

## Your Comment on the Kaimai Hydro-Electric Power Scheme- FTAA-2502-1024 s70 comments on draft conditions from Department of Conservation

Please include all the contact details listed below with your comments and indicate whether you can receive further communications from us by email at [substantive@fastrack.govt.nz](mailto:substantive@fastrack.govt.nz)

1. Contact Details			
Please ensure that you have authority to comment on the application on behalf of those named on this form.			
Organisation name (if relevant)	Department of Conservation		
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Email	██		

<input checked="" type="checkbox"/>	I can receive emails and my email address is correct	<input type="checkbox"/>	I cannot receive emails and my postal address is correct
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Please provide your comments below, include additional pages as needed.

Please find comments attached



Jenni Fitzgerald  
Fast-Track Applications Manager

Acting pursuant to delegated authority on behalf of the Director-General of Conservation.

Date: 4/05/2026

Note: A copy of the Instrument of Delegation may be inspected at the Director-General's office at Conservation House Whare Kaupapa Atawhai, 18/32 Manners Street, Wellington 6011

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## Comments on draft conditions for a fast-track consenting application

### Fast-track Approvals Act 2024 section 70

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**To:** The Expert Panel

**From:** Department of Conservation

**Regarding fast-track project:** Kaimai HEPS

**Fast track Reference:** FTAA-2502-1024

### Comments on draft conditions of resource consent

1. Thank you for the opportunity to provide further comment on the draft conditions (dated 24 April) for the Kaimai Hydro Electric Power Scheme reconsenting. The Department of Conservation (DOC/the Department) has undertaken a review of the draft consent conditions and Minute 9 provided by the Expert Panel.
2. Overall, the Department is supportive of the amendments made to the proposed conditions by the Applicant and the Expert Panel. In particular, this includes:
  - 2.1 Condition 4.10 and 10.4 requiring a Freshwater Fish Salvage and Relocation Plan during dewatering (at levels lower than 0.2m or complete dewatering). This responds to the Department's s53 comments and recommendation that a standard fish salvage and relocation plan condition is included to ensure that effects on freshwater fish are appropriately managed during maintenance that results in dewatering of the canal.
  - 2.2 The amendment to Condition 1.13 to include '(a)...results of monitoring...' as a trigger for any review that may be required under section 128 of the RMA.
  - 2.3 Condition 12.4 and requirement to provide detail to Council on how the Consent Holder is responding to any recommendations of the Sediment Monitoring Plan. The condition ensures that any recommendations of the plan are implemented, if the findings of the monitoring conclude that there are sediment or erosion effects caused by the continued operation of the Scheme. The Department supports the further amendments proposed by Bay of Plenty Regional Council (proposed Condition 12.4 (b) and (c)) to ensure Council oversight and enforceability.
  - 2.4 The inclusion of a requirement to prepare an annual report to Council that presents the results of monitoring/recording of passive fish passage and salvage and comments on the efficacy of the measures and programmes implemented as a

result of the Native Fish Passage Management Plan (Condition 13.4). This has responded to the Department's comments on the need for a monitoring condition.

3. DOC suggests three further changes to Condition 13 (Native Fish Passage Management Plan (NFPMP)) which are attached as tracked changes in Appendix 1 (in red text and highlighted green).

### 3.1 Condition 13.2(b) Injury or mortality monitoring

Based on the expert advice provided by Dr Ryder in his response to the s53 comments<sup>1</sup> and the Department's s53 comments at paragraph 3.13 in relation to tuna, it is recommended that this condition is more explicit and that the NFPMP specifically addresses and monitors existing impediments of the Scheme including '*any risk of injury or mortality*' to native fish. This aligns with the intention of the NFPMP and comments by Dr Ryder that the draft management plan appropriately addresses the *safety* of large tuna during downstream passage. Adding these words clarifies that the consent holder should be cognisant of and monitor for any downstream impacts where large tuna have navigated weirs under spilling conditions but may have been injured or killed as a result. Tuna (longfin eel) are categorised as At-Risk Declining, and a taonga species, and the fish most at risk from this kind of injury are mature, large females, therefore it is appropriate for a precautionary approach be taken to their management. If any injury or mortality is identified as a result of monitoring, then the management plan can respond and adapt to this appropriately, as is proposed by the Applicant, within the NFPMP.

### 3.2 Condition 13.3 – Department Review of the Native Fish Passage Management Plan (NFPMP)

It is acknowledged that the Consent Holder has included an opportunity for DOC to review the draft NFPMP in Condition 13.3. However, at present the condition is worded in a way that is ineffectual. For example, DOC could provide comments and they could be left sitting in the consent holder's inbox with no further action taken or required – that would be compliant with the current wording. DOC recommends that wording is added to Condition 13.3 to close off the action and give effect to what is intended.

The suggested wording of the condition within the Department's s53 comments included the requirement to record comments received from DOC and that a response from the Consent Holder on how feedback had been incorporated be submitted to the Council. In support of DOC's proposed wording, the Environment Court has emphasised the importance of clarity, efficacy and the enforceability of conditions in numerous judgements.<sup>2</sup>

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<sup>1</sup> Response to Invited comments 12 Feb 2026, Statement of Evidence of Greg Ryder, Aquatic Ecology, pg 8-9

<sup>2</sup> See for example *Port of Tauranga v Bay of Plenty Regional Council* [2023] NZEnvC 270, [26]

DOC has considered the comments from the Applicant in their response to DOC's proposed wording<sup>3</sup>, however the intention of this suggested condition wording is to ensure that there is transparency of this action taking place as part of the process of developing the final NFPMP. Further it is to provide technical input and peer review of the draft management plan against nationally adopted best practice and from specialist expertise. DOC has a statutory responsibility for the conservation of indigenous freshwater fish,<sup>4</sup> is a joint custodian and technical contributor to the NZ Fish Passage Guidelines, alongside NIWA and the Ministry for the Environment (MFE), and regularly provides expertise and advice on fish passage. DOC has experts with considerable international and national expertise in the Freshwater Species Team that can add real value to the management of indigenous fish species, such as tuna, impacted by this activity.

As noted in the s53 comments the intention is not to undermine the certification process but to assist in the process of developing the NFPMP. It is acknowledged that the role of certification lies solely with the Council, and the conditions already specify what that certification process involves. There is no opportunity for a 'dispute' to occur (as feared by the Applicant) if the wording proposed by DOC is adopted – the proposed wording simply does not provide for that to occur.

### 3.3 New Conditions 4.13, 10.5 and 13.5

For consistency in the condition requirements (i.e. Condition 12.3) and to ensure Consent Holder compliance and Council enforceability, it is recommended that a condition is included that the Consent Holder *implements* the certified NFPMP and Freshwater Fish Salvage and Relocation Plans. In support of this point, and to repeat the comment above, the Environment Court has emphasised the importance of clarity, efficacy and the enforceability of conditions in numerous judgements.

4. Overall, it is considered that with the amendments proposed and shown in Appendix 1, the conditions provide certainty and ensure that the effects of the Scheme will be managed appropriately.
5. Thank you for the opportunity to comment on the draft conditions.

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<sup>3</sup> Response to Invited comments, 12 Feb 2026, Statement of Evidence of Richard Turner, Planning, pg 20

<sup>4</sup> See Part 5B Freshwater Fisheries in Conservation Act 1987, and s 26ZHB in particular.