Fast-track

Te Kāwanatanga o Aotearoa
New Zealand Government

Your Comment on the Alternative to the Brynderwyn Hills project application

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

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
First name	Jenny
Last name	Clafferty
Postal address	PO Box 10420, Wellington 6140
Mobile phone	[redacted]
Email	[redacted]

2. We will email you draft conditions of consent for your comment			
X	I can receive emails and my email address is correct	☐	I cannot receive emails and my postal address is correct

3. Please provide your comments on this application
Please find comments attached



Linda Kirk
Fast Track Applications Manager

Acting pursuant to delegated authority on behalf of the Director-General of Conservation.
Date: 20/10/2026

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

Comments on a fast-track consenting application

Fast-track Approvals Act 2024 section 53

To: The Expert Panel

From: Department of Conservation

Regarding fast-track project: **Alternative to the Brynderwyn Hills**

Fast track Reference: FTAA-2603-1178

1. Introduction

The application and the Department's role in this process

1.1. New Zealand Transport Agency Waka Kotahi (NZTA/ the Applicant) has applied for approval under the Fast-track Approvals Act 2024 for the construction of the 'Brynderwyn Hills section' of the 'Alternative to the Brynderwyn Hills' portion of the Northland Corridor Project. The Northland Corridor Project being a new section of State Highway 1 intended to provide an efficient and resilient connection between Whangārei and Auckland.

1.2. The 'Alternative to the Brynderwyn Hills' is listed in Schedule 2 of the Fast Track Approvals Act 2024 (FTAA) and is one of three Roads of National Significance that make up the Northland Corridor Project (Northland Corridor).

1.3. The Brynderwyn Hills section is herein referred to as 'the project'.

1.4. The project involves the construction, operation and maintenance of a four-lane, median-divided highway and associated infrastructure from Pukekararo to Waipū, across the Brynderwyn Hills. Among other approvals, a designation is sought for the Project. An indicative road design and alignment have been provided to represent a design that *could* be constructed within that designation (the indicative alignment). The approval sought includes approval to dispose of 6,000,000m^3 of spoil within the proposed designation corridor, in locations to be determined by the approval holder at the detailed design stage.

1.5. The project is *not* located on any public conservation land.

1.6. The Director-General of Conservation (D-G, also referred to below as the Department) was directed as administering agency in respect of the wildlife approval application to provide a report to the Panel under section 51 of the FTAA. That report (including detailed technical reports) was provided to the Panel on 29 July 2026.

1.7. The Department has been invited under section 53 of the FTAA to comment on the substantive application. The Applicant seeks designations, resource consents, wildlife approvals and archaeological authorities under the FTAA.[1]

1.8. As is further discussed below, processing of the application was suspended by the EPA on the Applicant's request, effective from 11.59pm on 11 August 2026. In accordance with Minute 12, processing of the application resumed just prior to midnight yesterday, 19 October 2026.

1.9. As the Panel suspension was put in place just before midnight on the eve of the deadline for section 53 comments, the Department's comments (including technical reports) were in close to final form.

1.10. The Applicant is now proposing various amendments to its earlier effects management approach. The Department's overarching comments and its technical advisers' reports have therefore needed to be updated. For some of the Department's technical advisers, this has been done via amendments to their originally prepared report (11 August 2026), and for others, the response to the Applicant's updates is provided as an addendum to the 11 August report.

1.11. The reports and addenda prepared by the Department's technical advisers are appended to this report, and form part of the Department's section 53 comments:

- **Appendix A (and addendum)**: Freshwater ecology - Dr Amber McEwan.
- **Appendix B**: Terrestrial and wetland vegetation – Dr Timothy Martin.
- **Appendix C:** Frogs, lizards and avifauna – Dr Rhys Burns.
- **Appendix D:** Bats - Ms Tertia Thurley.
- **Appendix E (and addendum):** Invertebrates - Dr Jamie Stavert (noting that Dr Stavert's primary statement of advice was also appended to, and formed part of, the Department's section 51 report).
- **Appendix F:** Dr Richard Storey – Freshwater offsetting.
- **Appendix G (and addendum):** Mr Nick Goldwater - Terrestrial and wetland offsetting.
- **Appendix H:** Ms Leah McEnhill – Resource Management Planning.

1.12. These comments should be read in conjunction with the Department's s51 FTAA wildlife approval report (including technical reports for each species), dated 29 July 2026 as mentioned above.

1.13. Legal Submissions on behalf of the Department are also appended to and form part of the Department's comments **(Appendix I)**.

[1] These comments do not discuss the application for archaeological authorities.

1.14. A legal memorandum is also filed separately to the Department's comments, seeking directions on procedural matters relating to next steps, now that resumption of processing the application has resumed.

1.15. The Department seeks an opportunity for further engagement in the Panel-led process, in accordance with the requirement that the Panel determine the application in a just, as well as timely, manner. As outlined in its 7 October 2026 memo to the Panel, the Applicant will be filing, via its section 55 response, a substantial amount of new information arising from further technical work and the parties' good faith engagement during the suspension.

1.16. The Department is concerned that without directions to engage further or a request for further information (RFI) by the Panel to it, the Department will have no opportunity to provide expert technical advice or to the Panel on this new information.

1.17. As matters currently stand, the Department's only formal opportunity to input into the process from here relates solely to commenting on the Panel's draft conditions issued with its draft decision. Yet the bulk of the Applicant's new material is not being provided until after the Department's opportunity to comment has been exhausted.

Engagement with the Applicant during the Panel suspension

1.18. The Department has engaged constructively and in good faith with the Applicant during the 10 week suspension, and narrowed some issues where possible.

1.19. That engagement included meetings between members of the executive and technical teams for both the Applicant and the Department, technical discussions involving relevant specialists, and the exchange of information and views on aspects of the application and proposed measures for managing effects.

1.20. This included the Department setting out its key concerns with the project and comments on the proposed conditions, and providing drafts of the Department's section 53 technical reports to the Applicant on 14 August 2026.

1.21. As well as attending various meetings and providing written feedback, the Department's Hochstetter's frog expert, Dr Burns, also spent several days in Northland with the Applicant's ecologist and contractors visiting further potential Hochstetter's frog release sites.

1.22. The four documents that the Applicant has shared with the Department on an open basis are attached as **Appendix J** "Documents forming the Applicant's amended effects management package". These include:

- A2BH – Ecological effects mitigation table 28 August 2026;
- NC – A2BH – Proposed Frog Management Package – DRAFT v3, dated 28 August 2026;

- Brynderwyns Hills Alternative Project – Indicative Compensation Approach, dated 7 October 2026 (and subsequent email from NZTA of 8 October 2026 with frog compensation calculation); and
- NZTA's Proposed Amendments to Mitigation Package Since Lodgement, provided to the Department on 9 October 2026.

1.23. The Department understands from the Applicant that its current updated proposed amended effects management package now comprises what is set out in the Applicant's four documents listed above, together with the proposed conditions and draft Ecological Management Plan as at 13 July 2026.

1.24. The Applicant also provided further Aquatic Survey Information Maps and Terrestrial Survey Information Maps to the Department on 7 October 2026. The intended purpose of these maps was to present existing information contained in the application documents in an easier to understand and combined way. They are also **attached**.

1.25. Updates to the Applicant's proposed conditions, and finalised locations for further Hochstetter's frogs release sites and assessments of their suitability, have yet to be shared by the Applicant.

