[658] Responding to Dr Fea's request to quantify the entire amount of vegetation loss across the property and clarification as to what areas were defined as to not being lizard habitat, Mr Payne advised that the total area of lizard habitat confirmed by the April 2026 survey was 3,484m^2, comprising nine small discrete areas of low-quality exotic dominant terrestrial habitat (principally long grass along vegetation margins and gardens). All other areas within the development footprint had been assessed and defined as not being lizard habitat.

[659] In relation to the low magnitude of effect classification in the LMP for copper skink, Mr Payne accepted that salvage and relocation, being mitigation measures, should not be used to reduce the description of the pre-mitigation magnitude of effect and to do so as both pre-mitigation and mitigation, involved double counting. However, given the very small number of copper skink potentially affected, he maintained the correct pre-mitigation magnitude of effect was Low.

[660] In particular, Mr Payne sought to clarify his reliance on the low level of copper skink identified during surveys. He regarded it as not a population estimate, but rather an indication of a small population, consistent with the limited extent of suitable habitat. The latter point was also related to issues regarding the scale of analysis. In Mr Payne's view, the habitat affected was very small in absolute terms, not because similar vegetation existed elsewhere, but the wider distribution of copper skink within the ecological district and thousands of hectares of potential habitat outside the site provided relevant context.

[661] As regards predator related effects, Mr Payne accepted that the pest management measures proposed for the adjacent QEII forest margin should also be applied against all terrestrial release areas in the LMP. He noted that proposed cat trapping measures are located at the margins of retained and created habitat and will intercept roaming domestic cats entering the habitat.

[662] He also observed that the adjacent Muri Road residential development will introduce cats and rats capable of roaming into the adjacent QEII protected forest and that the lizard species present on site already coexist with a range of mammalian predators.

[663] In his view, ten years of cat control would allow sufficient time for the residential community to establish and for the infrastructure required to support a resident led 'predator free' programme to be put in place.

[664] As regards suggestions that the Project results in fragmentation of lizard habitat, Mr Payne noted that the landscape in which the site sits is already highly fragmented by historic pastoral farming and pine plantations and that the Project does not create a further fragmentation beyond what already exists. Rather, it will materially increase the extent and quality of habitat available on site.

[665] The balance of Mr Payne's response consisted of a detailed examination of the Project against the nine principles DoC has established for lizard salvage and transfer. We note the following relevant points:

(a) Mr Payne advised that the LMP sought to create lizard habitat in areas that do not currently provide it by ceasing grazing, establishing log stacks, undertaking native planting and implementing predator control. He noted an example in which he had been involved of a lizard receiving site that was identified as having no lizards prior to release. He did not consider that as a barrier to successful establishment based on that experience. Mr Payne noted also that the LMP had been updated to require five-day device checks for three consecutive suitable days without captures before salvage can conclude, and three nights of spot lighting. He did not consider that Dr Fea's suggestion of a minimum of two weeks of cover checks prior to construction was required. It has not been a required condition for over a dozen Wildlife Act Authorities he has been

issued by DoC for lizard salvages. He also noted that the timeframes he had suggested had been accepted by the Expert Panel for the Stage 2 Puke Kapo Hau Wind Farm.

(b) Mr Payne also did not agree with Dr Fea's suggestion that the one day duration proposed for supervised clearance required an extension given the small scale of vegetation involved.

(c) He likewise did not agree that lizard proof fencing was required at release sites, noting that the release sites are typically hundreds of metres from the impact sites with large areas of grazed pasture between them. He did not consider that lizards were likely to return across that distance from where they had been salvaged.

(d) Mr Payne disagreed that the proposed release sites were disconnected, pointing out that two were contiguous with the QEII covenant forest and the other two were separated by approximately 20 metres and joined by a pine hedge row and wetland. He observed that the Karehana Bay Scenic Reserve had been accepted as a suitable receiving site for a number of lizard species as well as copper skink in two other wildlife authorities and extended to approximately 16 hectares. He also did not accept that a five-year period of control at the Karehana Bay Scenic Reserve release site was necessary, noting that the reserve already benefits from a long-standing ongoing predator control independent of the Project.

(e) Mr Payne defended having a capture threshold for triggering post-release monitoring and the suggested three-year monitoring period, noting that both copper skink and northern grass skink reach sexual maturity at approximately two to three years of age, meaning that three years of monitoring provides sufficient time to identify population trajectory and determine whether the density at the release site is increasing, stable or declining.

(f) He agreed that changes should be made to the LMP provisions related to annual reporting of release sites, pest control and habitata performance standards.

(g) Mr Payne disagreed that additional contingency options were required. He pointed to the significantly greater size of the release sites than the impact sites, and the fact that, in his view, they do not support a resident population. He did not consider there to be a realistic scenario in which more copper skink could be captured during salvage than the receiving environment was capable of supporting.

(h) Mr Payne agreed that a three-month period of retiring grazed grassland was appropriate based on his experience at Lincolnshire Farm (within Wellington City).

(i) He did not accept that the absence of long-term landscape scale rat control rendered the release sites unsuitable, noting that the site already supports a range of mammalian predators that the lizard species present are tolerant of.

(j) He did not consider that funding of pest control should be based on a per lizard calculation noting that these are highly cryptic species with a low detection probability.

(k) He also did not accept that a formal contractor-based costing programme was required noting that pest control at Karehana Bay Scenic Reserve is currently undertaken by trained volunteers through Pest Free Plimmerton.

(l) He did however agree with Dr Fea's recommendation regarding bait station spacing and noted that the LMP had been updated accordingly.

(m) Mr Payne also agreed with DoC's recommendation that the wildlife authority be granted for a maximum term of ten years rather than the 15-year term sought by the applicant.

(n) Commenting on DoC's suggested condition requiring a minimum 2:1 biodiversity offset provision, Mr Payne considered that the condition was not needed because no significant residual adverse effect existed that would require offsetting. He noted that where the residual adverse effect is less than minor, the effects of management hierarchy does not require a further offset or compensation response but, in any event, the project already achieves a ratio of habitat creation enhancement to impacted habitat in excess of 3 to 1.

(o) Mr Payne addressed and recommended an additional condition to ensure the humane euthanasia of lizards in care is consistent with the Animal Welfare Act 1999.

(p) Mr Payne noted that he had also revised the LMP to provide for unexpectedly high lizard values with additional habitat enhancement of predator control scaled to the number of lizards recorded.

(q) He did not, however, consider that further information was required regarding indirect effects, including the potential impact of increased housing density on adjacent lizard habitat values or that further information was required regarding the extent of ecological value provided by protected lizard habitat.

Expert conferencing

[666] The JWS of the herpetology experts contained the following points we regard as relevant to our consideration of these issues:

(a) Dr Fea had been to the site, Mr Wedding had not[160].

(b) Dr Fea is not a specialist herpetologist[161].

[160] Joint statement of Experts in the Field of Herpetology, 18 August 2026 at page 3
[161] Ibid at page 4

(c) 100% detection probability is unachievable with any lizard survey[162].

(d) Mr Wedding and Dr Fea considered that the surveys that had been undertaken confirmed the presence but not the detection probability, population abundance or the spatial boundary of occupied habitat and that the lack of detection of lizards at some locations may reflect the lack of certainty that any survey would locate all lizards present, rather than a lack of lizards. A precautionary approach would treat areas that could provide suitable habitat for lizards as having lizards present where they have not been surveyed or incompletely surveyed. For management purposes, they should be treated as potentially occupied unless field assessment provides a robust basis for exclusion[163].

(e) Mr Payne considered that mapping surveys had been extensive and that he had been conservative in terms of mapping a larger extent of potential habitat than that indicated by ACO survey alone[164].

