Ata o Waiohū raised several concerns about the cultural effects of the proposed development in its CIA.

Soil and Earthworks

- 37.2 Ngāti Te Ata expressed concerns regarding the source of the large quantities of fill required for future development. Soil plays a crucial role in cleansing; only by allowing treated waste to pass through Papatuanuku (the earth) can the mauri of water be restored. Earthworks and land modification may also significantly impact Māori cultural heritage, especially wāhi tapu (sacred sites) or sites of significance. The CIA emphasised the importance of ensuring that the fill is not contaminated and questioned whether it would be locally sourced or brought in from other areas. It highlighted that earthworks could have adverse effects on cultural heritage, land stability, and the mauri (life force) of water. Ngāti Te Ata recommended implementing stringent erosion and sediment control measures for earthworks, especially those with the potential to impact waterways. Additionally, it advocated for increased riparian planting of appropriate indigenous species to stabilise riverbanks and reduce erosion.

Erosion and Sediment Control

- 37.3 Ngāti Te Ata were concerned about the potential release of sediment into the receiving environment. Inadequate or improper sediment control could compromise the mauri of the land, rivers, lakes, and marine environments. The CIA recommended that iwi kaitiaki (guardians) be involved in monitoring sediment and silt control management, fencing, and mitigation plans during any future development.

Waterways

- 37.4 Historically, waterways have been vital for travel, trade, communication, and as a food source for the tribes. Others referred to waterways as “the veins of the earth,” emphasizing their role in connecting kainga (villages), pā (fortified villages), cultivations, and traditional resource areas. The CIA expressed concern that urban development could harm waterways through the loss of streams, wetlands, or floodplains and reduced water quality. Ngāti Te Ata recommended that future urban development prioritize the protection, rehabilitation, and enhancement of waterways, especially in areas where previous land use has degraded them. The CIA also requested involvement in stormwater management planning and to be kept informed about the processing of the network discharge consent for the area.

Stormwater

- 37.5 Ngāti Te Ata stressed the importance of advocating for the highest level of stormwater treatment before discharge into waterways. The CIA emphasised the need to protect the mauri of natural waterways and

enhance their food-producing capacity and life-supporting functions. Their cultural position includes advocating for water conservation and efficient water use, opposing direct waste disposal into waterways, and requiring that waste be filtered through soil or other innovative means before discharge. The CIA also recommended adopting a 'treatment train' approach for stormwater management, including the use of rain gardens, swales, and green roofs.

Indigenous Vegetation

- 37.6 Ngāti Te Ata supported and promoted the use of eco-sourced / whakapapa plants and trees and request input into the selection of plant species. This approach enables the return of original species to the area from locally sourced seeds, thereby promoting the return of native bird and insect species to the immediate and surrounding environment.

Applicant response

- 37.7 To address these recommendations in the CIA and others, the Applicant included a comprehensive set of measures designed to mitigate potential impacts on cultural values, particularly concerning freshwater ecosystems. Best practice measures for sediment and erosion control and stormwater management have been integrated into the project design to ensure the mauri (life force) of water remains unaffected. The landscaping plan prioritises the use of native species, reflecting the cultural significance of indigenous flora. Furthermore, the project conditions include a commitment to ongoing consultation with Mana Whenua, ensuring their input into the final landscape design.

Response from iwi

- 37.8 Ngāti Te Ata responded positively to the revisions made by the applicant, recognising the efforts to incorporate their feedback into the project design.
- 37.9 Similarly, Ngāi Tai ki Tāmaki has maintained open and ongoing communication with the Applicant and has expressed satisfaction with the modifications made.

Panel Findings

- 37.10 The Panel recognises that the Applicant has proposed best practice sediment and erosion control measures, along with stormwater management, to mitigate the effects on freshwater, ensuring that the mauri of the water is not adversely impacted by the Project. Furthermore, native species have been incorporated into the landscaping wherever possible, and additional input from Mana Whenua into the final landscape design will be sought through conditions.¹⁹⁷
- 37.11 Following the removal of the Wastewater Treatment Plant from the Site, a key concern identified by Mana Whenua, the Panel anticipates that the cultural effects of the project will be minor. The ongoing collaboration between the applicant and Mana Whenua will ensure that any cultural concerns are appropriately addressed throughout the project's development. The Panel consider that the conditions provide for

¹⁹⁷ AEE s7.187, p101

meaningful participation of Ngāi Tai ki Tāmaki in the implementation of the consents.

38. Positive effects

Potential effects

- 38.1 The AEE provided a detailed assessment of the Project's positive effects, which includes an economic impact assessment by Property Economics¹⁹⁸.
- 38.2 The first benefit of the Project identified by the Applicant relates to the provision of new business land for the communities of Beachlands and Maraetai. Currently 69% of residents commute to other parts of Auckland given the lack of local employment. Consequent impacts of this commuting include increased transport costs¹⁹⁹.
- 38.3 There is also a current deficiency in local business sites to accommodate light manufacturing, automotive services, logistics and retail/service activities. However, the Project will provide buildings and yards that can accommodate these activities locally²⁰⁰.
- 38.4 The provision of new business land is of benefit to the growing population of the local area. Population growth will be generated by recent planning decisions, including a fast-track application for 235 dwellings at 109 Beachlands Road²⁰¹.
- 38.5 Employment will also be generated by the Project's construction. Property Economics estimated that the three year construction phase would generate 345 FTEs and \$40.3 million to the Auckland economy. The Project itself will also provide between 120 to 170 FTEs once completed²⁰².
- 38.6 The Applicant notes that the works to Whitford-Maraetai Road will improve walking and cycling infrastructure,²⁰³ while the Project will generate positive environmental outcomes due to the stormwater improvements and landscaping proposed²⁰⁴.

Comments received

- 38.7 Auckland Council confirmed that the Project will generate local employment and related economic benefits. The Council considered that the Applicant has made a reasonable case for the Project's benefits, including making a more productive use of the Site. In addition, the Council stated that enabling land for more productive purposes is generally beneficial in an economic sense²⁰⁵.

¹⁹⁸ Attachment 21, AEE.

¹⁹⁹ Para 10.7, AEE.

²⁰⁰ Para 10.13, AEE.

²⁰¹ Para 10.14, AEE.

²⁰² Page 5, Economic Impact Assessment Overview, Property Economics, December 2023.

²⁰³ Stelios Smilas, Senior Planner, Resource Consents.

²⁰⁴ Para 10.26 - 10.28, AEE.

²⁰⁵ : Gary Blick, Chief Economist, Auckland Council.

- 38.8 Councillor Andrew Baker stated his support, while the Franklin Local Board also considered that the proposed zoning may provide for local businesses and support the community.²⁰⁶²⁰⁷
- 38.9 Mr McKay commented on the purported positive benefits of the Project, including:
- a. The financial and economic benefits of the Project have been overestimated by the Applicant, including the total value of the proposal to the Auckland economy; and
 - b. That the construction phase employment generated is modest and may not involve local residents and/or the currently unemployed²⁰⁸.
- 38.10 Mr Willan also provided comment regarding the following issues:
- a. The Property Economics report is generic and does not specifically apply to the Application Site;
 - b. Beachlands and Maraetai are dormitory suburbs and do not need employment land;
 - c. The Project will not provide commercial activities where there is a current deficit in available land;
 - d. There is business land available elsewhere in the surrounding area; and
 - e. Changing work habits due to COVID-19 mean people do not need to travel to business sites²⁰⁹.

Response to comments

- 38.11 The Applicant provided the following responses to commentators:
- a. The Property Economics report does provide assessment specific to the Application Site; and
 - b. While COVID-19 has increased people working from home, the types of activities that will be provided for (e.g. automotive services) require commercial land (and premises the Panel notes) to operate.²¹⁰

Panel findings

- 38.12 The Panel generally agrees with the Applicant's identification of positive effects, and particularly those associated with economic benefits. The Panel also acknowledges that while some uncertainty exists regarding the final employment figures, the numbers of local people employed on-site and total quantum of construction value, it is apparent that a deficit in business land exists in the local area.

²⁰⁶ Comments of Franklin Local Board.

²⁰⁷ Comments of Councillor Andrew Baker.

²⁰⁸ Including Para 114 – 123, Comments of Lindsay McKay.

²⁰⁹ Including Para 60 to 66, Comments of Donald Willan.

²¹⁰ Appendix A, Applicant's response to the comments received – 17 May 2024

- 38.13 The Panel further agrees that the transport benefits will arise, principally from reducing travel distances for the local community to employment and commercial services, as well as by the localised improvements to walking and cycling infrastructure.
- 38.14 Finally, the Panel also agrees that the Project provides for environmental benefits through the restoration planting proposed by the Applicant, including planting in riparian margins and the treatment of stormwater discharges from the Site.

PART F: ANY MEASURES TO ENSURE POSITIVE EFFECTS ON THE ENVIRONMENT OFFSET OR COMPENSATE FOR ANY ADVERSE EFFECTS

39. Offsetting or compensation

- 39.1 Clause 31(1)(b) of Schedule 6 of the FTCA requires the Panel to have regard to any measure proposed or agreed to by the Applicant to ensure positive effects on the environment offset or compensate for any adverse effects that will or may result from allowing the Project.
- 39.2 The Applicant has not proposed offsetting or compensating the Project's adverse effects.
- 39.3 On the basis of the Panel's findings, set out above in Part E of this Decision on its assessment of the Project's effects, the Panel does not consider that offsetting or compensation is required.

PART F: STATUTORY DOCUMENTS

40. Introduction

- 40.1 The AEE addresses the relevant documents and identifies relevant provisions. Rather than repeat all of that, this section addresses the documents of particular relevance to the Application and the comments received and the relevant provisions. The Panel also relies on its conclusions on effects and the conditions it has decided to impose in support of the conclusions reached on relevant planning provisions, as relevant to the topic area.

41. National Policy Statements

- 41.1 As stated in section 45 of the RMA, the purpose of national policy statements is to state objectives and policies for matters of national significance that are relevant to achieving the purpose of the RMA. Clause 29(2)(c) and (d) of Schedule 6 of the FTCA requires regard be given to a national policy statement and a New Zealand coastal policy statement respectively.
- 41.2 The following national policy considerations are relevant to the Panel's assessment of the Application:
- a. National Policy Statement on Urban Development 2020;
 - b. National Policy Statement for Highly Productive Land 2022;
 - c. National Policy Statement for Freshwater Management 2014;

- d. National Policy Statement for Indigenous Biodiversity 2023;
- e. New Zealand Coastal Policy Statement 2010; and
- f. Hauraki Gulf Marine Park Act 2000.

We examine each of these documents below.

