

PART N: CONDITIONS

FTAA and General Requirements

[1] Section 81 of the FTAA provides that the Panel must set out any conditions to be imposed on the approvals. Section 83 of the FTAA must be complied with and provides:

83 Conditions must be no more onerous than necessary

When exercising a discretion to set a condition under this Act, the panel must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of this Act that confers the discretion.

OGNZL's Proposed Conditions

[2] On 28 July 2025 OGNZL provided a suite of conditions for all of the approvals sought. Those conditions took into account discussions between OGNZL, the three councils and DOC. Amendments to that 28 July 2025 suite of conditions were proposed by DOC in their s 51 reports and their s 53 comments. The three councils also suggested amendments to those conditions in their s 53 comments.

[3] HNZTP discussed conditions for the archaeological authority in their s 51 Report and in their s 53 comments they sought to retain OGNZL's preferred resource consent conditions.¹

[4] Various other commentators also provided comments on OGNZL's proposed conditions.

[5] OGNZL provided an updated suite of conditions for all the approvals sought as part of their 1 September 2025 response to comments received. On 13 November 2025 OGNZL provided clean copies of the Wharekirauponga Access Arrangement, Varied Favona Access Arrangement, Northern Area Concession, and the Willows Area Concession. The documents contained populated schedules for the standard conditions which had been agreed between OGNZL and DOC, and a placeholder for the Panel to populate the special conditions should we grant the approvals sought.

¹ HDC condition 89, TCDC condition 47 and WRC/HDC condition C29.

[6] On 20 November 2025 OGNZL proposed some administrative changes to the conditions, particularly with regard to the certification of management plans and the timeframes within which certain works and activities are to occur. OGNZL advised that the amendments had been discussed and agreed with the WRC and the HDC.

Panel's Assessment

[7] In Part E of this Decision the Panel addressed the conditions that should be imposed on the approvals sought, taking into account the requirements of s 83 which requires that the Panel must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of the FTAA that confers the discretion.

[8] The Panel also took into account the following FTAA requirements for conditions pertaining to particular approvals:

- (a) Schedule 5 clause 18 for resource consents under the RMA 1991;
- (b) Schedule 5 clause 19 for conditions on the resource consents dealing with standard freshwater fisheries activity;
- (c) Schedule 7 clauses 8 and 9 for the Northern Area Concession and Willows Area Concession sought under the Conservation Act 1987;
- (d) Schedule 7 clause 6 for the wildlife approval sought under the Wildlife Act 1953;
- (e) Schedule 8 clause 5 for the Archaeological Authority sought under the Heritage New Zealand Pouhere Taonga Act 2014;
- (f) Schedule 11 clause 9 for the Wharekurauponga Access Arrangement and the variation to the Favona Access Arrangement sought under the Crown Minerals Act 1991.

[9] The Panel notes that if a Treaty settlement or the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 is relevant to an approval then s 82 of the FTAA applies. That is not the case for the WNP.

[10] The Panel notes that under s 78 of the FTAA the appropriate Minister may specify conditions that a Panel may be required to impose. In this case the Minister of Conservation specified the imposition of Bond conditions that specify that initial bond, insurance, and fee values are set following independent valuation at OGNZL's cost. The specified conditions are included in the Wharekirauponga Access Arrangement.

[11] The Panel was cognisant of the fact that resource consent conditions must meet the requirements of s 108AA of the RMA.

[12] The Panel was also mindful that the underlying purpose of the conditions of a resource consent is to manage environmental effects by setting outcomes, requirements or limits to that activity, and how they are to be achieved.² Conditions must also be certain and enforceable.³

[13] A condition must also not delegate the making of any consenting or other arbitrary decision to any person, but may authorise a person to certify that a condition of consent has been met or complied with or otherwise settle a detail of that condition.⁴ Such authorisation is subject to the following:

- (a) the basis for any exercise of a power of certification must be clearly set out with the parameters for certification expressly stated in the relevant conditions;
- (b) a power of certification does not authorise the making of any waiver or sufferance or departure from a policy statement or plan except as expressly authorised under the Act (s 84 of the RMA); and
- (c) a power of certification does not authorise any change or cancellation of a condition except as expressly authorised under the Act (s 127 of the RMA).

² *Summerset Village (Lower Hutt) Ltd v Hutt City Council* [2020] MZEnvC 31 at [156].

³ *Bitumix Ltd v Mt Wellington Borough Council* [1979] 2 NZLR 57.

⁴ *Turner v Allison* (1970) 4 NZTPA 104.

[14] The Panel was mindful of these requirements when setting conditions relating to the certification of the various management plans that OGNZL proposed for the WNP.

Panel's Draft Conditions

[15] As required by s 70 of the FTAA, on 24 November 2025 we directed the EPA to provide our draft conditions to:

- (a) the parties listed in s 70(1);
- (b) the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development, as required by s 72(1); and
- (c) the Minister of Conservation for the Concessions and the Ministers of Conservation and Minister for Resources as required by s 77.

[16] Those draft conditions were accompanied by the Panel's draft Decision document.

Repetitive Conditions

[17] As noted earlier, OGNZL sought a range of approvals for the WNP including resource consents, Access Arrangements, Concessions and a Wildlife Act Authority. Each of the approvals necessarily contain a suite of conditions.

[18] In the conditions that were proposed by OGNZL many of the conditions in the Second Schedule of the Wharekirauponga Access Arrangement and Schedule 3 of the Northern Area Concession duplicated (in full or in part) conditions proposed for the resource consents, particularly the landuse consent pertaining to the Hauraki District Council.