(f) Mr Wedding and Dr Fea considered that arboreal lizard species may be present in the SNAs and the areas of non-SNA scrub/shrubland and that a survey would be necessary in advance of any vegetation clearance. By contrast, Mr Payne noted that the planted shrubland south-east of SNA029 and north of the access track is spatially isolated, and on that basis unlikely to provide habitat for arboreal lizards. Mr Wedding responded that native lizards are known to traverse areas of pasture and therefore the spatial isolation Mr Payne had relied upon was not decisive[165].

(g) Mr Wedding and Dr Fea were comfortable with the extent of survey effort but considered that the interpretation of the survey results was not precautionary and a conclusion as to the extent and location of potential lizard hazard was not justified based on the evidence. By contrast, Mr

[162] Ibid
[163] Ibid at pages 3-4
[164] Ibid at page 5
[165] Ibid at pages 5-6

Payne considered that his interpretation had been conservative and could be relied upon[166].

(h) Specifically in relation to copper skink, in Mr Wedding and Dr Fea's view, the approximately 3,500m^2 mapped by Mr Payne largely reflected localised survey and detection areas and did not demonstrate the boundary of the contiguous habitat feature[167].

(i) The experts had discussed the desirability of improving certainty and addressing knowledge gaps and Mr Payne's offer to provide maps of the areas manually searched and details of the searches would assist[168].

(j) The experts differed over the relevant threat criterion to apply. Mr Wedding and Dr Fea considered the regional threat ranking was relevant, and would imply a 'Very High' rating based on EIANZ criteria. Mr Payne's view was that it was more appropriate to use the national status because he considers the regional threat status was overly conservative. That would equate to a 'High' value[169].

(k) Mr Wedding and Dr Fea had based their assessment on the significance of the habitat of copper skink lost in the context of the local landscape, which was defined as larger than the site but smaller than the ecological district in the region. Mr Wedding's assessment had focused on the permanent removal of almost all habitat associated with the only known copper skink population within the development site. By contrast Mr Payne had taken into account the fact that copper skink occur in high densities and are well distributed within the ecological district, a fact that was unknown at the time the regional threat ranking was published. Responding to that reasoning, Mr Wedding did not consider that a relocation record of approximately 30km away was evidence of copper skink abundance or distribution throughout the ecological district[170].

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[166] Ibid at page 7
[167] Ibid at page 8
[168] Ibid at page 9
[169] Ibid at page 10
[170] Ibid at pages 11-12

(l) Mr Payne observed that Mr Wedding had considered all of the potential habitat on the site as part of the magnitude of effect but had not applied the same consideration for other areas of potential habitat within the local landscape[171].

(m) The experts differed on whether it has been demonstrated that the proposed release sites have sufficient carrying capacity and whether the proposal that planting of 20% of the area with indigenous species is sufficient. The extent of habitat restoration is based on lizard habitat being confined to 3,500m^2, which is in dispute. If the source habitat is materially larger, the ratio of release area to source habitat is reduced from 2.5[172].

(n) Mr Payne had updated the LMP but not shared it with Mr Wedding and Dr Fea. He also advised during the conference that an additional 2.4 hectares (approximately) had been identified as being enhanced to provide permanent lizard habitat. Mr Wedding and Dr Fea identified additional elements that the LMP should address including a baseline survey for release sites, detail of planting and inclusion of habitats that had not been surveyed but that could be suitable for lizards[173].

(o) Opinions differed also about the adequacy of the proposed pest control programme. Mr Wedding and Dr Fea considered it should last at least five years after lizard relocations and restoration plantings had been completed to enable establishment of a persistent population and suitable habitat. Mr Payne based his view that two years is sufficient on his experience at Lincolnshire Farm where the population was doing well within two years because the site had mature complex habitat. He regarded the latter as the key[174].

(p) Mr Payne indicated a readiness to accept as additional elements, the undertaking of baseline survey of the released sites, using machine

[171] Ibid at page 12
[172] Ibid at pages 15-17
[173] Ibid at pages17-18
[174] Ibid at pages 20-21

assisted salvage, undertaking two nights of spotlighting within the isolated fragment of native trees for arboreal lizards and taking a more precautionary approach to the amount of habitat affected[175].

(q) Mr Wedding and Dr Fea remained of the view that there was too much uncertainty in the Project to have confidence that there would not be significant negative effects on lizard populations. This included uncertainty regarding the long-term effects of increased domestic cats and commensal rodents[176].

Further Information

[667] In Dr Bramley's review of ecological issues dated 7 September 2026, he noted the differences of opinion between Dr Fea and Mr Wedding, on the one hand, and Mr Payne on the other regarding uncertainties relating to the overall level of effects on lizards and the sufficiency of the LMP to address those effects and protect native species.

[668] In relation to the adequacy of surveying, Dr Bramley noted that wildlife surveys never achieve complete detection of the target species. He recommended that the Panel treat assertions that a species is absent from all or part of a site based purely on a lack of sightings with extreme caution. He suggested that the Panel should assume the species may be present and ensure the management conditions protected them accordingly.

[669] Secondly, Dr Bramley noted that salvage and relocation of lizards is widely seen as the best that can practicably be achieved for protecting lizards, but he noted peer reviewed reports indicating that the survival and productivity of relocated lizards is likely to be poor or very poor, especially when only small numbers of individuals are relocated. While Mr Payne had noted his recent experience with successful lizard relocations including copper skinks

[175] Ibid at page 21
[176] Ibid at page 22

in the Wellington region, these results have not been published or subject to peer review. Dr Bramley recommended that the Panel should give more weight to peer review published evidence where it is available.

[670] Dr Bramley recommended a two-tier adaptive management approach. First, in relation to high value habitats and areas with confirmed lizard presence, a minimum baseline salvage effort would be required and threatened lizards would be subject to higher intensity and duration efforts than common species. In the second tier, applied to lower probability habitats which might still provide habitat to lizards or house fewer lizards, active pre-clearance surveying would be required with a clear trigger threshold whereby the discovery of any indigenous lizard within a Tier 2 zone would automatically escalate the entire area of similar habitat to a Tier 1 salvage protocol.

[671] Dr Bramley noted that Mr Payne had agreed to provide more detail about his search effort for lizards on the site, but he had not seen it as at the date of writing his report.

[672] Commenting on Dr Bramley's report, Mr Wedding reiterated a number of points he had already made both in his comments and in the JWS. He supported the precautionary direction of Dr Bramley's advice but regarded the extent of affected habitat, the area and readiness of release sites and enduring predator and habitat management issues as remaining unresolved. He considered that these matters should be addressed in the revised LMP.

[673] Following up on the reference in the herpetology JWS to Mr Payne supplying additional information about his survey efforts, and a discussion we had with him on that subject at the conference on 3 September 2026, we asked him to document by map the areas of manual lizard survey he had undertaken, to provide details of the proposed additional area of approximately 2.4 hectares of enhanced lizard habitat, and to discuss the practicality of fencing lizard relocation areas.

DRAFT

[674] Mr Payne supplied that information in the form of a Memorandum dated 11 September 2026 which also attached a copy of the EIANZ Guidelines that we had also asked for.

[675] As regards the areas of manual lizard habitat, Mr Payne supplied both a map and pictures of the relevant areas.

[676] He also supplied a map of the approximately 2.4 hectare area that "could be available, should the Panel decide it is necessary, to be enhanced and protected for the purpose of creating lizard habitat".

[677] Mr Payne did not consider it either practical or necessary for lizard relocation areas to be fenced so as to exclude predators, particularly cats. In relation to proposed release areas 1 and 2, where copper skink is proposed for release and which adjoin the QEII covenant forest on the adjacent property, Mr Payne considered that if a predator proof fence were constructed, it would be rational to fence the entirety of the forest rather than a small proportion of the total habitat area that copper skink would use. He estimated potential costs at over $1 million and noted that it would also require acceptance from the adjoining property owner. He also reiterated previous advice that copper skink have a demonstrated tolerance of mammalian predators, which make it particularly well suited for successful establishment following relocation, provided adequate extent and quality of receiving habitat is available.