National Policy Statement on Urban Development 2020 (NPS-UD)

- 41.3 The NPS-UD came into effect on 20 August 2020. The Applicant has identified that the NPS-UD is relevant to the Application given Beachlands meets the definition of an “urban environment”. This is due to the area having a projected population of at least 10,000 residents.
- 41.4 The Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 seeks to expedite the implementation of the NPS-UD in Tier 1 Urban Environments, including Auckland. As a result, Tier 1 councils like Auckland Council are required (among other things) to incorporate medium density residential standards (**MDRS**) in relevant residential zones; this is the purpose of PC78 to the AUP(OP). PC78, and the weight to be afforded to that change, is discussed further below.
- 41.5 The Applicant has focused on the previous section 32 assessment undertaken for PC78, specifically the s32 assessment regarding the Beachlands area. The Applicant’s AEE identifies the following constraints on urban intensification in Beachlands:
 - a. A high reliance on private motor vehicle use;
 - b. Infrequent and limited capacity public transport services;
 - c. Congestion generated by residents requires travelling on Whitford - Maraetai Road to access employment, education and community services; and
 - d. No significant transport infrastructure is planned for Beachlands²¹¹.
- 41.6 The Applicant acknowledges that Auckland Council has identified that these constraints would undermine Objective 1 of the NPS-UD in that a well-functioning urban environment would not be created.²¹²
- 41.7 In response to the Council’s analysis, the Applicant has relied on Property Economics’ assessment, which identifies that up to 68% of the local employment population leaves the Beachlands / Maraetai area for work. The Applicant also highlights that only 1.8 ha of light industry zoned land is present in the surrounding area²¹³.
- 41.8 It is the Applicant’s view that the Project will support a well-functioning urban environment in accordance with Objective 1. This is due to the

²¹¹ Para 15.5, AEE.

²¹² Objective 1 states:

New Zealand has well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing, and for their health and safety, now and into the future

²¹³ Para 15.8, AEE.

employment opportunities generated both during the Project's construction and operation. Such employment opportunities will positively affect the local community, given that it would reduce the need to travel outside the Beachlands / Maraetai area and mitigate traffic volumes on Whitford-Maraetai Road. The Applicant further highlights that the Project's investment in walking and cycling infrastructure will also improve travel choice and local connectivity²¹⁴.

- 41.9 The Applicant also highlight's Policy 6, in that planning decisions in urban environments should have particular regard to:

(d) any relevant contribution that will be made to meeting the requirements of this National Policy Statement to provide or realise development capacity.

- 41.10 In Applicant's view, the Project enables development capacity at Beachlands to be realised, reduces longer distance motor vehicle trips and contributes to local employment. ²¹⁵

- 41.11 The Panel considers that Objectives 4 and 6 as well as Policy 1 of the NPS-UD are also relevant to the Application.

- 41.12 Firstly, Objective 4 states:

New Zealand's urban environments, including their amenity values, develop and change over time in response to the diverse and changing needs of people, communities, and future generations.

- 41.13 The Panel recognises that the NPS-UD acknowledges that urban growth can have effects on amenity and other environmental values. In particular, we wish to acknowledge the amenity concerns raised by commentators. However, such concerns must also be balanced against the need to provide for the changing needs of the community, both currently and in the future.

- 41.14 It is the Panel's view that the Project will contribute to an urban environment that provides for the economic needs of communities in Beachlands and Maraetai who are currently limited in their access to business land. This lack of business land has been shown by the Applicant to adversely affect access to employment and other services that are not otherwise able to be established locally.

- 41.15 Objective 6 of the NPS-UD details the following:

Local authority decisions on urban development that affect urban environments are:

- a. Integrated with infrastructure planning and funding decisions; and
- b. Strategic over the medium term and long term; and
- c. Responsive, particularly in relation to proposals that would supply significant development capacity

- 41.16 Initially, the Panel queried the consistency of the Project against this Objective given the originally proposed on-site wastewater treatment plant and related discharge. It appeared to the Panel that the Application

²¹⁴ Para 15.9 - 15.10, AEE.

²¹⁵ Para 15.12, AEE.

was not integrated with three waters infrastructure planning given an apparent inability to connect to Watercare's Beachlands-Maraetai treatment plant. However, the Applicant subsequently withdrew this part of the Application and has provided confirmation that the Project will connect to Watercare's wastewater treatment plant. In the Panel's opinion, this change to the Application demonstrates that the Project is integrated with local infrastructure planning and capacity, specifically with wastewater network infrastructure.

- 41.17 The Panel is also of the opinion that the Project will deliver significant development capacity over time. We are conscious that commentators have stated that there is either limited demand for business land or that the projected employment numbers are modest.²¹⁶²¹⁷
- 41.18 However, the Panel acknowledges the comments made by Auckland Council, which highlight that there is a deficit in business land at Beachlands-Maraetai. The Panel also considers that the Project's employment generation must be viewed within the context of the local area rather than necessarily the wider Auckland Region.
- 41.19 The Panel has also had regard to Policy 1 of the NPS-UD, which states:
- Planning decisions contribute to well-functioning urban environments which are urban environments that, as a minimum: ...
- ...(c) have good accessibility for all people between housing, jobs, community services, natural spaces, and open spaces, including by way of public or active transport ...
- 41.20 The Panel considers that the Project will provide good accessibility to jobs for the local community, as articulated in the economics assessment by Property Economics. There is an apparent lack of business land in the local area, which impacts the functioning of the urban area and results in increased traffic volumes on Whitford-Maraetai Road. The Panel also acknowledges that the Project provides improved active transport links.
- 41.21 To conclude, the Panel finds that the Project is not contrary to any objective or policy of the NPS-UD, and is consistent with the core purpose the NPS-UD.

National Policy Statement for Highly Productive Land 2022

- 41.22 The Applicant has reviewed the National Policy Statement for Highly Productive Land (**NPS-HPL**), noting that the current land uses are neither rural nor rural production.²¹⁸ Rather, the soil resources of the Site have been quarried and removed or otherwise modified by the existing uses.
- 41.23 The Panel is aware of the recent *Bluegrass* decision²¹⁹ which has helpfully clarified the application of the NPS-HPL in the transitional phase until a regional policy statement specifying maps of highly

²¹⁶ Including Para 65, Comments of Donald Willan.

²¹⁷ Para 118 Comments of Lindsay McKay.

²¹⁸ Para 15.53, AEE

²¹⁹ *Blue Grass Limited v Dunedin City Council* [2024] NZEnvC 83

productive land in the region becomes operative. Of relevance to this Application is the land use classification of the Site as mapped by the New Zealand Land Resource Inventory. The Panel is aware that the front of 867 Whitford-Maraetai Road is LUC2, the western portion of the quarry is LUC3 and the eastern-most edge of the quarry is LUC4. This soil classification remains until such time as a regional policy statement specifying maps of highly productive land in the region becomes operative (despite the soil being removed as a result of quarrying activity).

- 41.24 Clause 3.5(7) of the NPS-HPL sets out transitional requirements for HPL that apply to land zoned general rural or rural production. As 867 Whitford-Maraetai Road is Rural – Countryside Living Zone, clause 3.7(5)(a)(i) of the NPS-HPL is not met, and such the site does not meet the definition of “highly productive land”. Similarly, the Special Purpose Quarry Zone is not classified as highly productive land by virtue of it being deemed to be “urban” in the definitions of the NPS-HPL. The Panel agrees with the Applicant’s analysis and findings on this matter.

National Policy Statement for Freshwater Management 2014

- 41.25 The NPS-FM sets out a framework under which local authorities are to manage freshwater (including groundwater) and, to the extent they are affected by freshwater, the receiving environment (which may include estuaries and the wider coastal marine area).²²⁰
- 41.26 The objective of the NPS-FM is to ensure that natural and physical resources are managed in a way that prioritises:²²¹
- a. First, the health and well-being of water bodies and freshwater ecosystems;
 - b. Second, the health needs of people (such as drinking water); and
 - c. Third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.
- 41.27 This objective reflects the hierarchy of obligations in Te Mana o te Wai.²²² Te Mana o Te Wai is a fundamental concept in New Zealand's freshwater management, reflecting the intrinsic value of water as vital to the environment, communities, and future generations. This principle, enshrined in the NPS-FM, underscores the need to protect the mauri (life force) of water, ensuring that the health of freshwater systems is maintained through a balanced relationship between water, the environment, and the community.
- 41.28 The proposal aligns with the NPS-FM by incorporating Te Mana o te Wai principles into its design and execution, ensuring that the health of freshwater ecosystems is prioritized. The Applicant considered that the following key measures align the Project with the NPS-FM:²²³
- a. Minimizing sediment discharge: The proposal uses erosion and sediment control measures, consistent with council guidelines, to

²²⁰ NPS-FM clause 1.5.

²²¹ NPS-FM clause 2.1.

²²² NPS-FM clause 1.3.

²²³ Para 15.45, AEE

minimize sediment discharge during construction. Stormwater discharge points are carefully located to reduce environmental impact.

- b. Protecting freshwater quality: Stormwater discharges are treated to protect the health of freshwater environments, with designs that maintain the natural form of stream beds and avoid disturbing sensitive areas.
- c. Enhancing riparian margins: The proposal includes additional native vegetation planting along riparian margins to enhance ecosystem values, provide stream shading, and support biodiversity.
- d. Retaining mature vegetation: Existing mature vegetation near streams is preserved, with construction activities carefully planned to avoid these areas, thereby maintaining ecosystem health and shading.
- e. Integrated stormwater management: Best practice stormwater management is employed to maintain and enhance the quality of receiving environments. Devices for contaminant treatment and detention are used to mitigate the effects of increased water flow and velocity, reducing erosion and protecting water quality.
- f. Consultation with tangata whenua: The applicant has actively engaged with tangata whenua, ensuring that their values, including the principle of Te Mana o te Wai, are reflected in the project's outcomes. This ongoing consultation has informed the design and implementation of measures that respect Māori cultural values and the health of freshwater systems.²²⁴
- g. Addressing climate change: The engineering designs incorporate climate change considerations, ensuring that the project remains sustainable in the face of future environmental challenges.

Panel Findings

- 41.29 The Panel recognizes that the applicant has effectively integrated the principles of Te Mana o te Wai into the project, demonstrating a commitment to the holistic well-being of both the environment and the community. The proactive engagement with tangata whenua, prioritization of water health, and adherence to guiding policies suggest that the project will support the long-term sustainability of freshwater resources, with any potential impacts being effectively managed and mitigated.
- 41.30 The Applicant in the AEE has assessed the Project against the objective and policies of the NPS-FM. The Applicant considers that the Project is consistent with the NPS-FM given that:
 - a. Land disturbance will be managed through the ESCP;
 - b. Appropriate stormwater treatment has been proposed;

²²⁴ Page 123. AEE.

- c. The existing bed of Te Ruangaingai Stream will be retained, while Pony Club Creek will be realigned and retained;
- d. No natural inland wetlands will be reclaimed;
- e. Riparian buffers and planting will be undertaken; and
- f. The Applicant will continue to work with iwi.²²⁵²²⁶

41.31 The Panel has considered this analysis and agrees. The Panel further notes that the Applicant's withdrawal of the wastewater discharge component from the Application further reduces the potential effects of the Project on freshwater environments. On this basis, the Panel is satisfied that the Project is consistent with the objectives and policies of the NPS-FM.

National Policy Statement for Indigenous Biodiversity 2023

41.32 The National Policy Statement for Indigenous Biodiversity (**NPS-IB**) was gazetted on 7 July 2023 and came into force on 4 August 2023.