1.26. There is also outstanding information on spoil management and alternative methods for stream crossings that the Department requested during the suspension, but which the Applicant has indicated will be provided as part of its section 55 responses to comments.[2]

Engagement with Treaty Partners during the Panel suspension

1.27. The Department's section 51 report outlines Treaty of Waitangi considerations. These comments apply equally to the RMA approvals sought for the project.

1.28. The Department understands from the Applicant that it has engaged with hapū over the period of the suspension. The Applicant has undertaken this engagement separately to the engagement it undertook with the Department. The Department has been clear in its engagement with the Applicant over the period of the suspension that the views of iwi will be an important consideration.

1.29. Where it was able to, the Department shared with its Treaty partners the feedback that the Department was sharing with the Applicant over the period of the Panel suspension, along with an invitation to discuss, should they wish. The Department also met with Te Parawhau

[2] This includes information stated as facts in the Opening Legal Submissions on behalf of the Applicant at [30.3]. This information has not been provided to the Panel, and is inconsistent with later advice provided in correspondence from the Application during the Panel suspension (ie whether the cost of bridging the Piroa main stem versus culverting and filling it would add another $200-250M to the project cost, or whether it would add a further $150-200M as later advised by the Applicant. It is not known if this matter is going to be corrected or clarified as part of the Applicant's section 55 response.

hapū at their request on 24 September 2026. Te Parawhau hapū expressed that their significant concerns with the Application remain.

Potential for further engagement with the Applicant

1.30. In addition to the matters outlined above, the Department understands that the Applicant may seek to directly engage further on a range of issues identified by the Department, including the management of adverse effects.

1.31. The Department is supportive of ongoing engagement acknowledging that productive engagement on issues such as effects management needs to be supported by additional information (as outlined below) and adequate time provision to work together with a view to achieving more appropriate conservation outcomes.

1.32. The Department also strongly suggests that any further engagement with the Applicant is also undertaken together with our Treaty Partners.

2. Overview of the Department of Conservation's comments on the application

The Department's key concerns

2.1. Notwithstanding the substantial engagement and progress made to narrow issues during the suspension, the Department retains significant concerns regarding the project. The Department remains of the view that, at this point, the Panel does not have adequate information to properly consider and determine the extent of the biodiversity values affected, nor the extent of the adverse effects on those values. In particular:

a) Based on the information that is currently available, the Department's technical experts have identified several areas where they consider the values and effects have, or have likely been, underrepresented and areas where the proposed mitigation is inadequate and inconsistent with relevant guidelines and standard practice. This includes the underestimation of adverse effects and/or overestimation of the effectiveness of proposed mitigation measures to address effects on long-tailed bats, wetlands, streams, and indigenous vegetation, avifauna, snails and lizards.

b) The Applicant's approach of seeking approvals for an "envelope of effects", leaving the detailed design until after the approvals are granted, and the long lead time sought for construction (20 years)[3] combined with the above, means that adverse effects have not and cannot be quantified.

[3] The Department remains unclear as to why the Applicant seeks a 20 year lapse period on the approvals, given the Project is urgently necessary and NZTA has been directed to deliver the statutory approvals required for construction at pace: Memorandum of counsel on behalf of the Applicant dated 7 October 2026 at [8.1].

c) The proposed measures to address adverse effects, including those developed and put forward by the Applicant during the Panel suspension, are considered inadequate, and in some cases likely unachievable, leading to uncertain outcomes. The Department does not consider that the measures proposed to address adverse effects on protected wildlife would ensure the project is consistent with the Wildlife Act. That inconsistency, alongside the significant residual adverse effects of the project on protected wildlife, are matters that must be taken into account in deciding whether or not to grant the Wildlife Approval pursuant to ss 81(2) and 85 of the FTAA.

d) The Applicant's approach to effects management does not adhere to the effects management hierarchy as directed by the National Policy Statement for Indigenous Biodiversity 2023 (NPS-IB) and the National Policy Statement for Freshwater Management 2020 (NPS-FM), and is inconsistent with them due to this and in several other respects. This results in significant adverse impacts that should be weighed against the benefits under section 85 of the Act.

e) The Applicant's proposed conditions are based on incomplete information, are considered inadequate, do not set clear outcomes, and leave matters that should be determined by the Panel as part of this process to later processes or left entirely to the consent holder.

f) The project will result in the loss of irreplaceable Hochstetter's frog habitat, and is likely to result in significant adverse effects on Hochstetter's frogs, in particular the Brynderwyn Hills population of the "Northland clade" of Hochstetter's frogs.[4,5] The Department's expert, Dr Burns, has estimated[6] that approximately 40,000 frogs may be adversely affected through complete loss of habitat, fragmentation effects, and incidental killing. The Applicant has acknowledged during the Panel suspension that an estimated 22,000 Hochstetter's frogs would be directly affected by the project works.

Further avoidance and minimisation of adverse effects is appropriate

2.2. The proposed road and associated works are proposed within important Hochstetter's frog habitat. The Applicant says it must not only construct the road in this important habitat, but

[4] National Conservation Threat Status of 'At Risk – Declining - Burns RJ, Armstrong DP, Bell BD, Haigh A, Germano J, Rawlence NJ, Thurley T, Hitchmough RA, Makan T Michel P. 2025. Conservation status of amphibians in Aotearoa New Zealand, 2024. New Zealand Threat Classification Series 44. Department of Conservation, Wellington. 19 p.

[5] Auckland Regional Conservation Status of Regionally Declining - Melzer S, Hitchmough R, Van Winkel D, Wedding C, Chapman S, Rixon M, Moreno V, Germano JM. 2022. Conservation status of amphibian species in Tāmaki Makaurau/Auckland. Auckland Council technical report 2022/4, Auckland.

[6] Based on the data provided by the Applicant in its assessment reports.

that it should be able to deposit the spoil produced from the cuts required to form the carriageway into this habitat, being within "Earthworks Zone 2".[7]

2.3. The Applicant's "flexible" approach also means that it is impossible to tell how much fill and spoil will be deposited into important freshwater, wetland, Hochstetter's frogs and Kauri snail habitat. As a result, the loss cannot be quantified.

2.4. The Department considers that greater emphasis on effects management through avoidance and minimisation is needed if this project is to go ahead. This relates in particular to improvements that can be made (i.e. which the Department understands are possible) to optimise opportunities to avoid rare endemic species and their habitats. This includes, for example, minimising cuts, fill and spoil deposition in Hochstetter's frog habitat and selecting options that minimise the effects (including infilling of streams). These issues have been raised with the Applicant but remain unaddressed in the Applicant's currently proposed effects management package.

2.5. There is no information currently before the Panel explaining why the excess fill that is not required to form the carriageway in Earthworks Zone 2, or the unusable spoil, cannot be transported and deposited in another earthworks zone rather than being deposited into the ecologically important and sensitive gullies and streams which are Hochstetter's frog (and other native species) habitat. In fact, Volume A of the application[8] records that a haul road will connect Zones 1 and 2 to facilitate the movement of material north.

2.6. The Department has sought to understand from the Applicant during the Panel suspension if (a) the extent of spoil proposed to be deposited in Hochstetter's frog habitat (gullies and streams) could be reduced, and (b) what the implications would be of adopting different options from those currently indicated for stream crossings. This could include bridges and viaducts instead of culverts, filling and realignments on spoil.