[678] In relation to release sites 3, 4 and 5, the species released would be Not Threatened northern grass skink, which is highly abundant and widespread. In his view, where the species involved is not a conservation concern, the benefits of predator proof fencing does not justify the associated cost.

[679] In addition, counsel for the applicant provided, at our request, comment on the application of the EIANZ Guidelines, noting that they did not provide a specific methodology for reconciling differing local and national threat

levels and stating that a professional ecologist should consider facts, personal judgements and personal opinion.

[680] In relation to value, which is based in part on threat level, counsel pointed out that the Guidelines record that the focus for assigning value to plant and animal species is usually a conservation concern at the national level, but concern at local levels should also be considered, addressing locally rare or uncommon species where there is sufficient local knowledge to do so.

[681] Counsel also drew our attention to a statement in the Guidelines that there may be valid reasons to disagree with the threat status of a specific species "such as insufficient or new information".

[682] Counsel submitted that Mr Payne had exercised a professional judgement in applying the national risk status and therefore that he had acted consistently with the EIANZ Guidelines.

[683] Providing comment on the initial information supplied by Mr Payne, Mr Wedding reiterated that he had no substantive concern with the search effort undertaken, but rather with the interpretation of its results. In his opinion, non-detection of lizards during manual searches should not be interpreted as demonstrating absence from the habitats searched.

[684] Mr Wedding described the additional photographs Mr Payne had provided as useful because they provided a clear indication of the ground layer conditions. In his view, they confirmed that many features are consistent with copper skink habitat he had observed elsewhere. In particular, he did not agree that there was an ecological basis for treating a south-facing aspect, steep slope or pine canopy as excluding copper skink habitat. While those characteristics might influence local microclimate and patterns of habitat use, they are not either individually or collectively diagnostic of habitat absence.

DRAFT

[685] In relation to the suggested additional 2.4 hectare area, while he welcomed the identification of that area, he did not consider it was ecologically equivalent. The small areas continuous with the adjacent SNA and, with release area 5, expand or connect with existing or proposed habitat therefore improving habitat extent, connectivity and opportunities for dispersal. The new identified area is separated from the existing and proposed habitat network and does not appear to support a resident lizard population. He did not consider that area suitable to be relied upon as equivalent habitat gain unless a viable founding population is deliberately introduced or a functional connection to occupied habitat is established.

[686] Lastly, Mr Wedding agreed with Mr Payne that a predator proof fence around the lizard release areas is neither necessary nor proportionate.

[687] In her comments on Mr Payne's additional information, Dr Fea noted the disparity between the results from manual searching (no lizards or lizard sign observed) and 16 lizards identified across multiple areas and habitats during three days of ACO survey in April 2026. In her view, lizards are clearly present at the site, but no evidence of this seems to have been revealed during multiple sessions of manual searching. Dr Fea provided a detailed commentary of the 64 photographs Mr Payne had provided of the areas he had searched manually, commenting that they provided her with a much better understanding of the habitat types and their potential to provide habitat for lizards. She categorised 29 of the 64 photographs as illustrating possible lizard habitat, noting that three other areas of the 64 had confirmed habitat as a result of subsequent ACO surveys.

[688] Dr Fea recommended that in the identified areas where habitat was possible, supervised clearance was likely to be required during construction, but some of these sites also require pre-clearance spotlighting of indigenous vegetation to search for arboreal lizards. She had noted the latter areas in her Table 1 also. Addressing the proposed additional release area, Dr Fea commented

that most of the site appeared to offer an appropriate site for lizard habitat restoration, but the east end appeared to coincide with an area of proposed fill. She queried the suitability of that area.

[689] In relation to the potential to fence lizard release areas, Dr Fea agreed with Mr Payne that a predator proof fence does not offer an appropriate tool at this site. She noted additional practical reasons for her view. However, she believed that other management tools needed to be explored to protect released lizards from predation, particularly by cats. She suggested that consideration should be given to the use of lethal traps that only trigger for non-microchipped animals detected, or making the subdivision entirely cat-free.

[690] Dr Fea did not agree with Mr Payne's statement that skinks are tolerant of mammalian predators, pointing to reported literature on the issue.

[691] In relation to counsel's advice on the application of the EIANZ Guidelines Dr Fea noted DoC database reports showing no copper skinks recorded at mainland sites within 5km of the Mt Welcome site (but numerous records on Mana Island) and only five locations between Porirua and Paekākāriki where copper skinks have been detected in the last 20 years, with 13 individuals caught overall. She also noted that 50 copper skinks were caught in ACOs, pitfall traps and manual searching over a three-year period during lizard surveys for Transmission Gully approximately 5km east of the Mt Welcome site and outside the DoC database, and 12 copper skinks over a two year period at Pukerua Bay. It also compared with no copper skinks found on the Plimmerton Farm Subdivision to the south of Mt Welcome or on the Muri Road Block directly to the north.

[692] In her view, the loss of copper skinks from the Mt Welcome site could have a moderate or high magnitude of effect on their range within the Wellington

region. Although she commented that data is patchy, her understanding was that this would result in a 'High' or 'Very High' level of effect.

[693] We asked that Mr Payne comment on the apparent overlap between the proposed additional lizard relocation area and the potential that it might also be used as a fill area or as an offset for lost SNA areas. His response[177] was that they were compatible. He considered that the SNA offset would provide suitable habitat for copper skink and the fill area would provide habitat for northern grass skink.

[694] Lastly, we record that we sought Mr Payne's assistance on a without prejudice basis, to identify how the LMP might be amended were we to find merit in Dr Fea's recommendations in her most recent commentary, as above. Dr Payne supplied his amended LMP on 27 October. We gave other parties the opportunity to comment, but the only substantive Comment received was from TRoTR seeking that it be invited to participate in all lizard salvage and release operations, with prior notice no less than ten working days in advance.

Findings

[695] Mr Payne based his assessment of potential effects on the extent to which he had identified lizards being present on the site during the surveys that he had undertaken. There was a precautionary element only to the extent that he recommended including an area adjacent to State Highway 59 as a potential habitat for arboreal geckos.

[696] We accept the view of Mr Wedding and Dr Fea that the fact that Mr Payne did not identify lizards in other areas across the site does not mean that they are not there. This is not a criticism of Mr Payne. We consider that their acknowledgement that the extent of survey effort was adequate suggests that

[177] Reported in the applicant's response to Minute 22 dated 21 October 2026 at paragraph 9

the potential for lizards to be present in greater numbers and/or different locations reflects the inherent difficulty in detecting lizards the experts noted in their JWS.

[697] Dr Fea's analysis of the photographs Mr Payne provided of potential habitat on site and her division between areas of possible habitat and areas that are unlikely to provide lizard habitat is also helpful in that regard.

[698] The uncertainty as to whether the areas she identified as 'possible' habitat in fact have lizards (particularly copper skink) present is relevant, in our view, to the assessment of the extent of adverse effects.

[699] Guidelines published by the EIANZ provide a framework for assessment of level of effects on biodiversity that requires quantification of the values of a particular feature and the magnitude of effect. As above, Mr Wedding and Dr Fea categorised the copper skinks on the site as having a very high value on the basis of their regionally threatened, vulnerable status. Mr Payne relied on the national status of 'At Risk – Declining' for his view that copper skink values were at the 'High' rather than 'Very High' level.

[700] Table 5 of the EIANZ Guidelines suggests that very high values are attributed to nationally threatened species found in the zone of influence. High values are attributed to species listed as 'At Risk – Declining'.

[701] We also observe that it seemed odd that a regional status that is a step down from the highest regional threat status ('Regionally Threatened, Critical') should have the highest assessed value.

[702] In summary, therefore, we prefer Mr Payne's view on the value of copper skink habitat on the site.

