

BEFORE THE EXPERT PANEL UNDER THE FAST-TRACK APPROVALS ACT 2024

IN THE MATTER OF an application for resource consents by Manawa Energy Limited (**Manawa Energy**) for activities associated with the listed Kaimai Hydroelectric Power Scheme (**Kaimai HEPS**) Re-Consenting Project

MEMORANDUM OF COUNSEL - APPLICANT RESPONSE TO COMMENTS ON DRAFT CONDITIONS

FTAA-2502-1024 – 8 MAY 2026

Introduction

1. In accordance with Minute 9 of the Expert Panel, this Memorandum of Counsel, together with the attached tracked change version of conditions,¹ provides the Applicant's response to comments on draft conditions under s 70 of the Fast-track Approvals Act 2024 (**FTAA**).
2. Manawa Energy responds to the comments from Ngāti Hangarau/Ngamanawa, the Kaimai Canoe Club, and the Department of Conservation (**DOC**).

Ngāti Hangarau/Ngamanawa

3. Ngāti Hangarau/Ngamanawa has expressed concern about the proposed public access condition in light of Ngamanawa's land holdings in the upper catchment.
4. With respect to the upper catchment, we advise that while Manawa Energy owns some parcels of road, there is private land which must be traversed to

¹ The tracked change version of conditions retains the Expert Panel's changes to proposed conditions, and the changes proposed by Manawa Energy on 4 May 2026, and highlights with yellow highlighting the additional changes proposed by Manawa Energy.

access Lake Mangaonui and the Ngautuhua and Waitaia lodges. Access gates are privately owned and administered by other parties. Manawa Energy has operational access but does not control or administer public access.

5. In light of that, Manawa Energy proposes the following wording for condition 1.13:

Subject to any modifications reasonably necessary to meet operational and safety requirements, the consent holder must maintain the nature and scope of existing public access to the following parts of the Scheme over which the consent holder has control:

1. *Pedestrian access to and along the Ruahihi Canal; and*
2. *Pedestrian access to Lake Matariki.*

For the avoidance of doubt, this condition does not limit the consent holder from increasing or improving access.

6. We confirm that Manawa Energy and Ngāti Hangarau/Ngamanawa have engaged with respect to, and agree on, this proposed wording.

Kaimai Canoe Club

7. Manawa Energy accepts the changes which the Kaimai Canoe Club has proposed to condition 9.6, and proposed new condition 9.7.

DOC

8. Manawa Energy has no issue with and accepts the proposed conditions that the consent holder implements the certified Native Fish Passage Management Plan (**NFPMP**) and Freshwater Fish Salvage and Relocation Plans.²
9. Manawa Energy does not accept the other two changes which DOC has proposed to the NFPMP conditions, and asks the Expert Panel not to make these changes for the following reasons:

² Conditions 4.13, 10.5 and 13.5.

- (a) With respect to the proposed amendment to condition 13.2(b), while this amendment appears innocuous within that condition (as it relates to simply identifying risk presented by existing structures), the drafting is somewhat narrower than DOC's accompanying comments which clearly discuss and seek *monitoring* of injury or mortality. This issue was raised in DOC's substantive comments under s 53 of the FTAA, and responded to by Dr Greg Ryder.³ The Expert Panel's draft decision concludes that the that the scope of the NFMP is sufficient to capture the issues raised by DOC in their comments.⁴ Given the Expert Panel's findings, and to avoid any interpretation or implementation issues as to what the NFPMP must contain in this regard, the suggested amendment to condition 13.2(b) should not be accepted.
- (b) With respect to the proposed changes to condition 13.3, these have the potential effect of broadening the Bay of Plenty Regional Council's (**BOPRC's**) certification role and placing it in the position of having to exercise a discretionary approval. In particular, the conditions currently require BOPRC to certify that the NFPMP meets the conditions of the consent, after DOC has reviewed and commented on it. If Manawa Energy and DOC do not agree, and Manawa Energy must include a summary of DOC's comments and how they have been met, then BOPRC may be placed in the position of having to determine the reasonableness of Manawa Energy's position which is not the function of a certification role. It goes beyond certification, which in accordance with condition 1.6 is limited to ensuring that a plan meets the objective(s) set out in the relevant conditions and the information requirements of the relevant condition. This proposed change should not be accepted.

³ Statement of Evidence of Dr Greg Ryder dated 12 February 2026, at paragraphs 23-28.

⁴ Paragraph 131.

Conclusion

10. In addition to a tracked change version of conditions, we attach a clean set of conditions, reflecting the decision sought by Manawa Energy.

11. Manawa Energy thanks the Expert Panel for its attention throughout the process and looks forward to receiving the Expert Panel's final decision.

DATED at Tauranga this 8th day of May 2026

A handwritten signature in blue ink, appearing to read 'Vanessa Hamm', is written over a light blue grid background.

Vanessa Hamm / Bridget Bailey
Counsel for Manawa Energy Limited