2.7. For the latter, the Applicant has indicated that it will be providing information on this in its section 55 response.

2.8. Putting to one side the effects of the extensive areas of cut and fill proposed, in respect of spoil deposition, the Applicant has advised that it *is* possible to adopt different spoil disposal methods, including those suggested by the Department during the Panel suspension, however, different methods come at different costs. The Applicant has also advised that if this matter is raised by the Department through its section 53 comments, the Applicant will respond appropriately to the Panel.[9] Further information on this issue from the Applicant is therefore anticipated. Better spoil management has the potential to

[7] See Application Volume A, Figure 8, page 34.

[8] Volume A of the application 4.4.4 Table 5.

[9] Email from [redacted] (Applicant) to [redacted] (DOC), 9 October 2026.

reduce the adverse effects on Hochstetter's frogs and their habitat, but the effects of the extensive areas of cut and fill would still need to be addressed.

2.9. It is unclear if the Applicant's key reason for not avoiding and minimising the destruction of Hochstetter's frog habitat is financial cost, but the Department considers that the cost (both financial and ecological) of *not* adopting further possible avoidance and minimisation methods requires clarity/further consideration. More practically, the financial costs include the significant costs associated with capture and translocation, release site procurement, enhancement and protection, outcome monitoring, and offsetting and compensation as proposed.

2.10. Hochstetter's frog is a taonga species and has intrinsic value. While it is not possible to simply put a cost on such species, they carry significant value to New Zealand and Māori in particular. Legally, this is supported by the protective purpose of the Wildlife Act.

2.11. The Applicant's Terrestrial AEE in Table 26 (page 45) recommends measures to reduce the level of effect on Hochstetter's frog habitat from 'Very high' to 'High', which even with the measures in place, would be a significant adverse effect as described in the EIANZ EcIA guidelines.[10] The Applicant's terrestrial ecologist has recommended minimisation of adverse effects on Hochstetter's frogs through detailed design and construction methodology.

2.12. The Application (Volume B, page 64) records that the Applicant has adopted the specialist recommendations and that conditions are proposed to that effect, including "Minimisation of native vegetation and native fauna species habitat loss through Detailed Design and construction methodology".

2.13. However, this is not reflected in the proposed conditions, nor the Applicant's most recent approach to effects management as presented to the Department. The Applicant's approach remains as originally – i.e. that it is able to deposit fill and spoil anywhere within the designation corridor, subject only to avoiding the relatively modest areas identified in the "Avoid Areas" and the "Avoid Areas except for Ecological works" maps linked to the proposed designation conditions, subject to one further area of Kahikatea forest being added to the Avoid Areas, and an unknown buffer being applied.

2.14. The Department considers that the Applicant should be required to commit to the undertaking in its application, to minimise habitat loss through detailed design and construction methodology, and this be reflected in amendments to the proposed conditions. The Department considers this should include a requirement that the final alignment be designed to minimise spoil generation and the need for fill to be deposited in Earthworks Zone 2. It should also require that spoil *not* be deposited in Hochstetter's frog

[10] As described in the EIANZ EcIA guidelines used for assessing the effects by the Applicant's terrestrial ecologist. See EIANZ Guidelines, pages 84, 85.

habitat in Earthworks Zone 2 by requiring it to be transported out of that zone and deposited elsewhere.

2.15. If there are good reasons why these measures should not be required, the Department requests that this information be provided by the Applicant and that opportunity be made available to the Department and other interested parties to comment on it.

Significant uncertainty regarding how successful the translocation of Hochstetter's frogs would be – particularly at this scale and in this terrain

2.16. The Department remains concerned that there is likely to be significant adverse effects on Hochstetter's frogs through many (or potentially most) being killed or otherwise affected by the project due the combination of:

a) The location of the designation corridor and indicative alignment in the Brynderwyn Hills ONL, being an area of high quality habitat for, and large numbers of, Hochstetter's frogs (described by the Applicant as “Earthworks Zone 2”);[11]

b) The effects management approach currently proposed by the Applicant, which relies heavily on the successful capture and translocation of an estimated 22,000 Hochstetter's frogs;

c) The practical difficulties the Applicant will face in attempting to capture and translocate such a large number of frogs given the time it would take and the difficult terrain in which the frogs are located; and

d) The absence of documented success of Hochstetter's frog translocations undertaken to date.

2.17. The Department therefore does not share the Applicant’s confidence that it can successfully capture and translocate all directly affected Hochstetter's frogs out of harm’s way, as it has said it will.

2.18. Based on the published results from Hochstetter's frogs translocation work undertaken in much smaller numbers for the NZTA Brynderwyn Hills Recovery Project in 2023,[12] Dr Burns has calculated that it would require 32,890 person-hours (or 17.9 person-years[13]) to salvage the large number of frogs the Applicant is proposing to translocate.[14]

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[11] See Application Volume A, Figure 8, page 34.

[12] NZTA Brynderwyn Hills Recovery Project works undertaken in 2023 to repair damage to SH1 resulting from Cyclone Gabrielle. The WSP report was proactively released by NZTA under the OIA, and available at: Brynderwyns Frog survey and Salvage report.

[13] Assuming a full-time worker works 1,840 working hours per year.

[14] See Statement of Advice of Dr Rhys Burns to the Director-General, paragraph 44. The 32,890 person-hours estimate is qualified, in that in the Brynderwyn ONL, frog densities are much higher than those of the salvage areas reported on in the 2024 WSP report. There are complex streams such as waterfalls which would be slow to access and safely search, so this figure could even be an under-estimate.

2.19. The 2024 WSP Brynderwyns Frog survey and Salvage report referenced above sets out the preliminary survey results taken a year after the translocation project there which involved the capture and release of 150 frogs into streams where there were already resident frogs. The report:[15]

- Notes the results of the preliminary relocation surveys yielded little information on the success or otherwise of the relocation programme, as individuals were not able to be distinguished from resident frogs.
- Notes that verification of relocation success could not be drawn from numerical comparisons between pre and preliminary post relocation surveys due to a number of factors;
- Records for each stream, the number of frogs detected during pre-relocation surveys, the number of frogs relocated, and the number of frogs detected in preliminary post relocation surveys (Table 7 and Appendix A to the report).

2.20. The figures in Table 7 of the WSP report, while noted as inconclusive, show that for two of the five stream lengths surveyed, frogs were relocated outside the pre-relocation site due to the amount of suitable habitat relative to the number of frogs that required relocation, to avoid crowding.

2.21. For the four sections of streams surveyed for relocated frogs both pre and post relocation (as per Table 7):

- One section of stream (F) had 16 frogs pre-relocation, 23 frogs were relocated there, and 29 frogs were found post-relocation;
- One section of stream (G) had 56 frogs pre-relocation, 22 frogs were relocated there, and 39 frogs were found post-relocation;
- One section of stream (H) had 11 frogs pre-relocation, 25 frogs were relocated there, and 20 frogs were found post-relocation; and
- One section of stream (J) had 23 frogs pre-relocation, 2 frogs were relocated there, and 21 frogs were found post-relocation.

2.22. In terms of the totals for frogs, pre-relocation and post-relocation for those four sections of streams, Table 7 shows:

- 106 frogs were found in the sections of streams in the pre-relocation survey[16];

[15] WSP Report, section 3.3.2.