[703] Assessing the level of effect also requires determination of the correct spatial level of analysis. Mr Wedding focussed on the immediate site as the basis

for his view that the magnitude of effect was very high. In the JWS, the focus was shifted outward to the 'local landscape', but both Mr Wedding and Dr Fea remained of the view that magnitude of effect was very high. As we have noted, however, Dr Fea identified DoC records of copper skink populations within relatively close proximity to the site (Pukerua Bay and Transmission Gully), albeit unevenly distributed.

[704] We agree with Dr Bramley's observation that considering the magnitude of effect at very fine scales such as the site affected artificially inflates the magnitude of effect, just as zooming out to a much larger area, as Mr Payne did when citing copper skink populations on the Miramar Peninsula, artificially reduces the magnitude of effect. In summary, we think that Dr Fea and Mr Wedding presented too large an assessed magnitude of effect, but Mr Payne's assessed 'Low' magnitude of effect was too low. We put it in the moderate category.

[705] Table 10 of the EIANZ Guidelines would suggest that the combination of a high ecological value and a moderate magnitude of effect produces a 'High' level of effect which, in our view, can be regarded as 'significant' for the purposes of the NPSIB. Implementation clause 3.16(1) of the NPSIB requires significant adverse effects on indigenous biodiversity outside SNAs be managed by applying the effects management hierarchy.

[706] Northern grass skinks are in a different category. It appeared to be accepted that they are of lower value, being much more common than copper skinks and not having a national or regional threat status of either threatened or at risk. We consider that implementation clause 3.16(2) of the NPSIB applies to adverse effects on them. Such effects must be managed to give effect to the objective and policies of the NPSIB. The focus of the objective and policies of the NPSIB is on maintaining indigenous biodiversity so that there are no overall loss and recognising and providing for that maintenance. That

in turn suggests loss of northern grass skinks cannot be ignored, but addressing the loss of copper skink habitat is the priority.

[707] In relation to copper skinks, we accept Mr Payne's reasoning that adverse effects on them will be avoided and minimised to the extent practicable and therefore the focus is on providing an adequate offset.

[708] Mr Payne proposed a process of salvaging and relocation of lizards in identified habitat areas. Dr Bramley observed that this action is widely seen as the best that can practicably be achieved for protecting lizards and we accept it in principle. We note his caution that if the number of lizards is very small, the outcome is likely to be poor, especially when only small numbers of individuals are relocated.

[709] We accept his view also that we should give more weight to the peer reviewed literature supporting that view than Mr Payne's undocumented examples of successful relocation of lizards elsewhere in the Wellington region.

[710] That does not mean that Mr Payne's examples are irrelevant, but it suggests the need for caution, which in turn supports Dr Bramley's recommendation that it is appropriate to salvage as many lizards as possible from all the habitats where they might occur and relocate them to the best quality habitat achievable.

[711] We consider it follows from Mr Wedding and Dr Fea's acceptance of the adequacy of survey effort that it should not be presumed that lizards, particularly the threatened copper skink, are present throughout the site in significant numbers. Rather, there is a potential that although properly conducted, Mr Payne's surveys may not have identified all of the relevant lizard habitat, and the number of lizards within both confirmed and possible additional habitat is uncertain.

[712] It also means that this is not a situation where the applicant has presented insufficient evidence to support its position, but rather one of inherent uncertainty that we need to manage having regard to the direction in Policy 3 of the NPSIB to apply a precautionary approach.

[713] Viewed in that light, we think there is much to be said for Dr Bramley's suggestion, as noted above, of the need to differentiate between the areas of confirmed lizard habitat, and other potential areas of habitat, with a correspondingly reduced management response in the latter case, at least until the potential is confirmed to be the reality. We will come back to that.

[714] As regards the appropriateness of the proposed relocation sites, both as to character and size, we accept Mr Payne's view that the areas he had identified for relocation were generally acceptable, with close proximity to the adjacent SNA being a clearly positive feature.

[715] The issue we had was with the combined size compared to the potential area of lizard habitat lost. We accept Mr Payne's position that if the area of lizard habitat is confined to those areas he had already confirmed, they provide ample offset areas (more than two times the total area affected).

[716] The problem is if investigation of potential habitat areas identifies more copper skink habitat.

[717] DoC proposed that the area of offset be defined on a ratio basis (2:1) in its report on the Wildlife Act approval.

[718] Mr Payne identified additional areas available for lizard relocation, including an approximately 2.4 hectare area on the western side of the site if we considered it was required.

[719] Mr Wedding critiqued the value of this potential area on the basis that it is separated from existing and proposed habitat networks and does not appear

to support a resident lizard population. He considered that a viable founding population would need to be deliberately introduced.

[720] We observed that many of the existing potential habitat areas on the site that Mr Wedding had drawn our attention to were similarly disconnected. We also note Mr Payne's evidence of previous successful translocations on sites with no existing population.

[721] We accept that the suggested new areas may not be as suitable as those adjacent to an SNA, but we find that they are sufficiently suitable for this purpose.

[722] We can foresee significant potential for disputes about the extent of habitat the discovery of a single lizard gives rise to. Rather than impose a condition based on a ratio, as DoC suggests, we therefore consider it preferable to have the greater certainty that an identified additional area provides.

[723] Mr Payne has accepted some suggestions as to assessment of relocation areas prior to lizards arriving, and preparing those areas, but rejected others based on his experience of successful relocations elsewhere in the region. We record that while he accepted (in the Herpetology JWS) the desirability of pre-release surveys of the proposed relocation areas, we could not identify clear provision for them in Mr Payne's revised LMP.

[724] As regards the difference in opinion between Messrs Payne and Wedding regarding the extent to which release areas should be planted, we agree with Mr Wedding's view (set out in the Herpetology JWS) that a material increase in planting (over the 20% Mr Payne recommended) is required as a mitigation against predation from rats and mice. While we take Mr Payne's point, that it is important to retain rank grass habitat and release areas should not be 100% planted, we consider a 20/80 split pitches the level of planting too low, given the predator risk. We consider the proportion of planting should be a minimum of 60%.

[725] We observe that in our discussion of terrestrial ecology effects we have found that the offsetting the applicant has proposed for the loss of indigenous vegetation both within and outside identified SNAs is insufficient, and it needs to materially expand the areas replanted. Additional planting in proposed lizard relocation areas is not therefore a burden on the applicant- it is required for other reasons.

[726] More generally in relation to the adverse effects of predatory cats, rats and mice, the experts were agreed that the suggestion of a number of commenting parties that SNA029 be surrounded by a predator proof fence was impractical. We accept that position. As Dr Fea noted that does not exclude the use of other means to protect released lizards from predation, particularly of cats. As above, she suggested consideration be given to the use of lethal traps that only trigger for non-microchipped animals, or making the subdivision entirely cat-free.

[727] Wellington Conservation Board, Te Awarua o Porirua Harbour and Catchments Community Trust, Guardians of Pāuatahanui Inlet, and Friends of Taupo Swamp all requested limits on cat ownership.

[728] While the Environment Court has been prepared to impose conditions on subdivision consents banning cats, that was in the context of a threatened nationally critical species on adjacent land and strong evidence of cats having a devastating effect on that species[178]. Even in that case, the Court noted issues with enforcement of a total cat ban. We did not have sufficient evidence to justify it in this case.

[729] We did not have sufficient information to require implementation of the alternative Dr Fea suggested of the use of lethal traps that only trigger for

[178] Refer *Western Lea Limited v Hamilton City Council* [2020] NZEnvC 189.

non-microchipped animals detected, but we agree that it deserves consideration.

[730] Mr Payne has suggested a number of other measures to minimise the adverse effects of cat predation on relocated lizards, but realistically, there is a limit to what can be achieved, and we tend to agree with the point he made in his response to Comments that the ultimate solution is a community sustained predator free programme similar to that established in a number of Wellington and Porirua suburbs.

[731] Mr Payne considered that the post mitigation/offset position would be a low adverse effect on copper skinks.

[732] The extent to which we can place confidence on his view depends on the effectiveness of the LMP.