41.33 The NPS-IB provides direction to councils to protect, maintain and restore indigenous biodiversity (**IB**) in the terrestrial environment,²²⁷ requiring at least no further reduction of IB nationally.²²⁸

41.34 The NPS-IB is relevant to the Project because the Application Site is within the terrestrial environment, and it contains IB as defined in Section 1.6 (Interpretation) of the NPS-IB.²²⁹

Indigenous biodiversity means the living organisms that occur naturally in New Zealand, and the ecological complexes of which they are part, including all forms of indigenous flora, fauna, and fungi, and their habitats

41.35 Clause 2.1 of the NPS-IB sets out the objective of the NPS-IB:

- (1) The objective of this National Policy Statement is:
 - (a) to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date; and
 - (b) to achieve this:
 - (1) through recognising the mana of tangata whenua as kaitiaki of indigenous biodiversity; and
 - (2) by recognising people and communities, including landowners, as

²²⁵ Para 15.45, AEE.

²²⁶ Appendix I, Response to Further Information Request – 27 June 2024

²²⁷ Plus some specific additional environments listed in clause 1.3(2). For example, provisions relating to promoting restoration and increasing vegetation cover extend to include natural inland wetlands.

²²⁸ Response to Panel Request in relation to the National Policy Statement for Indigenous Biodiversity for the Shildon Fast Track Application dated 24 July 2023 (RFI Response 24 July 2023) at [2.1].

²²⁹ RFI Response 24 July 2023 at [2.2].

stewards of indigenous biodiversity;
and

- (3) by protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity; and
 - (4) while providing for the social, economic, and cultural wellbeing of people and communities now and in the future.
- 41.36 Maintaining IB requires “at least no overall loss in indigenous biodiversity” through a number of means including protecting and restoring IB “as necessary to achieve the overall maintenance” of IB.
- 41.37 The NPS-IB contains 17 policies to achieve this objective, and Part 3 of the NPS-IB sets out a (non-exhaustive) list of things that must be done to give effect to the NPS-IB’s objectives and policies.
- 41.38 Clauses 3.1-3.9 are not relevant to this Application. Clauses 3.10-3.17 set out how effects on different IB are to be managed in different situations. Clause 3.16 directs that significant adverse effects on IB outside Significant Natural Areas (**SNA**) are managed one way, and all other effects on IB outside SNAs are managed in another (less strict) way:
- (1) If a new subdivision, use, or development is outside an SNA and not on specified Māori land, **any significant adverse effects** of the new subdivision, use, or development on indigenous biodiversity outside the SNA **must be managed by applying the effects management hierarchy**.
 - (2) **All other adverse effects** of any activities that may adversely affect indigenous biodiversity that is outside an SNA (other than on specified Māori land (see clause 3.18)), **must be managed to give effect to the objective and policies of this National Policy Statement**.
- [Our emphasis added.]
- 41.39 The Applicant has applied clause 3.16 as no works in SEAs are proposed as part of the current Application, specified Māori land is not involved, and the Project is for a new activity²³⁰. However, as acknowledged by the Applicant, there is a terrestrial SEA located on the Site, with native vegetation forming part of the SEA present at the Site’s south-eastern and south-western corners. The Applicant further notes that the ecological assessment undertaken by RMA Ecology identified that the effects on indigenous biodiversity will be avoided²³¹.
- 41.40 The Applicant has also identified the following measures that demonstrate the Project’s consistency with the policies of the NPS-IB:
- a. Incorporating measures to prioritise Mana Whenua values associated with biodiversity. This includes the use of an ESCP,

²³⁰ We note that works in a SEA form part of the application sought for the Pony Club Creek realignment.

²³¹ Para 15.23 - 15.24, AEE.

avoiding works in locations with high biodiversity values and engagement Ngāi Tai ki Tāmaki;

- b. using a proactive approach for the protection and restoration of ecological values;
- c. Undertaking enhancement plantings and increasing native vegetation cover;
- d. Employing a precautionary approach to vegetation removal;
- e. The Project provides for the needs of people and communities whilst concurrently providing for the protection, maintenance and restoration of indigenous biodiversity; and
- f. Providing conditions to address ecological effects, such as the lizard management plan²³²²³³.

41.41 The Panel generally agrees with the Applicant's assessment. We also note that the removal of the proposed wastewater discharge from the Application further reduces the scale of the Project's effects and addresses the Panel's earlier inquiries in that regard.

41.42 Overall, the Panel finds that the Project is consistent with the objectives and policies of the NPS-IB.

New Zealand Coastal Policy Statement

41.43 Although the Application site is approximately 800m from the Coastal Marine Area Boundary of the AUP(OP) and does not adjoin or sit within the coastal environment, the Panel has considered the relationship of the New Zealand Coastal Policy Statement (**NZCPS**) to the Application. This is in line with High Court's determination on the application of the NZCPS when assessing discharge proposals that may have an 'indirect or secondary' effect on the coastal environment.²³⁴

[140] Whether the provisions of the policy statements and planning instruments listed in s104(1)(b) will be considered relevant to an application for a resource consent will be a fact-dependent assessment that will turn on the particular circumstances of the individual case and the issues to which the application gives rise. However, the requirement of relevance imposed by s104 is not an onerous threshold.

[141] The effects on the lower reaches of the Hakatere/Ashburton River and hāpua was but one aspect of the effects of the activity on the receiving environment as a result of contaminants being discharged into ground and surface water with which the Commissioner was concerned. The consequential effects on the coastal environment may be described as indirect or secondary. However, on the evidence accepted by the Commissioner, the degradation of groundwater quality was found to be closely linked to the degradation of downstream surface water quality and declining ecological values in the lower Hakatere/Ashburton River and its hāpua. It must follow from that explicit connection that s 104(1) required the consent authority to have regard to relevant provisions of the NZCPS and RCEP. This is particularly so

²³² Para 15.26 - 15.40, AEE.

²³³ Appendix I, Response to Further Information Request – 27 June 2024

²³⁴ *Environmental Law Initiative v Canterbury Regional Council* [2024] NZHC 612 [20 March 2024] per Justice Mander.

when regard is had to the continuing or extant nature of this downstream impact on a specific part of the local coastal environment. I do not consider the absence of a direct discharge, other than to a freshwater environment, excludes provisions of planning instruments and policy documents concerned with the coastal environment from being relevant to an activity that has been established as having such an effect.

- 41.44 The AEE provides a limited assessment of the proposal against the NZCPS, noting that the mitigation measures will maintain coastal water quality and safeguard coastal ecosystems. Overall, the Applicant states that adverse effects on the coastal environment will be avoided²³⁵²³⁶.
- 41.45 The Panel considers that there are several objectives and policies relevant to the Application, noting that the Project also no longer includes an application to discharge treated wastewater. It is the Panel's view that the following policies of the NZCPS require consideration beyond that provided by the Applicant:
- a. Policy 2 - The Treaty of Waitangi, tangata whenua and Māori;
 - b. Policy 3 - Precautionary approach; and
 - c. Policy 22 - Sedimentation.
- 41.46 It is the Panel's view that the primary aspects of the Project that could affect coastal values are associated with land disturbance and the discharges. Based on the earlier assessments undertaken by the Applicant, the comments received from Auckland Council and the peer reviews undertaken for stormwater and ecological matters, the Panel notes that:
- a. The Applicant has and will continue to engage with Ngāi Tai ki Tāmaki;
 - b. The ESCP will manage any erosion effects and/or sediment discharges arising from land disturbance;
 - c. Contaminated soils will be managed through a site management plan;
 - d. The enhancement of riparian vegetation will support water quality and ecological values;
 - e. An appropriate level of stormwater treatment has been proposed; and
 - f. The withdrawal of the proposed discharge of treated wastewater from the Application means this discharge is no longer an aspect of the Project that could affect coastal values.
- 41.47 Overall, the Panel is satisfied that the proposal is consistent with the NZCPS.

Hauraki Gulf Marine Park Act 2000

²³⁵ Para 15.46 - 15.48, AEE.

²³⁶ Appendix I, Response to Further Information Request – 27 June 2024

- 41.48 The purpose of the Hauraki Gulf Marine Park Act 2000 (**HGMPA**) is, among other things, to: integrate the management of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments; establish objectives for the management of the Hauraki Gulf, its islands, and catchments; and recognise the historic, traditional, cultural, and spiritual relationship of the tangata whenua with the Hauraki Gulf and its islands.²³⁷
- 41.49 In accordance with section 9 of the HGMPA, a consent authority must, when considering an application for a resource consent for the Hauraki Gulf, its islands, and catchments, have regard to sections 7 and 8 of the HGMPA in addition to the matters contained in the RMA.²³⁸ The Application Site is within a catchment which flows to the Hauraki Gulf.
- 41.50 The Applicant has noted that:
- a. Appropriate provision has been made for the management and treatment of stormwater runoff;
 - b. Earthworks will be managed to address erosion and sediment generation in accordance with current best practise techniques; and
 - c. The Project includes enhancement of native vegetation including alongside Te Ruangaingai Stream which contributes to water quality and ecosystem values.²³⁹
- 41.51 To conclude, the Panel is satisfied that the Project is consistent with the HGMPA.

42. National Environmental Standards

- 42.1 Clause 29(2)(a) of the Schedule 6 of the FTCA requires regard be given to a national environmental standard. The following is an assessment of the Application against the relevant national environmental standards.

Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

- 42.2 The NES-CS applies to activities (including subdivision) on land on which an activity or industry described in the HAIL is being undertaken, has been undertaken, or it is more likely than not that a HAIL activity is being or has been undertaken on the Site. As recorded earlier in this Decision and as confirmed by Auckland Council, the Application requires consideration under regulation 10 of the NES-CS.²⁴⁰
- 42.3 The key consideration is the adequacy of the detailed site investigation and associated reports, which was provided with the Application as Attachment 16 to the AEE.
- 42.4 The Contamination Report identified the development and change in land use to a business park can be undertaken in manner that

²³⁷ HGMPA s 3.

²³⁸ HGMPA s 9.

²³⁹ Para 18.1 - 18.3, AEE.

²⁴⁰ Refer to Council comments on contaminated soils.

appropriately manages any related risks to human health. This includes a Site Management Plan and an accidental discovery protocol.

- 42.5 The Panel finds that the assessment in the Contamination Report is considered to be sufficient to ensure that effects on human health from soil disturbance are appropriately avoided and/or mitigated during soil disturbance. This outcome will be secured by the conditions imposed in the Land Use Consent.

Resource Management (National Environmental Standards for Freshwater) Regulations 2020

- 42.6 The National Environmental Standards for Freshwater (**NES-F**) sets requirements and regulates activities that pose risks to the health of freshwater and freshwater ecosystems. The Applicant has identified that resource consent is required under the NES-F due to:

Regulation 52:

- a. Earthworks within 100 of a natural inland wetland; and
- b. Taking, use, diversion or discharge of water outside but within 100m of a natural inland wetland.

Regulation 54:

- a. Diversion of water within 100m of a natural inland wetland; and
- b. Discharge of water within 100m of a natural inland wetland.

- 42.7 The bundled status of these activities is non-complying.

- 42.8 The Panel agrees with the Applicant's assessment of ecological effects, as well as the outcome of Wildland's peer view and related Joint Witness Statements. As such, we consider that the grant of resource consent for these NES-F activities can be supported.