[16] One section of stream (D) was not surveyed pre-relocation, so the total numbers of frogs found pre-relocation may have been more than the total recorded (i.e. by the number of frogs present but treated as zero for Stream D).

- 72 frogs were relocated into those sections of streams that were surveyed[17]; and
- 109 frogs were found in the sections of streams post-relocation.

2.23. In summary, 106 frogs were present pre-relocation, 72 frogs were relocated into the streams subject to surveys, and 109 frogs were found post-relocation. Whilst acknowledged that these results are not conclusive, nevertheless, the Department does not find these results encouraging, and it highlights the difficulty of the proposed method providing any certainty of success. The Department understands that a further post-relocation study has been completed, but the results are yet to be published.

2.24. As Dr Burns has highlighted in his statement of advice, he has significant reservations about the likelihood of successful capture and translocation of Hochstetter's frogs. As he notes:[18]

> *The success of Hochstetter frog salvage and release operations is highly uncertain. There has been no documented salvage and release of Hochstetter's frogs into a waterway where the survival of individual frogs past a few days is known. The best documented salvage and releases of Hochstetter's frogs have all occurred in the Brynderwyn Ranges, and all have been associated with improvements on SH1 by NZTA. To undertake this on such a large scale with no staging over time to test the suitability of release sites or using adaptive management approaches, is placing this population at risk of considerable losses – in the order of thousands to perhaps tens of thousands of Hochstetter's frogs*.

Compensation to address residual effects on Hochstetter's frogs

2.25. The Applicant is proposing that residual effects on Hochstetter's frogs following mitigation measures be addressed through compensation. The accompanying statements of advice of Dr Burns and Mr Goldwater address the Applicant's compensation proposal in detail.

2.26. Mr Goldwater concludes that the measures in the Indicative Compensation Approach including legal protection, pest control, and fencing of existing frog habitat, at most, may go some way towards compensating for habitat effects, and only if they are triggered. They are not designed to replace the frogs lost during construction and relocation, and the payment mechanism does not account for them.

[17] 150 Hochstetter's frogs were relocated, but 2 streams were not surveyed pre or post relocation.

[18] At paragraph 58.

2.27. Mr Goldwater and Ms McEnhill have also assessed the Applicant's proposed effects management package against the NPS-IB[19]. His conclusion is that what is currently proposed does not meet the requirements of the NPS-IB in a number of respects.

2.28. Policy 3.16(1) of the NPS-IB directs that significant effects on biodiversity outside of SNA's be managed in accordance with the effects management hierarchy. If offsetting of more than minor residual effects is not possible, and compensation is not appropriate, the NPS-IB (and NPS-FM) direct that the activity itself must be avoided. This means that the effects need to be reduced so that they are no more than minor, through further avoidance, minimisation and remediation, in order for the project to be approved.

2.29. The Department makes several comments about this:

a) Relying on compensation to address residual effects on Hochstetter's frogs falls within the circumstances listed in Principle 2 "When biodiversity compensation is not appropriate" of the Principles for biodiversity compensation in Appendix 4 to the NPS-IB.[20] Applying this guidance, compensation is therefore not appropriate in this case.

b) Given (a) above, the Applicant's proposed effects management approach does not adhere to the effects management hierarchy as defined in the NPS-IB and NPS-FM.

c) As a result, in order to comply with the NPS-IB and NPS-FM, the Applicant must ensure the residual effects are no more than minor. That is, it needs to do more to avoid and minimise adverse effects.

d) It is possible to do more to avoid and minimise adverse effects on Hochstetter's frogs.[21] For example:

- The final alignment is selected and designed in a way that far as possible avoids effects on biodiversity values;
- After avoidance measures are exhausted, measures are taken to ensure effects are minimised as far as possible, such as:
    - Not depositing spoil in gullies and streams in Earthworks Zone 2, where the important high value Hochstetter's frogs habitat and high numbers

[19] Dr Burns notes in his statement of advice that Hochstetter's frogs are semi-aquatic. Technically, they cross the NPS-IB/NPS-FM divide. Mr Goldwater has in essence also assessed the proposal against the Principles in the NPS-FM, as they are the same principles as those in the NPS-IB, but in relation to freshwater values. Where reference is made to the Principles for offsetting and the Principles for compensation in the NPS-IB, the same comment applies in as far as the NPS-FM is also a relevant policy document, or is the applicable policy document.

[20] Mr Goldwater's addendum to statement of advice to the Director-General, paragraph 46

[21] This comment should not be taken to mean that if the measures below were adopted, this would result in the effects being no more than minor. That is not able to be ascertained at this point.

of frogs are located. As is noted above,[22] the Applicant has confirmed that it *is* possible to adopt different spoil disposal methods, including those suggested by the Department during the Panel suspension;

- Hauling spoil out of Earthworks Zone 2 instead of depositing it in the streams and gullies, as is currently proposed;
- Bridging high value streams rather than filling, culverting and realigning them (including on spoil) as is currently proposed; and
- Defining and adhering to robust standards to be achieved for the level of effort and best practice methods for salvaging and translocating Hochstetter's frogs (as well as for lizards and kauri snails), and measures to ensure the best possible chance of successful translocation.

2.30. The Department records that while it acknowledges alignment with the NPS-IB and NPS-FM is not a mandatory requirement under the Act:

a) Consistency with each Policy Statement is a matter that the Panel is required to consider in the context of its decision on the Applicant's notice of requirement and application for resource consents.[23]

b) Other Panels have treated national and regional policy statements with a high degree of importance.[24]

c) Inconsistency with the NPS-IB and inconsistency with the NPS-FM as discussed above would both be a significant adverse impact that would need to be weighed against the benefits of the project under s 85 FTAA.[25]

2.31. The Department considers that significant weight should be afforded to both the NPS-IB and NPS-FM.

2.32. Taking into account the above, if the Panel is minded to approve the project and include compensation requirements in its conditions, the Department directs the Panel to the accompanying statements of advice and addenda of its experts Mr Goldwater and Dr Storey, which set out commentary on what they consider would need to be factored into compensation design.

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[22] See above at paragraph 2.4.

[23] Being a relevant matter under ss 104(1)(b) and 171(1)(a), incorporated as assessment criteria for resource consent applications and notices of requirement by clauses 17(1)(b) and 24(1)(a)(2) of Schedule 5 to the FTAA respectively.

[24] For example, see the Panel's decision for the Haldon Solar farm: Updated decision document, at [120] to [122]; Ashbourne-Final-Decision-20.05.26.pdf) at [13].

[25] For example see Ashbourne-Final-Decision-20.05.26.pdf) at [13]; Appendix G "Table comparing impacts and benefits" to the Panel's draft *Taranaki VTM* decision setting out 11 pages of adverse effects and other matters the panel treated as "adverse impacts" for the purposes of s 85 FTAA – see: Appendices.

2.33. In summary, the project's residual effects on Hochstetter's frogs are likely to result in a significant net loss to the Northland clade. In the Department's expert advisers' view, this effect cannot be offset, and compensation is not appropriate under Principle 2 of the NPS-IB.

2.34. The Applicant's proposed compensation package approach does not change that. It compensates (indirectly) for habitat only, and it pays only on demonstrated translocation failure. It does not account for frogs killed in situ. In addition, the proposed compensation package is unsecured and allows funds to be spent on other values, as Mr Goldwater outlined in his assessment against the NPS-IB Principles in his statement of advice.