[733] We asked Mr Payne to identify, on a without prejudice basis, what amendments to the LMP would best achieve Dr Fea's recommendation of supervised clearance of areas she identified as possibly providing lizard habitat.

[734] We have reviewed the revised LMP. While Mr Payne has added provision for searching of additional areas, beyond those he had previously proposed, we found the distinction between confirmed habitat areas and possible habitat areas is unclear. While Mr Payne suggests searching the wooded area adjacent to the areas where he located lizards during his field survey (a step we agree with), it is not identified explicitly as a possible habitat. The end result is somewhat disjointed, and reads as if the addition has been engrafted onto the end of the existing text with insufficient consideration for the logic of the suggested approach overall.

[735] More substantively, the revised LMP maintains the position Mr Payne advanced that there is no need to provide for contingency measures. We

think that approach is premised on Mr Payne's view that there are a very small number of lizards, and an even smaller number of copper skink present on the site, and that they are located in a small number of discrete areas.

[736] We consider that the LMP needs to provide for at least three contingencies:

(a) An unexpectedly large number of lizards are located;

(b) Additional lizard species, including Threatened species, with different habitat requirements are located; and

(c) Relocation and re-establishment does not go as well as Mr Payne expects.

[737] We do not think any of these contingencies are likely, but we consider they should be addressed. We have most concern about the last given Dr Bramley's counselled caution on that issue, as we consider Mr Payne may be unduly optimistic about the prospects of successful relocation and re-establishment. A clearer process of adaptive management is required with monitoring of the release areas feeding back into the level of predator control, among other things, and monitoring continuing until a stable and thriving lizard population can be confirmed.

[738] The applicant proposed that adverse effects on lizards be managed through the conditions on the wildlife approval it has sought, rather than on its land use consent. Compliance with the revised (27 October 2026) version of the LMP is one of the suggested conditions.

[739] We do not endorse the current version of the LMP. Quite apart from the flaws we have identified above, the current version of the LMP is inconsistent with some of our findings that pre-release surveys of release areas are required, and release areas should be 60% planted at minimum.

[740] As above, we invited Comment from the parties on the revised LMP and the only Comment we received was from TRoTR.

[741] In the absence of further expert feedback, we sought Dr Bramley's assistance as to how the issues we have identified above might be addressed. The problem we found with that option is that the document required a reasonably significant rewrite, and the answer to some of the problems with it require expert feedback to resolve. We considered that it was inappropriate to lean on Dr Bramley's advice to that extent at this stage of the process, given that we had no time available to circulate a revised draft LMP constructed with Dr Bramley's assistance for comment before we must produce our draft decision, and the very limited time the parties would have to respond to our draft decision.

[742] The option we have therefore taken is to revert to DoC's recommendation that the wildlife approval conditions provide for submission of a draft LMP to DoC for certification against a list of specified criteria.

[743] We will discuss the relevant criteria in the context of the wildlife approval below, but for present purposes it is sufficient that we find that the end result should be something less than a significant adverse effect on herpetofauna values and that the proposed conditions on the wildlife approval, which largely manage these effects, will reduce the residual effect to the extent it practicably can be reduced.

[744] We acknowledge that this outcome may not accord with the requirements of the NPSIB, to the extent that offsetting and compensation does not prove as effective as intended.

Effects on Other Terrestrial Ecology and Biodiversity

The Application

[745] Dr Vaughan Keesing assessed effects on terrestrial ecology in his Ecological Assessment Report supporting the applications before us.

[746] Dr Keesing noted two significant natural areas (**SNA**s) adjoining the site: SNA225 and SNA029.

[747] Both are located adjacent to the northwestern edge of the site. A third SNA (SNA027) was identified as being located on the western side of State Highway 59. Taupō Stream runs through SNA027.

[748] Dr Keesing advised that there are no indigenous terrestrial habitats on the site property itself, other than a 3,000m^2 planted belt of mixed natives along the north side of the access road south of SNA029.

[749] In his report, Dr Keesing described the ecological qualities of each of the SNAs in greater detail.

[750] More specifically, SNA027 was described as having been planted for some 60 years, with native canopy cover of that age. Dr Keesing described the vegetation as late seral broadleaf forest with few later canopy species, but with signs of kohekohe development present. Native ferns are not abundant but are present. Dr Keesing noted that there is extensive *tradescantia*[179] throughout the ground cover, particularly around the stream and blackberry is common throughout.

[751] He also noted the presence of a natural inland wetland.

[179] Google identifies tradescantia fluminensis as an exotic wildflower weed species also known as wandering willie. In his report responding to Comments, Dr Keesing called it 'wandering jew'.

[752] Dr Keesing described the eastern side of State Highway 59 as containing mainly planted pine stands. However, northward of the pine trees is further native regenerated standard shrubs and trees on a raised berm. Dr Keesing described that vegetation as less than 30 years old as it was barely evident in a 1995 aerial photo. From his description, the native component includes mahoe, kanuka, kawakawa, hangehange, mapou, karamu, harakeke, shining spleenwort, as well as gorse, blackberry, fennel, cherry, lucerne, tradescantia and more pines. A taller pine row sits behind the natives.

[753] Dr Keesing queried the SNA status of this area. In his view, it was not representative of an SNA because it is largely weed species and did not have rarity, diversity or any important ecological function that would warrant a significant classification.

[754] Addressing the ecological values on the site, Dr Keesing noted that there are virtually no terrestrial ecological values related to indigenous assemblages or habitat on site outside the mapped SNAs. As above, the only indigenous vegetation is of a band 20 metres wide, 250 metres long of native plants planted adjacent to a pine band above the access road near the SNA, and which is now around 20 years old.

[755] Dr Keesing recorded that the proposed State Highway 59 roundabout will affect SNA029. Although SNAs are typically high value, Dr Keesing suggested that the age and condition of this SNA made it of moderate value. He did not think that birds flying over or arriving on the property would be either directly or indirectly affected. Dr Keesing also noted a range of pest mammals present and a degradation to indigenous species in general. While Dr Keesing commented on the potential for the site to include lizard habitat, we have addressed that issue already.

[756] Addressing the extent of potential effects, Dr Keesing noted that the proposed new roundabout would result in around 1,400m^2 of vegetation

from SNA027 being cleared. While the area cleared was identified as younger and weedier edge vegetation and therefore of lower quality, the end result is a reduction in width of an already narrow band of vegetation between the public walking track and SH59, as well as creating a new canopy edge.

[757] Dr Keesing reviewed the application against the NPSIB, finding that the only aspect of that document that is challenged is the spatial loss of extent of the SNA. Dr Keesing considered that the removal of approximately 1,400m^2 of SNA027 would represent a reduction of around 1% of the total 14 hectare area. In his view, that equated to a negligible magnitude of effect hardly affecting the SNA as a whole, noting that it is already divided by linear pieces of infrastructure.

[758] That said, Dr Keesing accepted that the effects hierarchy set out in the NPSIB would be engaged so that there is no loss of extent nor of values post consenting works.

[759] Dr Keesing did not consider the vegetation clearance on the eastern side of SH59 to be of ecological concern given that it would be a minor amount and affecting low value early seral areas of linear native common broadleaf shrub and mostly pine. He considered the ecological effects to be negligible and not engaging the effects management under NPSIB Clause 3.16 which responds to significant effects on indigenous biodiversity outside SNAs.

[760] Dr Keesing considered potential effects on indigenous birds separately. He classified them as generally unlikely although, in SNA027, there was a greater probability that native bird species might nest in the affected area. He recommended potential effects to individual native birds be addressed by way of a condition managing SNA027 vegetation clearance.

[761] Turning to management of effects within SNA027, Dr Keesing noted that clearance cannot be avoided due to the need to provide an appropriately

sized and safe functioning intersection. He recommended a 3:1 offset ratio based on work in similarly later seral type indigenous vegetation. He noted that he had not undertaken an offset model for this purpose.