PART G: AUCKLAND UNITARY PLAN (OPERATIVE IN PART)

43. Introduction

- 43.1 Clause 29(2)(e) and (f) of the Schedule 6 of the FTCA requires regard be given to a regional policy statement and plan respectively. An assessment of the AUP(OP)'s Auckland Regional Policy Statement (**ARPS**) and regional and district plan chapters has been included within the AEE. The Panel has reviewed and considered the assessment provided by the Applicant and outlines the key matters in the following sections (as well as adding further considerations and assessment).

44. Auckland Regional Policy Statement

- 44.1 The ARPS is contained in Chapter B of the AUP(OP). Of particular relevance to this Application are:
- a. Issue B2 – Urban growth and form;
 - b. Issue B3 – Infrastructure, transport and energy;
 - c. Issue B4 – Natural heritage;

- d. Issue B5 – Built heritage and character;
 - e. Issue B6 – Mana whenua;
 - f. Issue B7 - Natural resources;
 - g. Issue B8 - Coastal environment;
 - h. Issue B9 – Rural environment and
 - i. Issue B10 – Environmental risk.
- 44.2 Each of these Issues is expanded upon by the Objectives and Policies that follow each Issue. The Panel has carefully considered the relevant Objectives and Policies with respect to each of these issues.
- 44.3 These Issues, together with the relevant Objectives and Policies have been assessed by the Applicant in the AEE²⁴¹, and in its Responses to the requests for comments and their response to the Panel's request for further information²⁴²²⁴³.
- 44.4 However, the Panel notes that the Applicant's position is not fully supported by Auckland Council. In particular, Auckland Council takes a different view with respect to the following chapters' objectives and policies:
- a. Chapter H19 (Countryside Living Zone);
 - b. Chapter H28 (Special Purpose - Quarry Zone); and
 - c. Chapter I441 (Whitford Precinct).²⁴⁴²⁴⁵
- 44.5 The Panel acknowledges a tension between the objectives and policies of the two zones that apply to the Site. We return to this issue and the Council's specific comments further in our discussion of each of these specific district plan chapters below.
- 44.6 In the meantime, the Council has provided a broader commentary that:

²⁴⁶

The application seeks to enable light industry type activities and supporting infrastructure on the site via resource consents in lieu of a plan change process to rezone the land. My concern with this approach is that it 'establishes' the primary land use activity on the site, enabling urban activities in a non-urban area. In my view, this could pave the way for a future plan change to be lodged to 'acknowledge' the established light industrial uses. While the appropriate zoning isn't determined by resource consents or existing uses, it does set the scene for what is considered appropriate land uses in the area.

It is my view that once the quarrying activities have ceased and the relevant portions of the site have been rehabilitated, a plan change process to rezone the land from the SPQZ would ensure that the

²⁴¹ Section 16, AEE.

²⁴² Appendix A and B of response to comments.

²⁴³ Memo of 24 June from Tollemache – RFI response 1

²⁴⁴ Stelios Smilas, Senior Planner, Resource Consents

²⁴⁵ Jimmy Zhang, Senior Policy Planner, Plans and Places

²⁴⁶ Jimmy Zhang, Senior Policy Planner, Plans and Places, Auckland Council.

proposed light industrial type activities would be situated within a more appropriate planning framework.

- 44.7 The above comment appears to relate primarily to the “Structure Plan” Policy B2.3.2(3):

Enable rezoning of future urban zoned land for urbanisation following structure planning and plan change processes in accordance with Appendix 1 Structure plan guidelines.

- 44.8 In response, the Applicant has stated: ²⁴⁷

Paragraphs 16.12-16.23 of the AEE and Attachment 27 to the AEE address at length, the RPS objectives and policies as relevant to rural coastal towns and villages (including commentary on the growth and expansion of these areas and necessity for a plan change) and commentary on the AUP Appendix 1 Structure Plan guidelines. Neither, Messrs Zhang or Mr Smilas have identified that they disagree with this. In our opinion, the policy approach to rural coastal towns and villages along with the provision of employment and services associated with them provides for a resource consent path to achieve this. This is in contrast to the RPS provision for the Future Urban Zone which specify that a plan change is mandatory.

- 44.9 The Panel agrees with the Applicant in this regard. While a structure plan process may be preferred by Council, Policy B2.6.2(4) enables small scale growth in rural and coastal towns and villages to occur without the need for structure planning, where such growth is consistent with policies B2.6.2(1) and (2).

- 44.10 With regard to B2.6.2(1) and (2), the Panel notes that:

- a. The character of Beachlands will be largely maintained;
- b. Adequate infrastructure provision has been provided, not least with the management of stormwater and wastewater;
- c. The natural hazards associated with the Site will be adequately remedied or mitigated;
- d. Elite soils have been avoided and food production will not be affected;
- e. Management measures and design address potentially incompatible land uses;
- f. The Application is largely compatible with the natural and physical characteristics of the Site;
- g. Transport options have been provided for, including new active transport infrastructure;
- h. Significant adverse effects on the rural environment will be avoided; and
- i. The terrestrial SEA will be enhanced through the proposed landscaping.

²⁴⁷ Para 3.13 Appendix B to Response to Comments.

- 44.11 Based on the above and the previously mentioned assessments, the Panel finds that the Project is generally consistent with the relevant provisions of the ARPS.

B6 Mana Whenua

- 44.12 The development and expansion of Auckland have historically impacted the taonga and customary rights of Mana Whenua within their ancestral rohe. Ensuring Mana Whenua participation in resource management decision-making, alongside the integration of mātauranga Māori and tikanga, is essential for a sustainable future for both Mana Whenua and Auckland.[1]
- 44.13 The Panel has considered the Application alongside the following AUP:OP Mana Whenua objectives and policies.
- 44.14 *B6.2 Recognition of Treaty of Waitangi/Te Tiriti o Waitangi Partnerships and Participation*
B6.2.1 Objectives (1-4)
B6.2.2 Policies (1-5)
 The Applicant stated that it adheres to objectives and policies by fostering a collaborative partnership with all relevant iwi, particularly those holding Mana Whenua status within the project area. This includes active engagement and ensuring their participation in decision-making processes.
- 44.15 *B6.3 Recognising Mana Whenua Values*
B6.3.1 Objectives (1-3)
B6.3.2 Policies (1-6)
 The Applicant stated that it demonstrated alignment by acknowledging and incorporating Mana Whenua values into the Project, particularly concerning ecological and biodiversity matters.
- 44.16 *B6.4 Māori Economic, Social, and Cultural Development*
B6.4.1 Objectives (1-2)
B6.4.2 Policies (1-4)
 The Applicant records a commitment to collaborating with Ngāi Tai ki Tāmaki in the ongoing development of the Project which supports the objectives and policies focused on advancing Māori economic, social, and cultural well-being.
- 44.17 *B6.5 Protection of Mana Whenua Cultural Heritage*
B6.5.1 Objectives (1-5)
B6.5.2 Policies (1-9)
 The Applicant advised that it recognises both the tangible and intangible aspects of Mana Whenua cultural heritage in the Project, demonstrating compliance with these objectives and policies.

Panel findings

- 44.18 Overall, and in the absence of evidence from Mana Whenua rebutting the Applicant's assessment outlined above, the Panel accepts the Applicant's analysis of the Project alongside the Mana Whenua objectives and policies of the AUP:OP.

45. Auckland Unitary Plan objectives and policies

- 45.1 Standard C1.8 of Chapter C1 General Rules of the AUP(OP) identifies that for any restricted discretionary, discretionary activity or non-complying activity, the consent authority will consider all relevant overlay, zone, Auckland-wide and precinct objectives and policies that apply to the activity or to the site or sites where that activity will occur.
- 45.2 As set out later in the Decision, when considering an application for resource consent for an activity that is classified (relevantly) as non-complying activity, the consent authority will have regard to the standards for permitted activities on the same site as part of the context of the assessment of effects on the environment.
- 45.3 The Panel have addressed the Auckland-wide chapters first, followed by the zone and precinct objectives and policies.

Chapter E1 – Water Quality and integrated management

- 45.4 The objectives and policies in Chapter E1 relevant to the discharge of stormwater are:
- a. Objectives: E1.2(1)-(3); and
 - b. Policies: E1.3 (1) – (14)²⁴⁸.
- 45.5 The Panel agrees with the Applicant's assessment of these objectives and policies²⁴⁹. The Panel has also considered the comments received from Mr Willan, Auckland Council, AT and the Hauraki Gulf Forum, and peer reviews undertaken for stormwater and ecology.

- 45.6 On this basis, the Panel finds that the Application is consistent with Chapter E1.

Chapters E11 and E12 land disturbance

- 45.7 The relevant objectives and policies are provided below:
- a. Objectives E11.2(1)-(3), E12.2(1); and
 - b. Policies E11.3(1)-(7), E12.3(1) - (6).
- 45.8 The Panel agrees with the Applicant's assessment of these objectives and policies and finds that the Application is consistent with them.

Chapter E15: Vegetation Management and Biodiversity

- 45.9 The relevant objectives and policies are provided below:
- a. Objectives E15.2(1) and (2); and
 - b. Policies E15.3(1) - (7).
- 45.10 The Panel agrees with the Applicant's assessment of these objectives and policies²⁵⁰ and finds that the Application is consistent with them.

²⁴⁸ The AEE does not list Policy E1.3(8). However, given it relates to new discharges such as the proposed stormwater discharge, we have considered it as part of our decision.

²⁴⁹ Para 17.37 - 17.38, AEE.

²⁵⁰ Para 17.41, AEE.

Chapter E25 – Noise and Vibration

- 45.11 The relevant objectives and policies are provided below:
- a. Objectives E25.2.(1) and (4); and
 - b. Policy E25.3(1) – (2), (7) and (10).
- 45.12 The Panel notes that the Applicant's assessment has focussed on noise and vibration associated with construction²⁵¹. However, considering the comments received from invited parties²⁵² and the Applicant's effects assessment, the Panel has also considered the objectives and policies of Chapter E25 associated with operational noise.
- 45.13 In particular, the Panel recognises that the AUP(OP) requires the following:
- a. Objective E25.2(1) – People are protected from unreasonable levels of noise and vibration;
 - b. Policy E25.3(2) - Minimise, where practicable, noise and vibration at its source or on the site from which it is generated to mitigate adverse effects on adjacent sites; and
 - c. Policy E25.3(7) - Require activities to be appropriately located and/or designed to avoid where practicable or otherwise remedy or mitigate reverse sensitivity effects on ... existing lawfully established rural production activities.
- 45.14 As detailed in the earlier discussion of operational noise effects, the Panel requested further information from the Applicant regarding the effects of the proposal on livestock. The Applicant's experts provided this information, which confirms that adverse effects as raised by Mr Willan are unlikely to occur.
- 45.15 Comments were also received that the Project's noise emissions will impact the amenity of the surrounding sites. While the Panel is satisfied that the Applicant has proposed measures that will avoid this occurring, we consider it appropriate that the existing quarry CLG is continued for the first five years of the Project to enable stakeholders to raise any concerns (such as noise) so that they may be appropriately addressed.
- 45.16 On this basis and consistent with the Applicant's own assessment, the Panel finds the Project is consistent with the objectives and policies of Chapter E25.

Chapter E26 – Infrastructure

- 45.17 The relevant objectives and policies and commentary on the Project with respect to these are provided below:
- a. Objectives E26.2.1 (1)-(5),(6); and
 - b. Policies E26.2.2 (1), (2) and (14)-(15).