[19] Similarly, many of the conditions proposed for the Second Schedule of the Wharekirauponga Access Arrangement duplicated those in Schedule 3 of the Northern Area Concession. Also, some of the conditions in Schedule 3 of the Wildlife Act Authority duplicated conditions in either HDC landuse consent, the Second Schedule of the Wharekirauponga Access Arrangement, or Schedule 3 of the Northern Area Concession.

[20] However, in some cases the precise wording of the duplicated conditions differed between the various approvals.

[21] The FTAA provides a single process for seeking a range of approvals which would otherwise have to be sought under different statutes and by different processes. The purpose of the FTAA is to facilitate the delivery of the development project that is the WNP. In our view duplicating conditions in the various approvals relating to the WNP is not an efficient or effective way of achieving that purpose.

[22] Duplicated conditions (particularly where there is inconsistent wording) creates uncertainty, increases the complexity of the approvals and potentially frustrates the delivery of the project. The Panel's view is that it is better to state the conditions once in a relevant approval and to cross-refer to those conditions in the other approvals.

[23] Consequently, the Panel adopted the following approach:

- (a) Rather than repeating (or duplicating) conditions in the Wharekirauponga Access Arrangement for matters that were adequately addressed in the resource consent conditions we have instead cross-referred to the relevant conditions in the HDC, TCDC and Combined HDC and WRC condition suites.
- (b) Rather than repeating (or duplicating) conditions in the Northern Area Concession that were adequately addressed in the conditions for the Wharekirauponga Access Arrangement, we have instead cross-referred to the Wharekirauponga Access Arrangement conditions. And
- (c) Rather than repeating (or duplicating) conditions in the Wildlife Act Authority we have cross-referred to either the HDC, TCDC and Combined HDC and WRC condition suites or the Wharekirauponga Access Arrangement conditions. In particular we referred to the relevant management and monitoring plans that will be certified under condition C5A of Schedule One: Conditions Common To The Hauraki District Council And Waikato Regional Council Resource Consents. Having made that amendment we saw no need to detail the contents of those management and monitoring plans in the Wildlife Act Approval.

[24] We see no particular issue with that approach because the HDC, TCDC and Combined HDC and WRC condition suites already contained conditions that referred to the Department of Conservation directly and to the matters addressed by the Concessions and Access Arrangements. We understand that OGNZL had consulted extensively with Departmental officials regarding the wording of those conditions.

[25] We acknowledge that the conditions in the HDC, TCDC and Combined HDC and WRC condition suites may be reviewed by the respective councils under s 128 of the RMA. Accordingly, we have amended the s 128 review conditions in those consents to require that when undertaking any review of conditions that are cross-referred to in the Wharekirauponga Access Arrangement; Favona Access Arrangement; Northern Area Concession; or Willows Area Concession the respective council(s) will invite the Department of Conservation to comment on the proposed wording of any amended conditions and take into account any comments received when finalising the wording of any amended conditions.

Tangata whenua consultation outcomes

[26] As we noted in Parts D and E2, the Panel undertook direct consultation with four iwi authorities, including those who lodged comments on the substantive application, namely Ngāti Porou ki Hauraki (NPKH), Ngāti Pū, Ngāti Tara Tokanui, Ngāti Koi; and Ngati Hako (Hako Tūpuna Trust). Following that consultation, the first three of those entities provided us with additional comments on conditions that primarily addressed the role of the proposed Iwi Advisory Group (IAG) in relation to individual iwi entities.

[27] NPKH wished to be referred to in conditions and we have done so. They queried how many tangata whenua representatives would be on the IAG. The conditions are silent on that point and so we see no issue with a particular iwi having more than one representative attend IAG meetings. As we noted earlier the IAG will have input to both management plans and monitoring programmes, as was sought by NPKH. OGNZL will meet the reasonable costs of all appointed iwi representatives. As part of our consultation process NPKH provided detailed suggestions for other conditions, but we deferred our consideration of those suggestions until comments were received from all parties and OGNZL had the opportunity to respond to all comments.

[28] Ngāti Pū sought “binding decision-making authority”, but that is not appropriate here because the approvals for the WNP must be exercised by OGNZL (as consent holder). OGNZL are also ultimately responsible for the contents of management plans and monitoring programmes, although the IAG will have input to those processes. Ngāti Pū sought a specific role in developing the Cultural Practices Plan and Mātauranga Māori Monitoring Programme. However, input will necessarily come from the IAG to ensure the voices of all tangata whenua can be heard.

[29] As part of our consultation with Ngāti Tara Tokanui/Ngāti Koi we were supplied a list of proposed conditions that conferred specific roles for Ngāti Tara Tokanui/Ngāti Koi as distinct from the IAG. As with NPKH, we deferred our consideration of requests to amend conditions pending the receipt of comments from all parties and OGNZL’s responses. Ngāti Tara Tokanui/Ngāti Koi also sought a specific role in developing the Cultural Practices Plan and Mātauranga Māori Monitoring Programme. However, as we noted in relation to Ngāti Pū, such input will necessarily come from the IAG to ensure the voices of all tangata whenua can be heard.

[30] Comments on the Panel’s Draft Conditions

Note to readers – this is a placeholder section pending the receipt of comments on draft conditions

[31] TBC

OGNZL’s Response to Comments on the Panel’s Draft Conditions

Note to readers – this is a placeholder section pending the receipt of OGNZL’s response to comments on draft conditions

[32] TBC

Panel’s Response to Comments on the Draft Conditions

Note to readers – this is a placeholder section pending the Panel’s assessment of the comments and OGNZL’s response

[33] TBC