[762] A 3:1 ratio produces a need to find an area of 4,200m^2 for replanting. Dr Keesing identified areas on the margins of SNA029 and SNA0225 which would provide connections and protection for a small wetland area and buffering of the SNAs.

[763] He recommended a full and complete restoration programme for the offsetting areas to be required by conditions with monitoring of success focussed on the correct species richness painted in the correct patterns and established to an 80% canopy cover. A draft restoration programme was provided.

[764] Further, to avoid harm to nesting native birds, Dr Keesing recommended two protocols, the first to avoid clearance in the nesting season and to trim/thin the vegetation to be cleared prior to the nesting season and then followed up by pre-clearance ornithologist survey for active native nests. Identifying active nests would require clearance to be halted in the immediate area until such time as chicks are fledged or the nest has failed as determined by the ornithologist. Section 9 of Dr Keesing's report provided greater details.

Section 53 Comments

[765] As part of the Comments received on the applications, we had expert commentary from Dr Nyree Fea for PCC and from Ms Tayla Hooker for DoC.

[766] Dr Fea's comments included that:

(a) She had identified discrepancies in the documentation regarding the extent of indigenous vegetation across the development site and suggested that a Figure should be provided correctly mapping vegetation and habitat types across the entire development site.

(b) She noted that PCC had made its own estimates of vegetation clearance showing that construction of the SH59 roundabout would require clearance of 1,338m^2 of indigenous forest west of SH59 within SNA027 and 687m^2 of indigenous forest east of SH59 within SNA029. She was of the view that the latter had not been correctly assessed.

(c) She agreed that the indigenous scrub southeast of SNA029 was unlikely to meet any of the criteria to qualify as an SNA in the relevant national and regional instruments. While the indigenous scrub fragment was likely to have low ecological value, in her view, the magnitude of effect should be assessed as moderate because the loss of indigenous cover would occur in an environment type that is Acutely Threatened. The end result is that the overall level of effect would be low. She nevertheless considered that there was ground for that level of effect to be addressed within the effects management hierarchy because of provisions in the NPSIB focussing on maintenance of connectivity between and buffering around indigenous biodiversity and the potential for cumulative loss even if individual fragments are rated as low.

(d) She considered a replacement ratio of 3:1 very low for mature indigenous-dominant forest with significant ecological values and results should be provided from a biodiversity offsets accounting model (**BOAM**) specific to the project to ensure an appropriate offset ratio was calculated;

(e) Dr Fea noted the potential for cumulative habitat loss and the value of the SNAs in providing buffering of the Taupō Stream. She did not agree that the magnitude of effect was negligible and suggested it should instead be considered either low or moderate.

(f) Based on the information available to her, it was difficult for Dr Fea to determine if the proposed offset was appropriate.

(g) Dr Fea agreed that with the conditions Dr Keesing had proposed, indigenous birds would not be harmed during construction, but considered that the suggested conditions needed to be expanded to cover indigenous vegetation areas on the site.

(h) Based on the information available to her, Dr Fea considered that an acoustic bat survey should be undertaken immediately before construction commences in order to minimise the risk of felling occupied bat roosts, with provision for preparation of a bat management plan if long-tail bats are recorded during the survey.

[767] In her report, Ms Hooker:

(a) Agreed with Dr Fea's comments regarding the need for better mapping of indigenous vegetation within the site.

(b) Disagreed with Dr Keesing's assessment of SNA027 and SNA029. She concluded that both were of very high ecological significance and that the indigenous vegetation described east of SH 59 was moderate-high. In an appendix, she provided a more detailed assessment based on criteria of representativeness, rarity and distinctiveness, diversity and pattern and ecological context in each case.

(c) Specifically disagreed with Dr Keesing's view that the eastern area by the road should not have been identified and mapped as an SNA, noting that while it does contain some weed components, it also contains older indigenous vegetation up to 30 years old and forms part of the remainder of SNA029. Likewise, she disagreed with Dr Keesing's assessment of SNA027 as having moderate value, noting that indigenous broadleaf forest is rare.

(d) Disagreed with application of a 3:1 offset ratio for SNA027, noting that the area to be lost is approximately 60 years and there will be significant

time lags before it can be replaced. She shared Dr Fea's view that a BOAM assessment should be undertaken.

(e) Considered that the same approach also needs to be undertaken in relation to the loss of indigenous vegetation east of SH59 that currently has no offset or mitigation provided.

(f) Expressed concern about the five-year maintenance period proposed for the SNA027 offset.

[768] Other Comments raised more general issues. Ms D'Olivera suggested that natural environments should be protected wherever possible. Te Awarua o Porirua Harbour and Catchments Community Trust and Guardians of Pāuatahanui Inlet, and Friends of Taupō Swamp both raised issues about SNA029. They suggested it should be surrounded with a predator proof fence and a native shelter belt to replace existing macrocarpas. They also suggested limits on cat ownership within the subdivision.

[769] Wellington Conservation Board disagreed with the assessment of indigenous vegetation to be removed and recommended additional bat surveys. The Board considered that biodiversity offsets have been insufficiently justified and suggested that a precautionary approach should be undertaken where ecological uncertainty remains.

[770] The Board accepted the applicant's position in relation to potential adverse effects on bird life.

[771] The Board considered that the SNAs affected needed the strongest possible protection. It suggested that offset planting around the three SNAs should be doubled, predator proof fencing installed around SNA029 and cat ownership restrictions put in place across all subdivisions.

[772] Rebecca Davis and Jonathan Burchell suggested that open space buffers should connect SNAs and that ecological areas have protection in perpetuity.

Applicant's Response to s53 Comments

[773] As part of the applicant's response to Comments, Dr Keesing responded to both Dr Fea and Ms Hooker's Comments.

[774] In relation to the issues Dr Fea had raised:

(a) He had not produced a map of every vegetation type across the site because there were no indigenous vegetation assemblages remaining on the farm land other than the 0.5 hectares of planted indigenous shrubland. He clarified that he had discounted the gardens of three house lots as not constituting valid indigenous ecological features. Likewise, while there are areas of vegetation along driveway edges, boundary edges and in some other locations identified by Mr Payne as part of his assessment of herpetofauna, Dr Keesing noted that these were largely exotic plant species and he did not consider they constituted indigenous vegetation requiring mapping.

(b) Dr Keesing disagreed that native vegetation on the SH59 road edge should be included in offset calculations as it was not significant, holds no important species or areas of habitat, has no important functioning role, is not 'natural', and is being cleared for roading purposes.

(c) Dr Keesing confirmed that the area of SNA029 on the east side of the main access track where vegetation was proposed to be removed had been included in the overall area of 1,400m^2 which formed the basis for offsetting calculations.

(d) Dr Keesing contested the basis for Dr Fea's view that the loss of planted shrubland on the eastern side of SH59 and outside any SNA was not negligible. He assessed this fragment as having virtually no ecological function or value, but that even if that was not correct and, as Dr Fea suggests, it is of low value, there was no basis on which to conclude that

its clearance would result in a moderate magnitude of effect (i.e. more than minor).

(e) Dr Keesing analysed the elements of the BOAM methodology, suggesting that the critical element was the proportion of indigenous vegetation lost. In his view, given that the area is dissected by road, rail and footpaths, is relatively young and is compromised by weeds, an offset ratio of 3:1 is a fair proportionate response and 7:1 or 10:1 (as suggested by DoC and PCC) is not.

(f) Dr Keesing specifically refuted the suggestion that a bat survey and bat management was required.

[775] Responding to Ms Hooker:

(a) Dr Keesing sought to clarify that his comments about the ecological value of SNA029 related to the roading issue and the edge of SNA029 by the State Highway. The latter largely consisted of exotic vegetation beneath a mahoe canopy with a prominence of wandering jew under the canopy. In his view, it does not have the indigenous representativeness, rarity or value to the wider important SNA and is not a buffer to the SNA, but rather a weed source.