²⁵¹ Para 17.44, AEE.

²⁵² In particular, the comments received from Mr Willan and Mr McKay.

- 45.18 In addition to the Applicant's assessment, the Panel considers the following objectives and policies are also relevant to its consideration of the Application:
- a. Objective E26.2.1 (9) - The adverse effects of infrastructure are avoided, remedied or mitigated;
 - b. Policy E26.2.2 (4) - Require the development, operation, maintenance, repair, upgrading and removal of infrastructure to avoid, remedy or mitigate adverse effects; and
 - c. Policy E26.2.2 (5) - Consider a range of matters when assessing the effects of infrastructure.
- 45.19 The Panel generally agrees with the Applicant's assessment of these objectives and policies²⁵³ and finds that the Application is consistent with them. In regard to the additional objective and policies that the Panel itself has identified:
- a. The Applicant has offered a suite of measures via conditions to avoid, remedy and mitigate the effects of the Project's infrastructure, including construction related management plans; and
 - b. The proposed infrastructure will be of benefit to Auckland's communities.
- 45.20 On this basis and aligned with the Applicant's own assessment, the Panel finds the Project is consistent with the objectives and policies of Chapter E26.

Chapter E27 Transport

- 45.21 The Applicant has identified the following transport objectives and policies as relevant to the proposal:
- a. Objectives E27.2(1), (2), (4) and (5); and
 - b. Policies E27.3(1), (20) and (21).
- 45.22 In addition, to the Applicant's assessment, the Panel considers the following also relevant to its consideration of the Application:
- a. Policy E27.3 (3) - Manage the number, location and type of parking and loading spaces, including bicycle parking and associated end-of-trip facilities to support all of the following...;
 - b. Policy E27.3 (15) - Require access to loading facilities to support activities and minimise disruption on the adjacent transport network; and
 - c. Policy E27.3 (17) Require parking and loading areas to be designed and located to:

²⁵³ Para 17.47, AEE.

45.23 The Panel generally agrees with the Applicant's assessment of these objectives and policies²⁵⁴ and finds that the Application is consistent with them.

45.24 The Panel further notes regarding the additional policies that it has identified:

- a. That an appropriate number of on-site parking and loading spaces have been provided; and
- b. The parking and loading spaces can be safely and efficiently operated.

45.25 On this basis, and aligned with the Applicant's own assessment, the Panel finds the Project is consistent with the objectives and policies of Chapter E27.

Chapters E33 Industrial and Trade Activities

45.26 The Applicant has identified the following Industrial and Trade Activities objectives and policies as relevant to the Application:

- a. Objective E33.2(1), and
- b. Policies E33.3(1) - (3).

45.27 The Panel agrees with the Applicant's assessment of this objective and the policies²⁵⁵ and finds that the Application is consistent with them.

Chapter E30: Contaminated Land

45.28 The relevant objective and policies and commentary on the Project with respect to these are provided below:

- a. Objective E30.2 (1); and
- b. Policies E30.2 (1) - (2).

45.29 The Panel notes that the Applicant has not provided an assessment of this objective and policies. However, the Panel considers that the Project is consistent with them given the technical assessments provided by the Applicant and the Council's comments. Furthermore, the Applicant's proposed conditions provide for appropriate management of contamination risks by using a site management plan and accidental discovery protocol.

45.30 On this basis, the Panel finds that the Application is consistent with the objectives and policies of Chapter E30.

Chapter E36 Natural Hazards

45.31 The Applicant has identified the following Natural Hazards objectives and policies as relevant to the proposal:

- a. Objectives E36.2(2), E36.2(4), E36.2(5); and

²⁵⁴ Para 17.49, AEE.

²⁵⁵ Para 17.51, AEE.

- b. Policies E36.3(3), E36.3(13), E36.3(17), E36.3(20), E36.3(29)-(30), and E36.3(35).
- 45.32 The Panel generally agrees with the Applicant's assessment of these objectives and policies. The Panel has identified the following additional objective and policies²⁵⁶ relevant to a consideration of the Application:
- a. Policy E36.3(4) - Control subdivision, use and development of land that is subject to natural hazards so that the proposed activity does not increase, and where practicable reduces, risk associated with all of the following adverse effects...;
 - b. Policy E36.3(32) - Identify land that may be subject to land instability taking into account all of the following features...;
 - c. Policy E36.3(33) - Require risk assessment prior to subdivision, use and development of land subject to instability; and
 - d. Locate and design subdivision, use and development first to avoid potential adverse effects arising from risks due to land instability hazards, and, if avoidance is not practicably able to be totally achieved, otherwise to remedy or mitigate residual risks and effects to people, property and the environment resulting from those hazards.
- 45.33 The Panel generally agrees with the Applicant's assessment of these objectives and policies and finds that the Application is consistent with them. With respect to the additional policies that the Panel has identified, we consider that the Applicant has demonstrated that the land stability risks associated with the Site can be adequately avoided, remedied and mitigated.
- 45.34 On this basis, and aligned with the Applicant's assessment, the Panel finds the Project is consistent with the objectives and policies of Chapter E36.

Chapter E38 Subdivision - Urban

- 45.35 The Applicant has identified the following subdivision objectives and policies as relevant to the Application:
- a. Objectives E39.2(1) - (4), (8), (15) and (17); and
 - b. Policies E39.3(1)-(5), (17), (19), (20), (33)
- 45.36 The Panel agrees with the Applicant's assessment of these Objectives and Policies²⁵⁷. The Panel has identified the following additional policy as being relevant:
- a. Policy E39.3(15) - Subdivision maintains or enhances the natural features and landscapes that contribute to the character and amenity values of rural areas.
- 45.37 The Panel considers that the Project is consistent with Policy E39.3(15) given the enhancement planting proposed by the Applicant within riparian margins, including those associated with a SEA.

²⁵⁶ Para 17.54, AEE.

²⁵⁷ Para 17.35, AEE.

- 45.38 On this basis, and consistent with the Applicant's own assessment, the Panel finds the Project is consistent with the objectives and policies of Chapter E36.

H28 – Special Purpose Quarry Zone

- 45.39 The Applicant has identified the following relevant Objectives and Policies of the Special Purpose Quarry Zone (**SPQZ**) are:
- a. Objectives H28.2(1) and H28.2(3); and
 - b. Policies H28.3(2); H28.3(5) and H28.3(8).
- 45.40 The AEE details that the Project is consistent with these policies, including Policy H28.3(5), which requires the rehabilitation of the quarries to enable the use of land for other purposes²⁵⁸. We highlight this policy given the comments received, and in particular those of Auckland Council, Mr McKay and Mr Willan²⁵⁹²⁶⁰²⁶¹.
- 45.41 Auckland Council has commented that the Project is inconsistent with the SPQZ provisions stating: ²⁶²
- the provisions of the SPQZ do not anticipate activities beyond the quarry rehabilitation phase. While the zone recognises that mineral extraction activity involves a wide range of interrelated activities, the zone does not address non-quarry land uses following the completion of rehabilitation activities. As such, most non-quarry related activities are not provided for in the Activity table.
- 45.42 The Panel does not agree with the Council's assessment. Instead, the Panel agrees with the Applicant's response insofar as the provisions of the SPQZ are neutral in regard to future uses. Furthermore, the fact that the zone's activity table does not include post-quarry activities does not mean that any such activities are themselves inappropriate; while the Panel notes they are also not prohibited. Rather, future uses, like those proposed in the Application, are subject to individual assessment in accordance with the provisions of both national and Auckland specific planning documents, which the Applicant has provided.
- 45.43 Mr McKay and Mr Willan both commented that given the presence of an existing resource consent for rehabilitation of the Site, that consent should be given effect to, and the Site returned to grassed or otherwise vegetated land. Mr McKay has further stated that the Project being located within the SPQZ is irrelevant.
- 45.44 However, the Panel disagrees with both commentators. In the Panel's view there are no specific requirements under the SPQZ to undertake such works. Rather and as stated above, we agree with the Applicant in that Chapter H28 of the AUP(OP) remains neutral as to the future uses of quarry sites. Furthermore, the current SPQZ provisions are of relevance given their operative status under the AUP(OP).

²⁵⁸ 17.10 - 17.14, AEE.

²⁵⁹ Jimmy Zhang, Senior Policy Planner, Plans and Places

²⁶⁰ Including Para 20, 29 and 31, Comments of Mr Lindsay McKay

²⁶¹ Including Para 12, Comments of Donald Willan.

²⁶² Jimmy Zhang, Senior Policy Planner, Plans and Places,

- 45.45 The Panel also acknowledges that the assessment provided in the AEE demonstrates that the reuse of quarry sites for different land uses is not an uncommon occurrence in the Auckland region. Numerous quarry sites have been reused for residential, industrial, recreation and landfill activities.
- 45.46 It is on this basis that we agree with the Applicant's assessment that the Project is consistent with the objectives and policies of the SPQZ.

H19 - Rural Zones

- 45.47 The Panel considers that the following "General Rural" objectives and policies are relevant to the Application:
- a. Objectives H19.2.1(1) to (3), H19.2.3(1) to (3), H19.2.5 (3) to (5), H19.7.2(1) to (5); and
 - b. Policies H19.2.2 (1) to (5), H19.2.4(1), H19.2.5 (1) – (4) H19.7.3 (1) to (5)
- 45.48 The AEE details that the Project is generally consistent with most of these objectives and policies²⁶³. The assessment provided by the Applicant highlights that the Site does not lend itself to rural productive activities given its historic use as a quarry and fill site. However, the Panel also recognises that the Site is effectively 'split zoned', that the front portion is zoned Rural -Countryside Living Zone, while the rear portion is zoned SPQZ. Given its partial rural zoning and location within a 'rural environment', we must give full consideration to Chapter H19's objectives and policies.
- 45.49 Turning first to the 'general rural' objectives and policies, the Panel is generally in agreement with the Applicant's assessment. These objectives and policies include the enabling of rural activities, avoiding incompatible activities and subdivision, the management of adverse effects and the protection of soil resources.
- 45.50 The Applicant has commented that the Project will support the rural area as it will provide a location for rural support services to be established. The Panel considers that while this may occur, no restrictions on non-rural related services have been proposed by the Applicant via consent conditions. As such, the Panel must place lesser weight on such benefits as there is no guarantee this kind of activity will establish.
- 45.51 The Panel agrees with the Applicant that the Project is not inconsistent with Objectives H19.2.1 (2) to (4) as it will not detrimentally affect elite soils or rural production. The Panel appreciates that the Site contains areas of LUC2 and LUC3 soils which are deemed to be "land containing prime soil" by the AUP(OP), albeit there is no plan definition of "prime soil". The Panel observes that the Project will not preclude rural production activities continuing on 867 Whitford-Maraetai Road, which is the location of LUC2 soils, but will result in some land containing LUC2 soils being used to access the business park and LUC3 soils being part of the business park activities. The Panel notes that Policy H19.2.2(3) requires avoidance of development on "prime soil" where it is practicable to do so. The Panel acknowledges that, in terms of the specific facts of the Application site, it is simply not practicable to access any future use

²⁶³ Para 17.24, AEE.

or development of the quarry without this consequence arising. In addition, the quarry operation is already located on an area identified as LUC3 despite the soil having been removed. For these reasons the Panel finds that the Project is not inconsistent with Policies H19.2.2 (1) to (4).