2.35. However, if the Panel decides to grant the approval on the basis that compensation should be imposed to address the residual effects, the Department notes that what the Applicant is proposing will not compensate for lost frogs specifically, as it is focussed solely on habitat. Although framed as compensation for effects on Hochstetter's frogs, any compensation for the lost frogs will be incidental. The Applicant has conflated these two requirements by providing a single proposal to compensate for lost Hochstetter's frogs and lost Hochstetter's frog habitat by way of improvements to habitat alone. The two elements of compensation should be provided for separately, and the conditions should also deal with this separately, i.e. as conditions of both the resource consent/designation and the wildlife approvals. In addition, any compensation should be appropriately outcomes-focussed and proportionate to the residual adverse effects.

2.36. The Department considers that the conditions must:

a) Require frogs to be replaced, through quantified, monitored, in-kind gains in survival or recruitment, as a wildlife offset or compensation under clause 6(2)(b) of Schedule 7 to the FTAA;

b) Separately address habitat loss under the resource consent and/or designation conditions; and

c) Be secured before construction and maintained long-term.

2.37. Although the Department considers compensation is inappropriate as a means to address adverse effects on Hochstetter's frogs, the Department has provided recommendations that could support a robust compensation package to be imposed through conditions, not withstanding further information being needed from the Applicant to facilitate this. In the Department's view, determining a compensation response which is more commensurate with the impacts of the project is a process that needs to be appropriately worked through. Any conditions implementing a compensation approach would need to be presented as reducing the net loss, and not as eliminating it.

2.38. The Department also adds for clarity that this is not a situation where the Panel would need to rely on conditions offered by the Panel on an *Augier* basis. In this case, the Panel can

legally impose conditions requiring compensation as this would be directly related to the adverse effects.

2.39. For clarity, the Panel is not restricted to a "take it or leave it" *Augier* condition approach in this case. The agreement of an applicant to *Augier* type "compensation" conditions is only required where the compensation is not directly connected to the adverse effects.

2.40. In addition, section 108AA RMA which restricts conditions for compensation not directly connected to the effects of the project or agreed to by the applicant, does not apply in the context of wildlife approval conditions.

Compensation for other protected wildlife

2.41. The Applicant is not currently proposing any offsetting or compensation for adverse effects on long-tailed bats, lizards, or kauri snails.

2.42. Dr Burns has suggested the construction of a pest-proof enclosure as a means of addressing residual effects on lizards. Mr Goldwater supports this recommendation, and notes that it is an approach that is frequently proposed for large-scale infrastructure projects where lizards and notable invertebrates are affected.

2.43. Such a fence could also provide a form of compensation for kauri snails, and could also act as a receiving site for relocated wildlife, depending on the quality and age of the habitat that would be fenced. However, baseline information would be needed to quantify additional gains and compare them with residual effects. Any pest-proof enclosure that receives displaced lizard and snails would also require an assessment of current carrying capacity and potential effects on resident snails.

2.44. Mr Goldwater considers that the proposed vegetation offset and compensation measures cannot be relied on to address effects on long-tailed bats.

Other key issues relating to Hochstetter's frogs

Uncertainty regarding further release sites

2.45. The Department's expert, Dr Burns, has engaged with the Applicant's ecologist regarding further potential release sites for Hochstetter's frogs additional to those identified in its application (i.e. the Northern and Central release sites). This includes Dr Burns having accompanied the Applicant's consultants in visiting some of the sites identified by the Applicant's ecologist as warranting investigation during the suspension.

2.46. The Applicant has not yet confirmed which (if any) further release sites it intends to pursue. However, it has proposed a "Release Site Selection Framework" in its 28 August 2026 draft frog management package, which the Department provided feedback on, on 1st and 2nd September 2026.

2.47. The Department is not aware of the Applicant having made legal arrangements to secure additional release sites for Hochstetter's frogs, so is concerned to ensure the approvals are not granted on the basis that these sites will be secured in the future, when it is uncertain this is achievable.

2.48. The Department is also mindful that the identification and selection should not be left outstanding at the time the Panel makes its decisions on the application. If conditions were to leave these arrangements until later (i.e. post-decision), this could result in an unlawful delegation by the Panel. That is because, in order to be able to assess the project's adverse effects, the Panel needs to know whether:

a) Suitable release sites with adequate capacity to safely support an estimated 22,000 Hochstetter's frogs[26] are available and secured by the applicant; and

b) The proposed salvage and relocation of these frogs will actually occur and be successful.

2.49. Enabling the Applicant as consent holder to be able to make the choices it proposes when implementing the approvals could lead to material changes in the resulting adverse effects on Hochstetter's frogs, depending on what those choices end up being. Consistent with the substantial body of RMA case law, the Panel in *Taranaki VTM* recorded in its draft decision under section 81 of the FTAA:

> "*it is unlawful for a condition to defer the substantive decision as to the actual and potential impacts of the project to a subsequent time and process*."[27]

2.50. A substantive decision cannot be left to later under the mantle of adaptive management.

Proposed contingency for higher-than-expected Hochstetter's frogs numbers being found

2.51. The Department notes that the Applicant is also now proposing a "Contingency for Higher-Than-Expected Frog Numbers" proviso in its proposed conditions framework for Hochstetter's frogs.[28] The detail is yet to provided by way of specific changes to the proposed conditions.

2.52. This proposal is intended to deal with a situation where salvage numbers exceed anticipated release-site capacity. The options proposed instead of salvage and relocation include that:

- "additional Framework-assessed release sites may be activated;

[26] See final page of the Applicant's "Brynderwyns Hills Alternative Project – Indicative Compensation Approach", dated 7 October 2026 (**attached**).

[27] Taranaki VTM decision at: Draft decision at [1819]. The application was withdrawn, so the Panel did not issue a "final" decision. See also the Supreme Court's decision in *Sustain our Sounds*.

[28] NC – A2BH – Proposed Frog Management Package – DRAFT v3, dated 28 August 2026 **(attached**), page 5.

- additional management may be implemented;
- agreed compensation/conservation responses may be implemented.

The objective is to provide flexibility while maintaining confidence in relocation outcomes."[29]

2.53. The Department considers this proposal is not robust and unlikely to be successful. This lack of credibility is highlighted when considered in combination with the Applicant's proposal to address residual adverse effects on Hochstetter's frogs through compensation, based on the rate of translocation (which ignores number of frogs not captured), and given Dr Burns' advice (as already provided to the Applicant) that:

a) The success of Hochstetter's frog salvage and release operations is highly uncertain;

b) It will be difficult to determine in future surveys which frogs have been translocated or were part of an existing population; and

c) It may take 10 to 20 years to know how successful the translocation has been if the degree of success is indeed able to be determined.

2.54. Given these uncertainties, and the further reasons explained above, the Department remains of the view that more emphasis and effort should be applied to avoidance and minimisation of effects on Hochstetter's frogs, and not left to the Applicant's compensation approach.

2.55. Based on the detailed reasons explained in Dr Burn's statement of advice, the Department does not accept the Applicant's ecologist's assessment that adverse effects on Hochstetter's frogs will reduce from "Very high" to "Low" on the basis of salvage and relocation as set out in the Applicant's Terrestrial Assessment of Effects.[30]

2.56. The Department therefore strongly opposes the Applicant's proposed approach of having the option of leaving behind an unspecified number of Hochstetter's frogs that will inevitably be killed, on the basis there is in fact more frogs than estimated, or because there is inadequate capacity at release sites.