(b) Dr Keesing advised that his estimate of the clearance area was derived from GIS analysis undertaken by the applicant's engineers of the area required to be cleared for infrastructure. He relied on that as the most accurate measure of required clearance.

(c) He suggested that the offset response might be finalised when the real actual clearance is known.

(d) Dr Keesing acknowledged the time lag but also pointed that because of the weed infestation, road edge effects, and poor conditions, as well as the age of the vegetation in SNA027, a 3:1 well maintained offset is fair. However, he also acknowledged that there was a case to be made for a 5:1 offset ratio.

(e) In relation to bat presence and the use of pine and shelterbelt trees, if bats were detected then the resulting actions to be taken by the developer is management through the DoC tree felling protocol or the Eco-Hydrological Management, Offsetting, and Monitoring Plan (EHMP.) He regarded this as a low-risk issue.

[776] Dr Keesing had a similar response to the Wellington Conservation Board Comments. He noted specifically that the ecological values on the site were largely removed before 1900 and those that remained had been limited by many decades of farming practice. In his view, the quality of the habitat now present is very minor contextually and provides also almost no value in respect of supporting native fauna.

Expert Conferencing

[777] The JWS issued following conferencing of the terrestrial ecology experts provided the following relevant information:

(a) Neither Dr Fea nor Ms Hooker had inspected the SNAs. Ms Hooker had not been on the site[180].

(b) The construction of the roundabout as proposed would remove 1,345m^2 on the western side of SH 59 and 691m^2 on the eastern side of the State Highway, a total of 2,036m^2 [181].

(c) Dr Keesing confirmed that he had excluded the 691m^2 on the eastern side of the State Highway from his offset calculation based on it not meeting the criteria in the District Plan for determining ecological significance. By contrast, Dr Fea and Ms Hooker considered (based on aerial photographs) that the vegetation had been in existence prior to 1995 and had a native component. In their view it should be included in

[180] Terrestrial Ecology Joint Witness Statement dated 18 August 2026 at paragraph 10
[181] Ibid

the SNA and any loss accounted for via offsetting. Dr Keesing relied on the nature of the ground cover for this view[182].

(d) All agreed that the construction of the roundabout is the only activity that would affect SNA classified vegetation[183].

(e) Two areas of non-SNA native shrubland were identified as being cleared under the proposal, one of 400m^2 on the margins of the State Highway and one of 5,000m^2 south-east of SNA029. The latter was planted in 2002 and includes karo, karaka, pōhutukawa, mānuka and kānuka. It was noted that some elements are not native to the Wellington[184].

(f) Dr Fea characterised the larger area outside SNA029 as predominately indigenous, including local elements, and considered that it provides habitat for common native birds[185].

(g) Dr Keesing accepted that the area had some ecological value but categorised it as low in extent given it is relatively young, small in extent, and the unknown provenance of the plants with several not occurring naturally in the local area[186].

(h) Dr Fea and Ms Hooker's view was informed by the fact that both areas of indigenous shrubland as above were within an acutely threatened level IV land environment[187].

(i) Dr Keesing noted that the roadside scrub vegetation includes weeds and common native species and is not predominantly indigenous. By contrast, Ms Hooker considered that while it was of lower value than other remnants, it still represented a loss of indigenous biodiversity and so should be included in any proposed offset while accounting for its low value[188].

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[182] Ibid at paragraph 11
[183] Ibid at paragraph 13
[184] Ibid at paragraph 14
[185] Ibid at paragraph 15
[186] Ibid
[187] Ibid
[188] Ibid

(j) The experts expressed similar views regarding the 691m^2 within SNA029 east of State Highway 59[189].

(k) Accepting the disagreement as to the quantum of vegetation required to be offset, Dr Fea and Ms Hooker considered that in the absence of a BOAM analysis, a more precautionary approach employing a ratio of 7:1-10-1 was appropriate[190].

(l) The experts agreed the key elements if a BOAM analysis was undertaken[191].

(m) As regards the potential for bats to be present on the site, Dr Keesing considered that the only potential bat habitat was exotic trees which could be felled as of right[192].

(n) Drs Fea and Keesing agreed that there may be sufficient time to do acoustic surveys after approvals are granted and before a particular area is cleared. The uncertainty as to whether bats are or are not present could therefore be addressed by way of conditions of consent. Drs Fea and Keesing differed as to whether the more practicable route was to implement the DoC bat tree felling protocols without the need for an acoustic survey. Dr Keesing's view was that with or without acoustic surveying, the tree felling protocols would need to be applied[193].

(o) The experts differed as to the need for draft management plans, but all agreed that any fauna management plan needed to take account of changes to the site over time and changes in species management that might be required while mapping the more permanent habitat. There was also no disagreement as to the need for some management plans[194].

(p) All agreed that monitoring of restoration/offsetting sites should occur until the canopy cover, vegetation height, absence of weeds, plant

[189] Ibid at paragraph 20
[190] Ibid at paragraph 24
[191] Ibid
[192] Ibid at paragraph 33
[193] Ibid at paragraph 35
[194] Ibid at paragraph 40

survival and species richness targets are achieved, however, monitoring of adaptive management required consideration of other BOAM outcomes in the offset plan[195].

(q) All agreed that ecological matters requiring inclusion in the management plan are bats, offsetting, ecological planting, pest animal and weed control, monitoring of restoration outcomes and methods and nest checks.

Further Information

[778] In the conference we convened on 3 September 2026, we discussed offsetting requirements. The ecologists present confirmed our impression that the intent of offsetting requirement is that the higher the quality of the habitat lost, the greater the offset, and vice versa.

[779] We discussed with the experts whether it would be possible to undertake a BOAM analysis of SNA27, that having been identified at the conference as the most conservative position (i.e. any other indigenous vegetation would be a lower quality and potentially lower offset ratio). Based on their responses that it was readily practicable, we requested that this be undertaken. We also asked Dr Keesing to amplify a comment he had made at the conference that if greater offsetting was required, areas were available on slopes adjacent and above the proposed retention wetlands that were currently proposed for kānuka-flax revegetation or natural revegetation.

[780] In his commentary on ecological issues dated 7 September 2026 following issue of the JWS, Dr Bramley noted Dr Keesing's offer to provide a BOAM analysis to address SNA vegetation loss. He advised that the Panel would need to decide the applicability (or not) of this model in relation to the other vegetation clearance proposed. However, he considered that the assumption

[195] Ibid at paragraph 44

that the ratio generated by the BOAM for SNA027 would be appropriate and conservative for other lower value vegetation was reasonable.

[781] He also noted that the landscape and ecology plans included planting of approximately 25.8 hectares of native vegetation across the site, which represents a ratio of approximately 34.7:1 to the total amount of indigenous vegetation to be removed.

[782] Commenting on Dr Bramley's analysis, Dr Fea agreed that, in theory at least, if amenity plantings would have the dual intention to also provide for ecological outcomes, then it would be possible that some of those plantings could be appropriate as ecological offsets.

[783] She also agreed with Dr Bramley's view that offset models should not be treated as "crystal balls" predicting exact ecological outcomes "which can be relied upon", but rather, should be used as a guide.

[784] In her commentary, Ms Hooker noted that for this additional land to meet offset guidelines, it would need to be representative of the areas lost i.e. 'like for like' and would require management and monitoring in a way that differed to a landscape architecture site. In summary, if the indigenous vegetation in such areas is defined as an offset, it should be designed to achieve those outcomes.

[785] Dr Keesing's response to our request dated 17 September 2026 set out his BOAM analysis of both SNA027 and the larger area of non SNA indigenous shrubland on the site.

[786] Dr Keesing's conclusion was that the appropriate offset ratio for SNA027 was 3.6:1, which equates to 0.5 hectares offsetting for 0.14 hectares of SNA027 vegetation lost. Applying that ratio suggested the addition of a further 800m^2 to the offset area.