45.52 The Applicant has also provided an assessment against Policy H19.2.2(5), which is an “avoid” policy²⁶⁴. We concur with the Applicant in that the Project:

- a. Will not be incompatible with rural lifestyle living;
- b. Does not result in the fragmentation of land, other than for the creation of the new access road;
- c. Reverse sensitivity effects will not be generated; and
- d. The necessary infrastructure is funded and provided for.

Rural character, amenity and biodiversity values

45.53 The Applicant has provided an assessment of the Objectives and Policies associated with rural character, amenity and biodiversity values.²⁶⁵ In summary it is the Applicant’s view that:

- a. The LVA and AEE address the Project’s adverse effects on character and amenity;
- b. The landscape plan and plantings maintain and enhance character and amenity values;
- c. Effects on views from public roads and the Council reserve (i.e. the pony club) will be appropriately addressed by the proposed bunding and landscaping. This includes landscaping that mimics the plantings used for the supermarket development opposite the Site;
- d. Layered planting will screen views from Keanes Road;
- e. Views from the Council reserve will be managed through a staged planting process, including layered boundary; and
- f. Native vegetation will be retained and enhanced.

45.54 The Panel agrees with this assessment. However, the Panel also acknowledges that Policy H19.2.4(1) is a directive policy that seeks a ‘predominately working rural environment’, fewer buildings of an urban scale, and general absence of infrastructure which is of an urban type and scale. The Panel considers that the Project is an urban type of activity with a built form and character.

45.55 The Applicant has also provided a LVA and related landscaping mitigation that will, in the main, appropriately and practicably address the Project’s visual effects. This includes enhancement planting of riparian margins, bunding, boundary planting and the retention of native vegetation. The Panel also notes that stormwater infrastructure has been proposed in underground positions and will not generally be

²⁶⁴ Para 17.19, AEE.

²⁶⁵ Para 17.20, AEE.

visible. The Panel finds that these mitigation measures address the Project's effects on rural character and amenity.

- 45.56 Based on these factors, it is the Panel's view that the Project is inconsistent with this policy, specifically Policy H19.2.4(1).

Rural industries, rural commercial services and non-residential activities

- 45.57 With regard to the objectives and policies for rural industries, rural commercial services and non-residential activities, the Panel notes that the AUP(OP) objectives and policies anticipate that such activities are to:
- a. Maintain or enhance rural character and amenity;
 - b. Rural industries and rural commercial services locate only where they have a direct connection with the resources, amenities, characteristics and communities of rural areas are enabled;
 - c. Industries, services and non-residential activities of an urban type and scale unrelated to rural production activities are not located in rural zones;
 - d. The completed state of clean fills and managed fills in rural zones (other than the Rural – Rural Conservation Zone and Rural – Countryside Living Zone) should be in keeping with the appearance, form and location of existing rural character and amenity values;
 - e. That non-rural activities avoid reverse sensitivity effects; and
 - f. That adverse effects on traffic movement and the road network are avoided, remedied or mitigated.
- 45.58 The Panel has considered the related objectives and policies in detail given their relevance to the comments received from invited parties.
- 45.59 In the Panel's deliberations, we have identified a tension between Chapter H28 (Special Quarry Zone) and Chapter H19 (Rural Zones), in so much that while the SPQZ is not a rural zone under Chapter H19's preamble, it is treated as such by Chapter E38 (Subdivision). This tension results in a policy framework which is neutral for the future use of quarries and fill sites under Chapter H28, whereas Chapter H19 clearly articulates that the finished state of such sites should be in keeping with the appearance, form and appearance of existing rural character and amenity²⁶⁶²⁶⁷.
- 45.60 As discussed previously, it is the Panel's view that the Project will not be in keeping with a predominately working rural environment, with an urban character and form. While some of the Project's footprint is located within a more enabling SPQZ, it is also reliant on access, infrastructure and buildings within a rural zone. Within the boundaries of that rural zone are proposed most of the industrial units, as are the storage building and the proposed road. In the Panel's view these aspects of the Project are clearly not rural in character, albeit that the proposed landscaping will reduce the related visual effects. As such, we

²⁶⁶ Policy H28.3(5).

²⁶⁷ Policy H19.2.5(4).

consider that the Project is inconsistent with Objective H19.2.3(1) and Policy H19.2.4(1).

- 45.61 The Panel acknowledges the Applicant's view that the Project will support the rural economy and the local community's wellbeing principally through the supply of additional business land. However, as previously discussed, no restrictions on locating activities unrelated to the rural area or production have been proposed by the Applicant.
- 45.62 The Panel agrees with the Applicant that the Project will not give rise to reverse sensitivity or otherwise constrain adjoining sites from rural activities. We base this, in part, on the further noise assessment undertaken by the Applicant, which identified that noise effects from the proposal are unlikely to affect livestock. We also note that the Project does not provide for residential or other sensitive activities (e.g. childcare) that could be affected by day-to-day rural activities like fertilizer application.
- 45.63 The Panel further agrees with the Applicant that traffic effects will be minimal and managed through the road improvements and site layout proposed. The Applicant has also provided a LVA and related landscaping mitigation that will, in the main, appropriately and practicably address the proposal's visual effects. This includes enhancement planting of riparian margins, bunding, boundary planting and the retention of native vegetation. We also note that stormwater infrastructure has been proposed in underground positions and will not generally be visible

Rural – Countryside Living Zone

- 45.64 As with our commentary regarding "rural industries, rural commercial services and non-residential activities", the Panel wishes to primarily focus on the objective and policies of the Rural – Countryside Living Zone (**RCLZ**) which specifically seek the maintenance and enhancement of rural character and amenity values.
- 45.65 The Applicant has recognised the urban character of the Project, but states that adequate mitigation of landscape and visual effects has been proposed. This is based on the use of landscaping, land recontouring and enhancement plantings to soften the proposal's appearance from the surrounding area.
- 45.66 On this basis it is the Panel's view, that while the Project can mitigate some of its visual effects, it still clearly has an urban appearance in a largely rural landscape. As such it is inconsistent with Objective H17.7.2(1) and (2) and Policy H19.7.3(1). We note that this is also acknowledged by the Applicant and raised in a general manner by Auckland Council²⁶⁸²⁶⁹.
- 45.67 In terms of that part of the Site that will be retained for countryside living, the Panel finds that the Project's effects regarding noise, dust, traffic volumes, effects on health, safety and cultural values on the RCLZ have been suitably addressed.

²⁶⁸ Para 17.24, AEE.

²⁶⁹ Jimmy Zhang, Senior Policy Planner, Plans and Place

- 45.68 As such, the Panel agrees with the Applicant that the Project is generally consistent with the objectives and policies of the RCLZ other than Objective H19.7.2(2) and Policy H19.7.3(1) mentioned above.

Rural objectives and policies conclusion

- 45.69 To conclude, the Panel's view is that while the Project is generally consistent with many of Chapter H19's objectives and policies there are clear inconsistencies with Objectives H19.2.3(1) H19.7.2(2) and Policies H19.2.4(1) and H19.7.3(1). We return to the implications of this in our discussion on s104D below.

Chapter I441 Whitford Precinct

- 45.70 The Panel notes that this Precinct's objectives and policies seek similar outcomes to those sought for rural zones as detailed by the Applicant.
- 45.71 The Panel also acknowledges the Council's comments that the Project is inconsistent with the Whitford Precinct's objectives and policies as, in its view, these mainly focus on rural countryside living amenity values.²⁷⁰
- 45.72 Given this, the Panel considers that there is an inconsistency with Objective I441.2.(1)(a) for that part of the Project located in the RCLZ. The objective requires development to maintain and enhance landscape character and rural amenity values. As we have previously commented, the Panel does not consider the Project to be consistent with the AUP(OP)'s policy direction in this regard.
- 45.73 For completeness, the Panel generally concurs with the Applicant's assessment in regard to the Precinct's other objectives and policies.

PC79 and PC80

- 45.74 PC79 and PC80 are 'standard' plan changes, processed in accordance with Schedule 1 of the RMA.
- 45.75 Plan Change 79 (PC79) introduced new, or proposed amendments to existing, AUP:OP objectives, policies, and rules relating to transport including accessible parking requirements.²⁷¹ Auckland Council notified its decision on submissions on PC79 on 9 August 2024. The rules of PC79 do, in accordance with s86B of the RMA, now have legal effect and must be complied with. The Panel itself is required by clause 31(1)(c) of Schedule 6 of the FTCA to have regard to relevant provisions of "a plan or proposed plan", which includes PC79, when considering and making a decision on the Application.
- 45.76 The consequences of the newly-emerged legal effect status of the PC79 rules was addressed by the Applicant in its final Memorandum to the Panel.²⁷² The Panel has reviewed the Memorandum and its Appendices.

²⁷⁰ Stelios Smilas, Senior Planner, Resource Consents, Auckland Council.

²⁷¹ Counsel's covering letter dated 7 March 2023 at [5.17.a].

²⁷² Memorandum of Counsel on behalf of Knight Investments Limited – Response to Comments Received on Draft Conditions, 21 August 2024 at [6] and Appendix C (Te Puru Business Park: Review of Proposal against Plan Change 79, Tollemache Consultants Ltd, 21 August 2024 and Te Puru Business Park – Plan Change 79, Flow Transportation Specialists, 13 August 2024)

- 45.77 The then proposed objectives and policies of PC79 were relevant considerations when the Application was lodged with the EPA in December 2023. Following Council's decision on PC79, its rules are also now relevant considerations to the Panel's assessment of and decision on the Application. One additional new rule in PC79, Rule E27.6.3.2(A) Accessible Parking ("**PC79 rule**") is relevant to the Project.
- 45.78 The Applicant has assessed that the PC79 rule means that there is a shortfall of two accessible carpark spaces for the Project which must be authorised by a land use consent for a restricted discretionary activity. However, the Applicant's Transport Expert, Flow, has calculated this shortfall based on a theoretical parking demand which it states is likely to be very conservative. Flow notes that the proposed business park's car parking arrangements do still meet the requirements of the relevant NZS4121 standards.²⁷³ The Applicant has therefore concluded that it is acceptable to retain the two accessible carparking spaces as proposed in the Application and the draft conditions.
- 45.79 The Panel notes that the Application, being an application for a number of different resource consents, already includes an application for a land use consent to authorise the development of the Site for the proposed business park. Carparking is one of the existing components of the development assessed in the Application. The land use consent required to authorise the proposed business park is 'triggered' by a number of rules of the AUP:OP. In that respect, the new PC79 rule can be incorporated into the Applicant's land use consent component of its overall Application.
- 45.80 In reaching this position, the Panel has considered Judge Kirkpatrick's 2016 explanation of the relationship between plan rules that require resource consents and the activity, or land use, for which resource consent is required. Even though the Court there was dealing with a recently granted land use consent followed, shortly after, by a new plan rule taking legal effect, the Judge's explanation of the relationship between rules and consents can be applied, with all necessary modifications, to the relationship between rules and applications for consents. The Panel considers that if an application for a type of resource consent to authorise a use or development of land is already before a decision maker and, before a decision on the application is made, a new additional rule emerges which requires the same land use to be authorised by the same type of resource consent, that does not change the use or development of land for which resource consent is required – it simply changes the plan provisions that the decision maker must have regard to when considering the application and deciding whether to grant consent. This principle is captured, most succinctly in the following paragraphs of the Court's decision:²⁷⁴

[30] Section 9(3) imposes a restriction on the use of land in a manner that contravenes a district rule (being any rule in an operative plan or any rule in a proposed plan which has legal effect under s 868), but subject to an exception in sub-paragraph (a) for a use that is expressly allowed by a resource consent. Similar exceptions are made for existing uses and activities under ss 10 and 10A in sub-paragraphs

²⁷³ Te Puru Business Park – Plan Change 79, Flow Transportation Specialists, 13 August 2024, pages 3 and 4.