Effects on streams and wetlands

2.57. The Department is also very concerned about the loss of streams and wetlands and other adverse effects of the project on them, which the Department considers have been materially understated by the Applicant. This includes in particular:

[29] NC – A2BH – Proposed Frog Management Package – DRAFT v3, dated 28 August 2026 (**attached**), page 5.
[30] Terrestrial AEE, Table 26, page 45.

a) The omission of several wetlands from the Applicant's Freshwater AEE;[31]

b) The absence of information about indigenous aquatic fauna in the wetlands and limited information about aquatic indigenous fauna and aquatic habitats in the streams;[32]

c) An assumption that streams in gullies and valleys that are lost due to the deposition of spoil can be realigned on or next to the spoil and again become functional. The Department's experts consider there is a high probability that realignments on spoil will fail to achieve viable stream habitat;[33]

d) The very high adverse effects that would be caused by the methods the applicant proposes to employ, for example culverting streams along the proposed alignment and filling in the valleys and gullies with fill.[34]

Unorthodox and irregular approach to assessments

2.58. A further but also significant concern is the approach taken by the Applicant and its technical advisers in assessing the project's adverse effects and the extent to which adverse effects are proposed to be addressed. In particular, the Applicant has "*asked its experts to undertake their assessments in light of the FTAA and to consider whether departures from industry guidelines or practice are appropriate*". [35]

2.59. It is not known what effect this request has had on the Applicant's expert's assessments or their effects management recommendations. Any such impact would of course be influenced by the particular ecological expert's interpretation of the FTAA, which the expert is not qualified to do. As examples of where this may have influenced the Applicant's assessments and recommendations, the Department notes and comments as follows:

a) The Assessment of Effects on Terrestrial Ecology (Terrestrial AEE) concludes:

> "*We have assessed effects on high and very high value native vegetation (including kauri) and Hochstetter's frogs as moderate or greater, even after mitigation. While Project's residual adverse effects on those values will remain if unmanaged, those residual effects may be acceptable considering the purpose and relevant decision-making provisions of the FTAA in the context of the enabling benefits of the Project*." [36]

[31] Dr Nick Goldwater Statement of advice to the Director-General, paragraph 45.

[32] Dr Amber McEwan Statement of advice to the Director-General, paragraph 1.

[33] Dr Richard Storey Statement of advice to the Director-General, paragraph 61.

[34] Dr Amber McEwan Statement of advice to the Director-General, paragraphs 63 to 67.

[35] Alternative to the Brynderwyn Hills – Opening Legal Submissions for the Applicant, at [66].

[36] Assessment of Effects on Terrestrial Ecology, page 47.

Comment: Dr Martin notes in his statement of advice to the Department, that the Terrestrial AEE has departed from the EIANZ Guidelines without explanation, and the author's irregular approach to assessing effects by aggregating rare vegetation types has artificially reduced some of the most significant impacts of the project.[37]

b) The Assessment of Effects on Freshwater Ecology (Freshwater AEE) includes the author's analysis of the FTAA, its effect on the National Policy Statement for infrastructure 2025 (NPS-I), and how he considers the NPS-I and the National Policy Statement for Freshwater Management 2020 (NPS-FM) apply.[38] It does not, however, contain a clear statement of whether or how the FTAA has influenced the conclusions in the author's report.

Comment: As Dr Martin notes in his statement of advice, the Freshwater AEE has used "highly unorthodox" methods to describe the vegetation types and has omitted several wetlands, including those dominated by indigenous plant species.[39] Dr McEwan has also reported in her statement of advice to the Department on the Freshwater AEE's unsupported modification of standard definitions and assessment frameworks for freshwater values, as well as selective inclusion of values throughout the freshwater ecological assessment process.[40]

c) The Assessment of Effects on Avifauna Ecology (Avifauna AEE) does not state whether or how taking into account the Act has influenced the author's conclusions.
Comment: Dr Burns in his statement of advice to the Department considers that the surveys informing the assessment are inadequate and notes that the Avifauna AEE has largely relied on a desktop assessment using other sources, with no targeted surveys for birds in habitat types such as wetlands, streams, rivers or grasslands within the Proposed Designation corridor, no nocturnal surveys, and no surveys undertaken for cryptic wetland birds.[41] It is, however, not known whether this approach has been influenced by the abovementioned request.

2.60. The Department finds the Applicant's inference that, as a matter of principle, industry guidelines and practice on environmental effects assessment may be departed from for processes under the FTAA, and the approach to environmental effects can be soft-pedalled and/or lesser environmental standards applied, concerning.

[37] Dr Timothy Martin Statement of Advice to the Director-General, paragraphs 99 and 16.

[38] Assessment of Effects on Freshwater Ecology, 2.1.1 to 2.1.5 at pages 3 and 4; 5.1 on page 52.

39 Dr Timothy Martin Statement of Advice to the Director-General, for example at paragraphs 14 and 166.

[40] Dr Amber McEwan Statement of Advice to the Director-General, paragraph 6.

[41] Dr Rhys Burns Statement of Advice to the Director-General, paragraphs 123 - 134.

2.61. The Ministers for Infrastructure and Resources have been consistent in stating publicly that the FTAA does *not* mean a loosening of standards to be achieved or rigour in assessing effects. As the Ministers noted in their press release of 7 February this year:

> "*Fast-track is not a rubber stamp. It is about applying the same environmental rigour more efficiently, so good projects can get on with delivering*."[42]

2.62. And more recently, in the media regarding this particular fast-track project, Hon Chris Bishop has been reported as saying:[43]

> "*The purpose of fast-track is to provide a more efficient consenting process for significant projects, not to remove the requirement for robust technical assessment or appropriate environmental safeguards*."

2.63. The Applicant's approach is also at odds with the requirements for other similar projects that have been approved under the FTAA. For example, the Panels' decisions on the NZTA Takitimu Stage 2 and SH1 North Canterbury Woodend Bypass projects were both approved on a "no net loss" of biodiversity and freshwater values basis, in line with the objectives of the NPSIB and NPSFM.[44]

3. Comments on conditions

General comments – Further information and refinement needed to inform appropriate conditions

3.1. The Department considers that if the Panel is minded to grant the approvals, significant work is required to understand the values and effects in order to be able to design appropriate conditions to address these. This has created a "chick and egg" situation, given the Panel will need to properly understand the biodiversity values and effects in order to consider the application and design appropriate conditions to address adverse effects, but, as is detailed above, the values and effects have not been properly or adequately assessed.

3.2. Nevertheless, if the Panel considers it does have sufficient information to grant the approvals, the Department makes the following comments on the conditions currently proposed by the Applicant (i.e. the suite of conditions proposed as at 13 July 2026).

3.3. The Department's technical advisers have included detailed commentary on the proposed conditions in their accompanying reports. Most of this feedback and the comments set out below have already been provided to the Applicant.

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[42] See: One year on, Fast-track is building NZ's future | Beehive.govt.nz

[43] See: Brynderwyns alternative route: Critics call for rethink of eastern route - NZ Herald, 11 October 2026.

