

## **12. APPROVALS RELATING TO COMPLEX FRESHWATER FISHERIES ACTIVITIES**

### **12.1 COMPLEX FRESHWATER FISHERIES ACTIVITIES**

Schedule 9 of the Act sets out the information requirements for approvals required under Freshwater Fisheries Regulations. This includes:

#### **A description of the type of structure or fish facility:**

As set out in Section 3 and on the Plans contained in **Part C** of this substantive application, there are several instream structures proposed as part of the Project, including a water intake weir, culverts and fords. However, given the altitude of the Project area no fish are present in the waterbodies where instream structures are proposed. Given there are no fish present, the structures do not, and could not, impede fish passage.

#### **The dimensions, design and placement of the structure or fish facility:**

Section 3, the Plans contained in **Part C** and the relevant technical assessments contained in **Part B** of this report provides detail of the instream structures.

The final design of the in-stream structures (weir, fords and culverts) has not been finalised. However, the proposed conditions require that the detailed design of the structures is provided to the applicable consent authority for certification prior to works commencing.

Irrespective, these instream structures are not a barrier for fish as no fish are present at the altitudes where the instream structures are proposed.

#### **The water flows and operating regime:**

The water flows and operating regime, where details are available, are addressed in several technical reports including Water Take Assessment, Reservoir Report, Water Intake Report, Stormwater Report, and Roads & Crossings Assessment. However, as previously described, all of these information requirements will be addressed as part of detailed design.

#### **The freshwater species and values present (with particular focus on threatened, data-deficient, and at-risk species as defined in the New Zealand Threat Classification System):**

There are no freshwater fish present in the locations where the structures are proposed.

#### **The water quality and quantity in the surrounding habitat (at the proposed structure location, upstream and downstream):**

The water quality and quantity of the Rastus Burn are described in Wastewater Discharge Impact Assessment, and the Rastus Burn Wastewater Assessment, and the water quantity and quality of the Doolans Creek Right Branch are described in Water Take Assessment and the Doolans Freshwater Ecology Assessment.

**How the passage of fish will be provided for or impeded:**

The instream structures are not a barrier for fish as no fish are present at the altitudes where the instream structures are proposed to be located.

## 12.2 DECISION-MAKING CONSIDERATIONS FOR CONCESSIONS

Section 81 of the Act, and Clause 5 of Schedule 9, set out the matters for consideration by the panel on a concession application. These matters are summarised below:

- > A panel must, for each approval sought in a substantive application, decide whether to grant the approval (and set conditions) or decline the approval;<sup>605</sup>
- > The panel must consider the substantive application, and any advice, report comment or other information received by the panel,<sup>606</sup> including advice from administering agencies, local authorities, iwi authorities, treaty settlement entities, DOC and HNZPT;
- > A panel may only decline the approval in accordance with section 85 of the Act, which set out where panels *must* decline approvals and where panels *may* decline an approval – if the panel forms the view that:
  - > There are 1 or more adverse impacts in relation to the approval sought; and<sup>607</sup>
  - > Those adverse impacts are sufficiently significant to be out of proportion to the project’s regional or national benefits that the panel has considered, even after taking into account:<sup>608</sup>
    - > any conditions that the panel may set in relation to those adverse impacts; and<sup>609</sup>
    - > any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.<sup>610</sup>

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<sup>605</sup> Section 81(1) of the Act.

<sup>606</sup> Section 81(2) of the Act.

<sup>607</sup> Section 85(3)(a) of the Act.

<sup>608</sup> Section 85(3)(b) of the Act.

<sup>609</sup> Section 85(3)(b)(i) of the Act.

<sup>610</sup> Section 85(3)(b)(ii) of the Act.

- > A panel may not form the view that an adverse impact of a project is sufficiently significant to be out of proportion to the regional or national benefits solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider;
- > In its decision, the Panel must take into account, the following matters (giving greatest weight to the purpose of the Act);<sup>611</sup>
  - > The purpose of the Act; and
  - > The alignment of the proposed activity with best practice and the New Zealand Fish Passage Guidelines;
  - > How the proposed activity will manage risks to freshwater values or habitat, including prevention of access to or spread of invasive species;
  - > The availability and quality of the habitat upstream and downstream of the proposed activity; and
  - > The presence of threatened, data-deficient, or at-risk species under the New Zealand Threat Classification System in the vicinity of the proposed activity; and
  - > The advantages and disadvantages of providing fish passage upstream or downstream of the proposed activity.

In respect to these matters:

- > Sections 1.4 and 6.2 of this report addresses how the Project demonstrably achieves the purpose of the Act;
- > Consideration of the New Zealand Fish Passage Guidelines is not required given there are no fish present at the altitudes where the Project is located;
- > The effects of the Project – including risk to the environment – are addressed in Section 6 of this substantive application;
- > It is not anticipated that the instream structures will impact habitat quality and available upstream or downstream of the structures (noting again, no fish are present);
- > There are no fish present, such that consideration of the threat classification system is not required; and

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<sup>611</sup> Clause 5 of Schedule 9 of the Act.

- > Given there are no fish present, there are no advantages or disadvantages of providing fish passage.

In addition, it is noted that all persons performing and exercising functions, powers, and duties under the Act must act in a manner that is consistent with:<sup>612</sup>

- > The obligations arising under existing treaty settlements; and
- > Customary rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011.

Based on the assessment of the applicable treaty settlements and noting that the Project is not in a coastal environment, there are no obligations or rights that would preclude the granting of the approvals as sought by NZSki.

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<sup>612</sup> Section 81(7) of the Act.