²⁷⁴ *Arapata Trust Limited v Auckland Council* [2016] NZEnvC 236.

(b) and (c). It is important to observe that while s 9(3) is expressed as such a restriction, the exception to that restriction in s 9(3)(a) is for a use which is allowed by a resource consent, rather than for the contravention of a rule. **Even though it is the contravention of a rule that gives rise to the requirement for a resource consent, the consent is for the use of land.**

[31] This aspect of s 9(3) is consistent with other provisions in the Act relating to the nature of resource consents. In s 2 of the Act, "use" in certain sections (including ss 9 and 10) is defined to mean, relevantly among other things, "reconstruct ... a structure... on ... land." The definition does not refer to "use" in terms of any rule in a plan that may apply to it. As defined in s 87 A, a "resource consent" is "a consent to do something" that would otherwise contravene one or other of sections 9 or 11 - 158 of the Act. In this context, to do something must mean an activity, which for the purposes of s 9 means a use of land and in terms of the definition of "use" in s 2 means some action in relation to that land.

[32] Under s104, the consideration of an application for resource consent must have regard to "any actual and potential effects on the environment of allowing the activity" and to any relevant provisions of certain planning documents made under the Act and any other relevant matters. While having regard to any relevant planning document will involve an assessment of the effects of the activity against any relevant provisions of such a documents... **it is still the activity that is assessed in terms of the statutory requirements, rather than simply a contravention of a rule.**

[36] **The consequence of a land use resource consent being considered as a consent which allows a person to use land in a particular way, as distinct from simply being a consent to contravene a particular rule, is that the rules in any relevant operative or proposed plan may change but that use of land is still consented.** On that approach there is nothing in s 868 which would alter the effect of a current resource consent under s 9(3)(a).

[Our emphasis added.]

- 45.81 For the reasons set out above, the Panel agrees with the Applicant's submission and evidence on the consequence of the PC79 rule for the Application. The overall non-complying activity status of the Application is not affected by the PC79 rule. The Applicant assesses the accessible carpark shortfall to be less than minor. The Panel agrees.
- 45.82 PC80 introduced changes to the ARPS's objectives and policies relating to achieving a well-functioning urban environment.²⁷⁵
- 45.83 On 30 August 2023, the Independent Hearing Commissioners appointed to hear and determine PC80 made their decision on the plan change, on behalf of Auckland Council. This decision was notified on 14 September 2023.
- 45.84 Despite counsel for the Applicant stating that the proposed objectives and policies are addressed in the Planning Assessment and AEE alongside those in the AUP, no assessment was provided. Nonetheless, the Panel has considered the objectives and policies of the

²⁷⁵

Counsel's covering letter dated 7 March 2023 at [5.17.b].

PC80 decision, and these have been taken into account by the Panel in making its decision.

- 45.85 Having considered the relevant objectives and policies in, as sought to be introduced or amended by PC79 and PC80, the Panel finds that the Application is at least consistent with them. In making that finding, the Panel recognises the policies in PC80 refer to qualifying matters, which themselves remain under challenge through PC78. That goes to the weight that the Panel has placed upon the changes proposed.

46. AUP: overall assessment

- 46.1 Overall, the Panel finds that the Project is generally consistent with the AUP(OP). However, the exception to this is an inconsistency with:
- a. Objectives H19.2.3(1) and H19.7.2(2) for “Rural Zones”;
 - b. Policies H19.2.4(1), H19.3.4(1) and H19.7.3(1) of the RCLZ; and
 - c. Objective I441.2.(1)(a) of the Whitford Precinct.

PART H: OTHER CONSIDERATIONS

47. Trade Competition and Written Approvals

- 47.1 Issues regarding trade competition, effects of trade competition or effects on persons who have given written approval²⁷⁶ under clauses 31(5)(a)(ii) and 31(6) of Schedule 6 FTCA have not arisen as part of this Application.

48. Other Matters

- 48.1 The Panel has considered “other matters” in accordance with clause 31(1)(d) of Schedule 6 of the FTCA. We note that the Applicant has provided an assessment against the following documents:
- a. Future Development Strategy 2023;
 - b. Auckland Climate Plan 2020/Te Taruke-a-Tawhiri; and
 - c. Franklin Local Board Plan 2020.²⁷⁷
- 48.2 There are no other considerations the Panel has had regard to in its decision-making.

PART I: CONDITIONS

49. Conditions

- 49.1 A set of draft conditions was provided with the Application as Attachment 26, as required by clause 9(i)(j) of Schedule 6 of the FCTA.
- 49.2 Subsequent amendments were made by the Applicant, and then the Panel, to the draft conditions before the Panel invited written comments

²⁷⁶ Subject to the Panel’s comment in Section C of this Decision regarding the Applicant’s reference to the written approval of the owner of the Application Site.

²⁷⁷ Section 18, AEE.

on them from the Applicant and every person or group who provided earlier comments on the Application.²⁷⁸

- 49.3 Comments on the draft conditions were received from:
- a. The Applicant;
 - b. Auckland Council;
 - c. Auckland Transport;
 - d. Heritage New Zealand Pouhere Taonga;
 - e. Mr and Mrs McKay; and
 - f. Mr Donald Willan.
- 49.4 The Panel confirms that it has considered all comments on draft conditions received.
- 49.5 The Panel has not had regard to responses that went beyond its invitation to comment on the draft conditions because it does not have the jurisdiction or discretion to do so.
- 49.6 The Panel has, as directed in clause 35 of Schedule 6 of the FTCA, applied sections 108, 108A to 112 and 220 of the RMA in imposing the conditions recorded in Appendix A of this Decision.

PART J: OTHER SECTIONS OF THE RMA

50. Introduction

- 50.1 Clause 32(1) and (2) of Schedule 6 of the Act state that the following further matters are relevant to the Panel's consideration of the Application:
- a. Sections 104A to 104D, 105 to 107, and 138A(1), (2), (5), and (6) of the RMA apply to the Panel's consideration of the Application.
 - b. These provisions apply with all necessary modifications, including that a reference to a 'consent authority' must be read as a reference to the Panel.
- 50.2 Section 138A of the RMA, relating to coastal permits for dumping and incineration, is not relevant to the resource consents sought by the Applicant in the Application. The Panel has therefore not considered this provision any further in its Decision.

51. Sections 104A to 104D – Determination of applications

- 51.1 Because the Application seeks resource consents for a non-complying activity, sections 104A and 104C of the RMA applying respectively to the determination of applications for controlled and restricted discretionary activities are not relevant to the Panel's considerations.

²⁷⁸ Minute 12, dated 8 August 2024.

51.2 The Panel has turned its mind to the matters raised in sections 104B and 104D of the RMA in its consideration of the Application for resource consents for a non-complying activity.

51.3 As a non-complying activity, clause 32(1) of Schedule 6 of the FTCA requires that the Project must first satisfy one of two gateway tests in s104D(1)(a) and (b) of the RMA before the Panel can then proceed to consider the Application under clause 31 of Schedule 6 of the FTCA. Section 104D of the RMA states:

104D Particular restrictions for non-complying activities

- (1) Despite any decision made for the purpose of notification in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—
 - (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or
 - (b) the application is for an activity that will not be contrary to the objectives and policies of—
 - (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or
 - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or
 - (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.
- (2) To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.”

51.4 The Supreme Court helpfully explained this process recently, in the context of Waka Kotahi’s proposed East West Link in Auckland, in the following way:²⁷⁹

[18] Since the EWL is a non-complying activity, it must also pass through one or the other of the two gateways in s 104D. Both ss 104 and 104D require the consent authority to have regard to the proposal’s environmental effects and to the relevant provisions of any applicable plans. But s104D adds a second, more focused filter. It provides that consent for a non-complying activity may only be granted if either its adverse effects on the environment will be no more than minor or the activity itself is not contrary to the objectives and policies of the relevant plan.

[20] If the s104D gateway test is satisfied, the applications must then be considered in the ordinary way under s 104...

²⁷⁹ *Royal Forest and Bird Protection Society of New Zealand Incorporated v New Zealand Transport Agency* [2024] NZSC 26 [11 April 2024] at [18] and [20].

Are the Project's adverse effects on the environment minor?

- 51.5 In terms of s104D(1)(a) of the RMA, the Applicant submitted that an assessment of the Project's effects as a whole is required rather than an assessment of individual effects.²⁸⁰

[108] Evaluation of whether there will be "no more than minor" adverse effects requires a holistic assessment looking over the entire application and the range of effects, not individual effects. This means that some effects may individually be more than minor, such as visual amenity from certain properties, but the overall conclusion across the range of effects may be that the effects are no more than minor. In assessing the degree of effect, regard must be had to the ameliorating effect of conditions.

- 51.6 The Applicant concluded that, applying a holistic assessment across the Application and its range of effects, the adverse effects of the Project on the environment will be minimal. The Panel interprets this to mean no more than minor, and agrees for the reasons explained in Part E: Effects Evaluation of this Decision. The Panel concluded that effects associated with:

- a. the construction phase of the Project, including earthworks, discharges of particulate, noise and vibration and construction traffic would be minimal and, in some cases, less than minor;
- b. discharges of contaminants, ITA activities and stormwater would be no more than minor; and
- c. the operational phase of the Project, including ecology, landscape, visual, noise, traffic, lighting, archaeological and cultural effects would be no more than minor and, in some cases, insignificant.

- 51.7 Adopting the High Court's approach in *Waipapa* and applying a holistic assessment over the entire Application and range of effects, the Panel is, accordingly, satisfied that the Project's adverse effects on the environment will be minor. The Project satisfies and therefore passes through the first gateway test in s104D(1)(a). The Panel therefore proceeded to consider and determine the Application under clause 31 of Schedule 6 of the FTCA and s104B of the RMA.

Is the Project contrary to the AUP(OP)'s objectives and policies?