[44] TNL2-Panel-Final-Decision-Amended-decision-report-20-April-2026.pdf, at [336] and [433]; Woodend-Bypass-Decision-Revised-for-Minor-Corrections.pdf at [309] and [630(i)].

3.4. In addition to the Department's comments on conditions set out in its section 51 report, further consideration has also been afforded to the proposed wildlife approval conditions and the draft Ecological Management Plan (EMP) in light of their relationship with the other proposed conditions.

3.5. Consistent with the comments above regarding the inadequacy of information, the Department's overarching comment is that the proposed conditions are uncertain, inadequate, and do not speak to each other in the way the conditions of approvals secured through a one-stop-shop process should.

3.6. Given the FTAA provides for a one-stop-shop consenting process, the design of the project should be undertaken in a way that accommodates the requirements of all the consenting requirements as set out in the relevant schedules to the FTAA.

3.7. To reinforce this, the wildlife approval conditions should include a condition stating that the breach of a resource consent condition is also a breach of the conditions of the wildlife approval. This approach was adopted by the panel's FTAA decision for the Waihi North mining proposal.[45]

3.8. The restrictions for resource consent conditions in section 108AA of the RMA do not apply in the context of wildlife approvals under the FTAA. The Department considers that these restrictions do not apply to the compensation now being offered by the Applicant to address adverse effects on habitat (that would be expected to be imposed through resource consents conditions), given the purpose of it is to offset the adverse effects on that habitat.

3.9. The Panel can legally impose conditions requiring compensation where this is directly related to an adverse effect. It does not need to rely on conditions being offered on an *Augier* basis. This principle only applies where the compensation is not directly connected to the adverse effects.

Wildlife approval conditions

3.10. As is explained in more detail in the accompanying legal submissions, the wildlife approval criteria for decisions, and in particular, conditions, require a rigorous approach to the management of adverse effects on protected wildlife.

3.11. Clause 6 of Schedule 7 provides:

> ***6 Conditions***
>
> *(1) A panel may set any conditions on a wildlife approval that the panel considers necessary to manage the effects of the activity on protected wildlife.*
>
> *(2) In setting any condition under subclause (1), the panel must—*

[45] See Appendix-G-Wildlife-Act-Authority-18-December-2025.pdf.

(a) consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife that is to be covered by the approval; and

(b) where more than minor residual impacts on protected wildlife cannot be avoided, minimised, or remedied, ensure that they are offset or compensated for where possible and appropriate; and

(c) take into account, as the case may be, the New Zealand Threat Classification System or any relevant international conservation agreement that may apply in respect of the protected wildlife that is to be covered by the approval.

3.12. These provisions require the Panel to:

a) Consider whether the condition proposed would avoid, minimise, or remedy any relevant effects on protected wildlife;

b) Ensure that, where more than minor residual impacts on protected wildlife cannot be avoided, minimised, or remedied, that they are offset or compensated for where both possible and appropriate; and

c) Take into account the NZTCS threat classification for the affected species, and any relevant applicable international conservation agreement.[46]

3.13. The requirements in clause 6(2)(a) and (b) broadly reflect the requirements of the effects management hierarchy as set out in the National Policy Statements, discussed above. While acknowledging these documents have been prepared under the RMA and not the Wildlife Act, the Department suggests that the terms used in the NPS-IB should be applied in the wildlife approval context, given the specific meaning of terms used, and the assistance the NPS-IB brings to interpreting them in line with their accepted usage in the biodiversity offsetting and compensation space.

3.14. Clause 6(2)(b) broadly applies the effects management hierarchy. Although it does not expressly require offsetting to be considered ahead of compensation, this may be inferred.

3.15. The Department considers that the obligation in clause 6(2)(b) to ensure residual adverse effects to be offset or compensated *for where possible and appropriate* reflects the terminology used in the Principles for Biodiversity Offsetting and Biodiversity Compensation as set out in Appendices 3 and 4 to the NPS-IB, and should be interpreted consistently with their use in that policy document noting the underlying concept of compensation for biodiversity is the same.

3.16. Consistent with the discussion earlier in these comments, the Department's view is that, given biodiversity offsetting or compensation for more than minor residual effects on

[46] See the Department's discussion on international agreements in section 8.1, pages 26 and 27 of its section 51 report.

Hochstetter's frog habitat is not possible or *appropriate*, (in that it is beyond the limits for offsetting or compensation as set out in Principle 2 of Appendices 2 and 3 to the NPS-IB) the effects must be reduced by other means (further avoidance, minimisation and remediation), so they are no more than minor, otherwise the effects are unacceptable. The Panel's attention is drawn to Table 4 in Dr Burns' statement of advice, where he has identified opportunities for avoidance and minimisation of impacts on Hochstetter's frogs through suggested design and methodology refinements (alternatives options within the designation corridor). These could substantially reduce these impacts.

3.17. It is also reiterated that, as is discussed in Mr Goldwater's addendum, the Applicant's proposed compensation package does not address the loss of Hochstetter's frogs themselves, for example by "growing more frogs". This may be incidentally achieved to some degree through improvements to existing habitat, but is by no means guaranteed, nor would it be able to be measured.

3.18. In terms of specified conditions proposed by the Applicant (as at 13 July 2026), the Department recommends the following changes:

- Glossary – "Release Sites" – these are defined as "Areas identified for the transfer/relocation of salvaged Protected Wildlife as shown on the map in Appendix [A]". As Dr Burns notes in his statement of advice,[47] the Applicant has not undertaken adequate surveys to show the proposed release sites are suitable. Appendix A maps should not be locked into the conditions ahead of the Panel being satisfied the release sites are appropriate as having the requisite qualities, including adequate carrying capacity, for the number of taxa intended to be salvaged and released there.
- WA3 – EMP – there are not outcomes or standards in these proposed conditions that the EMP is required to achieve.
- WA5 – deeming of certification. This is opposed for the reasons given in other panel decisions. Please refer to the Department's Legal memorandum for further discussion on this issue.
- WA10 – WA 14 – the Lizard Management Plan conditions need to be strengthened to include outcomes and standards required to be achieved.
- WA15 – WA 19 – the Hochstetter's Frog Management Plan conditions need to be strengthened to include outcomes and standards required to be achieved.
- WA20 – WA 24 – the Snail Management Plan conditions need to be strengthened to include outcomes and standards required to be achieved.

[47] Dr Rhys Burns statement of advice to the Director-General, e.g. at paragraph 40

- WA25 – pest control – three years is inadequate, as explained in the Department's statements of advice.

Draft Ecological Management Plan (EMP)

3.19. The Department supports the inclusion as an Objective of the draft EMP:

> "*To enable activities authorised by the WA Approvals to be undertaken in a manner consistent with the purpose of the Wildlife Act, being the protection of wildlife*"

3.20. The Department also supports the environmental outcomes set out in the draft EMP which include avoidance and minimisation of adverse effects on Hochstetter's frogs, native lizards, and At Risk native snails, but the EMP and conditions need to be amended to ensure that this outcome is achieved.

3.21. The EMP is currently limited to the wildlife approvals. The Department considers that the EMP should also be linked in and apply to the resource consent and designation conditions, to ensure consistency of approaches across all approvals. For example, the approach in the draft EMP for fauna should be expanded to the habitat works which will be authorised through the designation and resource consents, as those works also affect wildlife.

3.22. The good intentions set out in the draft EMP also need to be incorporated as standards in the wildlife approval conditions, and the designation and resource consent conditions need to ensure that works authorised under them do not hinder those standards being met.

Resource consent conditions

3.23. In addition to the comments on the proposed conditions set out in the Department's expert advisers' reports, the Department recommends that conditions be included as follows:

- The final alignment of the section of road within Earthworks Zone 2 must be selected to achieve the least possible disturbance and displacement of Hochstetter's frogs.
- No spoil is to be deposited in any gully or valley within Earthworks Zone 2, unless that deposition is absolutely necessary for the integrity of the road carriageway.
- All material resulting from cuts within Earthworks Zone 2 that is not utilised as fill within that zone shall be transported out of Earthworks Zone 2 and deposited in a spoil site in Earthworks Zone 1.[48]

[48] Volume A of the Application at 4.4.4 on page 40 notes that the earthworks movement and disposal strategy for the Project is designed to support flexible construction sequencing and minimise environmental impact, and a haul road connecting Earthworks Zone 2 and Zone 1 is assumed to facilitate the movement of material north. There is a significant fill deficit for Earthworks Zone 1 shown in Table 6 in C4.5.1 on page 46, so it would appear fill is needed to be hauled into Earthworks Zone 1 from Earthworks Zone 2. There will also be a temporary bridge over Piroa Stream (NZTA 28.8.26 ecological package). It appears that this will connect EW Zone 2 to Earthworks Zone 3 during construction.

- No spoil shall be transported into and dumped within Earthworks Zone 2 from another Earthworks Zone.
- All options for crossing the Piroa main stem must be considered and the least ecologically damaging option adopted.
- Offsetting and compensation is required for all more than minor residual adverse effects in line with standard principles and methodologies.
- The consent holder is required to reimburse DOC's costs in post-grant processes.
- The resource consent conditions are consistent and work together with the proposed wildlife approval conditions and EMP, and ensure that the outcomes sought by the latter conditions (consistency with the Wildlife Act's protective purpose)[49] are not undermined.

3.24. The Department also recommends the following specific changes to the proposed conditions:

- Glossary – "Existing Wetland(s)" needs to refer to an updated map that includes all wetlands including ones present but not recorded on the current Appendix A map, as discussed in the Department's technical statements of advice.
- Absence of "Condition 1" type condition - the Department opposes this approach. It is not necessary given the flexible nature of the conditions and the "envelope approach" to assessing effects.
- RC1 – Lapse period of 20 years – this is an unnecessarily long period, as noted above for the proposed designation.
- RC8 – The Department opposes the deeming approach for management plans. This is an unorthodox approach which has been criticised by the Environment Court and rejected by other fast-track panel decisions.[50]
- RC40 – 49 – Wetland Management Plan – there should be a requirement for this management plan to be certified.

Proposed Designation conditions

3.25. The Department comments on the following issues in the proposed designation conditions:

- Lapse date of twenty years – this is a very lengthy timeframe which provides for a significant lag between approval and construction, during which time the environmental conditions could have significantly changed, bringing into question

[49] Draft Ecological Management Plan, 1.2 Objectives and Outcomes, page 8.

[50] See for example, Takitimu Stage 2 NZTA project: TNL2-Panel-Final-Decision-Amended-decision-report-20-April-2026.pdf; and REISSUED Waitaha Decision - Te 18 o Mei 2026, at [1170] and [1171].

whether the effects as assessed, measures to address them, and the conditions attached to the approvals at the time of grant remain appropriate. This also appears at odds with the Applicant's correspondence to the Panel seeking a timely decision so that construction can be complete before 2034.[51]

- Glossary – "Establishment Works" which are exempt from the restrictions for the "Avoid Areas" and "Avoid apart from Ecological Works Areas" include works that are inconsistent with the purpose for which these areas are to be set aside as protected areas under the proposed designation.
- Glossary - "Existing Indigenous Vegetation" is defined as "The indigenous plant species identified on the map in Appendix C". However, there are not any species identified on the map in Appendix C.
- Conditions D1 and D2 – prohibition of works in "Avoid Areas" and "Avoid apart from Ecological Works Areas" – these restrictions should also be included in the resource consent conditions. Without doing so activities controlled by the functions of the Regional Council are not subject to the avoidance.
- Landscape and Ecology conditions – these should be revised to ensure that ecological matters are not treated as landscape matters, and vice versa.
- D27 – D3 – vegetation clearance – these conditions need more certainty and would benefit from a vegetation management plan being built into the conditions.
- D31 – D34 - Bat conditions – these require more certainty regarding outcomes to be achieved, would benefit from the provision of a Bat Management Plan, and need to be tightened to ensure the DOC Bat Protocols are adhered to in terms of the removal of trees that may contain bat roosts.
- D35 – D37 – Avifauna Management Plan – these conditions should be amended to give effect to the Applicant's expert advisers' recommendations, for example the parameters for exclusions zones. They also need to include clear outcomes. The Applicant should be required to consult with the Department in preparing of this management plan.
- Management plans generally – there is no certification requirement. Where they involve ecological matters, DOC should have at least a strong consultative role.

4. Conclusions

4.1. The Department trusts the comments provided in this document and the appended documents listed below are of assistance to the Panel.

[51] A2B-Memo-of-counsel-on-behalf-of-NZTA-Indicative-decision-timeframes-11-June-2026.pdf.

4.2. As is noted above and in the accompanying legal memorandum, the Department seeks an opportunity to further engage in the Panel process ahead of commenting on the Panel's draft conditions under section 70 of the Act.

4.3. That is particularly so, given the requirement for a just process, and that the Applicant has not provided the Department with important information regarding the project (including information on the location of Hochstetter's frogs release sites required to be included in the application) nor updated proposed conditions so that it could provide comments on them to the Panel under section 53 of the Act.

4.4. The Applicant has instead indicated to the Department that these will be provided as part of its section 55 response, after the Department's opportunity to comment on the application has been formally exhausted.

Appendices

Statements of Advice	
Appendix A (and addendum):	Freshwater ecology - Dr Amber McEwan
Appendix B	Terrestrial and wetland vegetation – Dr Timothy Martin
Appendix C	Frogs, lizards and avifauna – Dr Rhys Burns
Appendix D:	Bats - Ms Tertia Thurley
Appendix E (and addendum):	Invertebrates - Dr Jamie Stavert (noting that this report advises both the Departments s51 comments and s53 comments and was also filed with the Department's s51 comments)
Appendix F:	Freshwater offsetting - Dr Richard Storey
Appendix G (and addendum):	Terrestrial and wetland offsetting - Mr Nick Goldwater
Appendix H:	Resource Management Planning - Ms Leah McEnhill
Other	
Appendix I:	Legal submissions
Appendix J:	Documents forming the Applicant's amended effects management package, including: a. A2BH – Ecological effects mitigation table 28 August 2026; b. A2BH – Proposed Frog Management Package – DRAFT v3, dated 28 August 2026; c. Brynderwyns Hills Alternative Project – Indicative Compensation Approach, dated 7 October 2026; d. NZTA's Proposed Amendments to Mitigation Package Since Lodgement, 9 October 2026

Attachments

- Aquatic Survey Information Maps, 07.10.26 (provided by NZTA)
- Terrestrial Survey Information Maps, 07.10.26 (provided by NZTA)