- 51.8 On the basis that the Project passed through one of the two gateways in s104D(1), there is no strict need for the Panel to satisfy itself as to whether the Project could also pass through the second of the two gateways on the basis that it is not contrary to the relevant plan objectives and policies. Nevertheless, for the sake of completeness the Panel records the following observations on the second of the two gateways.
- 51.9 The question under s104D(1)(b) becomes whether the Project is contrary to the objectives and policies of the AUP(OP), properly

²⁸⁰ *Waipapa Bay Protection Society v Ariki Tahi Sugarloaf Wharf Ltd* [2023] NZHC 3379, Anderson J at [108].

constructed. The Supreme Court confirmed this approach in its East West Link decision:²⁸¹

[79] Sections 104(1)(b)(v) and (vi), and 171(1)(a)(iii) and (iv), require regard / particular regard be had to any “relevant provisions” of the AUP. Section 104D(1)(b)(i) asks whether the proposal is contrary to “the objectives and policies” of the relevant plan. In considering the correct approach to s 104D, the Court of the Appeal in *Dye v Auckland Regional Council* explained that “a fair appraisal of the objectives and policies read as a whole” is required. In other words, isolating and de-contextualizing individual provisions in a manner that does not fairly reflect the broad intent of the drafters must be avoided. The approach will be the same under ss 104 and 171.

[80] That does not mean all objectives and policies can simply be put in a blender with the possible effect that stronger policies are weakened and weaker policies strengthened. Rather, attention must be paid to relevant objectives and policies both on their own terms and as they relate to one another in the overall policy statement or plan. As the Environment Court noted in *Akaroa Civic Trust v Christchurch City Council*, the interpretive exercise must acknowledge that some policies will, in context, be more important than others. The way in which inevitable tensions between policies are identified and worked through in the documents must be grappled with. As *King Salmon* held, the mere presence of tension does not open up an unfettered discretion to choose between unequal policies. On the other hand, the presence of tension between stronger and weaker policies will not always be resolved in favour of the stronger. Ecosystems are complex and dynamic, as is the impact of human communities located within them. Fact and context will be important in determining how tensions between policies will be resolved.

[Footnotes recorded in the Supreme Court decision excluded from this quote.]

- 51.10 In the separate decision (reaching the same conclusion to allow the appeal but for different reasons) in the Supreme Court’s East West Link decision, Justice Glazebrook provided the following further observations on what a fair appraisal and ‘contrary to’ mean in the context of deciding whether a proposal is contrary to plan objectives and policies:²⁸²

[235] Assuming the *Dye* approach is appropriate, I accept the submission of Royal Forest and Bird that the “fair appraisal” must be reached on the basis of the language of the policies themselves, rather than on the basis of an overall judgment. This means that a fair appraisal in terms of *Dye* must take into account (in accordance with *King Salmon*) any avoidance policies that have the effect of what in ordinary parlance would be called rules and which set environmental bottom lines. There were no such avoidance policies at issue in *Dye*. Further, the Court of Appeal in *Dye* said that it did not need to consider what the situation would be if the objectives and policies of a plan were inconsistent with or contrary to the terms of a higher-order planning document or the provisions of Part 2.

[236] Regarding the meaning of the phrase “contrary to” in s 104D, *New Zealand Rail Ltd v Marlborough District Council* defined “contrary to” as

²⁸¹ *Royal Forest and Bird Protection Society of New Zealand Incorporated v New Zealand Transport Agency* [2024] NZSC 26 [11 April 2024] at [79] and [80].

²⁸² *Royal Forest and Bird Protection Society of New Zealand Incorporated v New Zealand Transport Agency* [2024] NZSC 26 [11 April 2024], Glazebrook J at [235] and [236].

meaning “opposed to in nature, different to or opposite” and “repugnant and antagonistic”. It also said that contrary must mean “something more than just non-complying”. I agree that something more than being non-complying is required, but I am not sure that it is helpful to provide synonyms for the term “contrary to” as the words have an ordinary meaning that can be applied.

[Footnotes recorded in the Supreme Court decision excluded from this quote.]

51.11 The Panel has adopted the Supreme Court’s approach in its recent East West Link decision and applied the Court of Appeal’s fair appraisal approach in *Dye*. While the Panel is satisfied that the Project is generally consistent with the relevant objectives and policies of the plans assessed in Parts G and H of this Decision, the Project is clearly inconsistent with a handful of objectives and policies in the AUP(OP)’s Rural Zone and Whitford Precinct.²⁸³

51.12 The Panel considers that the relevant objectives and policies of the Rural Zone and Whitford Precinct promote rural character, environment and amenity values for that part of the Application Site that is proposed to be used for the majority of the industrial units, the storage building and the proposed road. These are examples of urban built form and character which are key components of the Application but which are difficult to reconcile with the rural focus and promotion of the relevant zone and precinct objectives and policies applying to that critical part of the Site.

52. Section 105 – Discharge Permits

52.1 Under section 105(1) of the RMA the Panel must, in addition to the matters in s104(1), have regard to:

- a. the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and
- b. the Applicant’s reasons for the proposed choice; and
- c. any possible alternative methods of discharge, including discharge into any other receiving environment.

52.2 Following the Applicant’s removal of the originally proposed discharge of treated wastewater from the Application, the Panel has proceeded to have regard to the matters listed in s105 in the course of its consideration of, and decision on, the proposed temporary discharges associated with surface water and contaminants during the construction phase of the Project and the proposed discharge of stormwater on an ongoing basis.

52.3 With regard to the temporary discharge of surface water during the construction phase of the Project the Panel is satisfied, for the reasons explained earlier in this Decision, that the proposed earthworks can be undertaken in a manner that will ensure that the potential adverse effects from the discharge of surface water from the Site on downstream freshwater and coastal environments will be temporary and less than

²⁸³ Objectives H19.2.3(1) and H19.7.2(2) for ‘Rural Zones’ the RCLZ; Policies H19.2.4(1), H19.3.4(1) and H19.7.3(1) of the RCLZ;. Objective I441.2(1)(a) of the Whitford Precinct.

minor. The Panel has had regard to the Applicant's choice of discharge method and possible alternative methods.

- 52.4 Turning next to the temporary discharge of contaminants from the completion of managed fill activities as part of the closure of the existing quarry. For the reasons explained earlier in this Decision, the Panel consider that the nature of the discharge and sensitivity of the receiving environment to adverse effects are considered to be minimal. In the specific context of an existing quarry, the Project is reliant on the quarry closure which requires, in turn, the completion of managed fill activities. The Panel finds that the Applicant's choice is logical and there are no possible alternative methods of discharge in this particular context.
- 52.5 Finally, with regard to the discharge of stormwater on an ongoing basis, the Panel has concluded, for the reasons explained earlier in this Decision and having regard to the matters raised in s 105 of the RMA, that Applicant's proposed stormwater management regime is appropriate.

53. Section 106 – Subdivision consent restrictions

- 53.1 The Panel has the discretion under s106 of the RMA, to either refuse to grant the subdivision consent sought by the Applicant, or grant consent subject to conditions, if it considers there is a significant risk from a natural hazard or sufficient provision has not been made for legal and physical access to any new lot created by the subdivision.
- 53.2 The Applicant has applied for subdivision consent in the context of the Project in order to create a road reserve and facilitate access. On the basis of the information provided, the Panel does not consider that the proposed subdivision raises any s106 matters that prompt the Panel to exercise its discretion to either refuse to grant subdivision consent or impose conditions to address significant risk from natural hazard or to provide legal and physical access.

54. Section 107 – Discharge permit restrictions

- 54.1 Under section 107 of the RMA, unless there are exceptional circumstances, or the discharge is temporary, or it is associated with maintenance work, the Panel cannot grant a discharge permit that would allow:

- a. A discharge of a contaminant or water into water; or
- b. A discharge of a contaminant onto or into land where that contaminant may then enter water;

if, after reasonable mixing, the contaminant or water discharged (either by itself or in combination with the same, similar, or other contaminants or water), is likely to give rise to all or any of the following effects in the receiving waters:

- c. The production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials.
- d. Any conspicuous change in the colour or visual clarity.
- e. Any emission of objectionable odour.

- f. The rendering of fresh water unsuitable for consumption by farm animals.
 - g. Any significant adverse effects on aquatic life.
- 54.2 As identified earlier in this Decision, the discharges proposed by the Applicant are either temporary or information provided to the Panel concludes that they will not result in any of the effects described in s107 of the RMA.

PART K: STATUTORY PURPOSES AND PART 2 OF THE RMA

55. Introduction

- 55.1 Clauses (9)(1)(g)(i) and (ii) of Schedule 6 of the FTCA requires resource consent applications to provide an assessment of the proposed activity against the purpose of the FTCA and the purpose and principles of the RMA.
- 55.2 Clause 31(1) of Schedule 6 of the FTCA requires that the Panel's consideration of the Application, in turn, must be subject to both the purpose and principles of the RMA and the purpose of the FTCA. The single exception to the direction to the Panel in regard to the principles of the RMA, relates to Te Tiriti o Waitangi, the Treaty of Waitangi. Clause 31(2) directs the Panel to apply section 6 of the FTCA instead of section 8 of the RMA, which the Panel have addressed earlier in this Decision.
- 55.3 The FTCA does not specify what weighting should be applied to or between the respective statutory purposes. Accordingly, and consistent with earlier expert consenting panel decisions under the FTCA,²⁸⁴ the Panel has applied equal weight to the purpose of each Act in its consideration of the Application.

56. The purpose and principles of the RMA

- 56.1 In accordance with clause 9 of Schedule 6 of the FTCA, the Applicant has assessed the Project against the purpose and principles of the RMA in its Application.²⁸⁵ The Panel has, in accordance with clause 31, carefully considered the Applicant's assessment and accepts this assessment.

57. The purpose of the FTCA

- 57.1 Section 4 of the FTCA sets out its purpose:

The purpose of this Act is to urgently promote employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.

- 57.2 In considering whether the Project will help to achieve the purpose of the FTCA, clause 9(1)(g)(iii) of Schedule 6 directs the Applicant

²⁸⁴ Such as the Kohimarama Comprehensive Care Retirement Village, Record of Decision of the Expert Consenting Panel under Schedule 6, clause 37 dated 21 May 2021 at [54].

²⁸⁵ Paras 9.1 to 9.17, AEE.

to assess the Project against the matters listed in section 19 of the Act.

- 57.3 The Applicant has comprehensively assessed the Project against the purpose of the FTCA in its Application and concluded that the Project accords with the purpose of the Act.²⁸⁶ The Panel agrees with this assessment. The Panel consider that the Project will create employment opportunities and stimulate the local economy by providing new workplaces and contributing to economic improvements within the community.

PART L: FINAL DECISION

58. Decision

- 58.1 The Panel has considered the Application and supporting information, the comments received on it and on the draft conditions, as well as the further information, peer review reports and joint witness statements provided.
- 58.2 Overall, and having had regard to the matters listed in clause 31 of Schedule 6 of the FTCA, the Panel determines that the resource consents sought in the Application can be granted subject to the conditions attached as **Appendices A** to this Decision.
- 58.3 The Panel wishes to thank the Applicant for its diligent engagement in the FTCA process, all commenters for their contributions, the expert and technical advisers to the Panel for their expertise and ready availability and the EPA staff for their assistance.
- 58.4 As required by clauses 38 and 45 of Schedule 6 of the FTCA, any person entitled to appeal this Decision is required to file a notice of appeal in the High Court within 15 working days after the day on which they are notified of this Decision.

Dated this 27th day of August 2024.

Theresa Le Bas.

Theresa Le Bas

Barrett

Anthony Tawhiwhi Barrett

Hegarty

Tim Hegarty

²⁸⁶ Paras 10.3 to 10.40, AEE.

APPENDIX A – CONDITIONS OF CONSENT