[787] This analysis suggested to Dr Keesing that the appropriate ratio for the area of SNA029 affected, should we determine that should be offset, was likely to be 2:1, therefore requiring an additional 1,382m^2.

[788] Dr Keesing undertook a separate analysis of the larger non-SNA shrubland area which indicated a 2:1 ratio for that area also, which equates to an additional 1 hectare.

[789] Commenting on Dr Keesing's BOAM analysis, Ms Hooker considered that there were weaknesses in the calculation because of the absence of data on a comparable benchmark, which suggested to her that the correct ratio was likely higher than 3.6:1. Dr Fea undertook her own BOAM analysis, which produced an offset ratio of 3.9:1. She did not agree that a lower ratio should be used for the smaller area of SNA029 as in her view, the habitat was similar in character to that of SNA027, albeit with a denser under story of tradescantia.

[790] Reviewing Dr Keesing's BOAM analysis of the non-SNA shrubland, Dr Fea agreed with his suggested offset ratio of 2:1.

Findings

[791] Consideration of effects on terrestrial ecology takes place against the background of the national direction provided by the NPSIB. Some of the relevant provisions of the NPSIB are discussed in relation to effects on Herpetology above.

[792] Specifically in relation to identified SNAs, we note Policy 7 of the NPSIB which directs that:

> SNAs are protected by avoiding or managing adverse effects from new subdivision, use and development.

[793] Adverse effects on SNAs in this case are related to the roading improvements supporting housing development that is provided for in the District Plan, which qualifies as 'specified infrastructure' under the NPSIB. Accordingly, clause 3.11(1)(a) applies and in conjunction with clause 3.10(3), requires that the effects management hierarchy be applied.

[794] In our discussion of Traffic effects, we have discussed the necessity for the proposed road works. We find that it is not currently practicable to avoid the proposed roadworks, and therefore the associated effects on SNAs, and that they are minimised to the extent practicable. They cannot be remedied, and so under the hierarchy, more than minor adverse effects must be offset where possible.

[795] As above, Dr Fea agreed that amenity plantings intended to provide for ecological outcomes could be appropriate as ecological offsets. We accept that the proposed amenity planting is intended, at least in part, to provide ecological benefits and that they would provide some offsetting of SNA loss, but we have insufficient information to quantify that contribution with any degree of confidence. We prefer to treat that contribution as providing a precautionary buffer, over and above the offsets calculated as being required.

[796] We accept also Dr Bramley's view that a BOAM analysis of the loss of 1,345m^2 of SNA027 provides a conservative assessment of what offset might be appropriate for the loss of indigenous vegetation elsewhere, i.e. if anything, it will likely overstate the level of offset required elsewhere.

[797] Dr Keesing's BOAM analysis produced a multiple of 3.6:1. Dr Fea's analysis produced 3.9:1. Although the difference between these calculations and Dr Keesing's original recommended ratio of 3:1 is not immaterial, the difference between them and the 7:1-10:1 range Dr Fea and Ms Hooker suggested would be appropriate without the benefit of a BOAM analysis is significant and supports a view that Dr Keesing's knowledge of the affected areas gave

him an advantage Dr Fea and Ms Hooker did not have when assessing the level of adverse effects.

[798] Ms Hooker critiqued the benchmark Dr Keesing chose, and suggested it under-estimated the offsetting that should be required, but did not provide an alternative analysis.

[799] Drs Keesing and Fea's analysis is therefore the best information we have. Taking the precautionary approach NPSIB Policy 3 mandates, and taking into account the additional buffer the proposed amenity planting provides (as above), we find that a ratio of 4:1 is appropriate.

[800] As regards the 691m^2 of SNA029 affected, we disagree with both Dr Fea, who considered it should be offset at the same ratio, and Dr Keesing, who considered it should not be offset at all (although his rounding up of the affected area to 1,400m^2 provides a small level of offsetting that could be attributed to SNA029). In particular, we accept Dr Keesing's view that the area affected is of lower quality than both the area of SNA027 lost and the balance of SNA029. That suggests to us that the offsetting ratio should be lower. However, the fact that Dr Keesing recommended offsetting at a 2:1 ratio if we determined offsetting is required suggests it is clearly not insignificant. That, combined with its presence in a Level IV Land Environment, indicate that this is a more than minor effect. We accept Dr Keesing's recommended 2:1 ratio as the best proxy we have.

[801] As regards the two areas of indigenous vegetation affected outside any SNA, the national direction from the NPSIB (Policy 8) is that its maintenance should be recognised and provided for. Implementation clause 3.16(1) directs that significant adverse effects on such vegetation be managed by applying the effects management hierarchy. Clause 3.16(2) directs that other effects are managed in accordance with the objectives and policies of the NPSIB.

[802] From the experts' JWS, it appears that the smaller roadside area is of low quality. Dr Keesing describes it as including weeds and common native species, and not being predominantly indigenous. While we take on board the fact that it is within a Level IV Land Environment, we do not consider its loss either constitutes a significant adverse effect, or otherwise requires offsetting.

[803] While Dr Keesing similarly classed the larger area as being of low value, the fact that both he and Dr Fea identified an offsetting ratio of 2:1 as being appropriate (and the detail of Dr Keesing's BOAM analysis), together with its presence in a Level IV Land Environment suggested to us that some management response was required. Having addressed the potential effects on herpetofauna separately, we do not class the level of effect as being significant, so as to require the formal application of the effects management hierarchy. However, the emphasis in the NPSIB objective on ensuring no overall loss of indigenous biodiversity, the direction in Policy 3 that a precautionary approach be applied and the statement in Policy 8 that maintenance of indigenous biodiversity outside SNAs is important combine to persuade us that offsetting at a ratio of 2:1 is required.

[804] The end result is that we find that offsetting is required of 1,345m^2 at a ratio of 4:1 (i.e. 5,380m^2) together with 691m^2 of SNA029 and 5,000m^2 of non SNA shrubland at a ratio of 2:1 (i.e. 11,382m^2), making a total of 16,762m^2.

[805] This is materially more than the applicant proposed, but Dr Bramley identified that there was a significantly greater area available for terrestrial ecology offsetting. As discussed in relation to herpetology, there is potential for additional terrestrial ecology offsetting areas to enhance benefits to herpetofauna. Enhanced planting above the Kakaho Stream similarly offers the potential for enhanced freshwater ecology outcomes.

[806] In our discussion of freshwater ecology issues below, we note the need to reassess the need for culverting of Taupō Stream when the trigger for requiring the roundabout approaches, to ensure that road conditions, and NZTA's view regarding those conditions still requires the roundabout as outlined in the evidence before us if the development is to expand beyond 110 lots.

[807] If that reassessment alters the need to clear SNA areas, or the extent of the areas needing to be cleared, it would alter the consequent requirement for offsetting.

[808] We have therefore amended the proposed conditions to add a new condition 25A as a variation to the Landscape and Environment Plan requiring terrestrial ecology offsetting in terms of the ratios set out above, applied to the areas of SNA and indigenous vegetation in the non-SNA shrubland area that are required to be cleared.

[809] The new condition is worded as follows:

> Notwithstanding Condition 25, the LEP shall be varied as required to ensure that all areas of SNA027 and SNA029, and of the area of indigenous vegetation identified as Shrubland (1) on page 5 of the Joint Witness Statement of Experts in the field of Terrestrial Ecology dated 18 August 2026 filed with the Environmental Protection Authority, required to be cleared of vegetation in the exercise of this consent shall be offset by planting currently grassed areas in a manner meeting the specifications in Appendix 5 of the Ecological Assessment prepared by BlueGreen Ecology dated 20 November 2025 for offset areas in the following areal proportions per square metre of vegetation cleared:
>
> SNA027: 4 times;
>
> SNA029 and Shrubland (1): 2 times

[810] As regards the difference of opinion noted above regarding the appropriate protection for nesting native birds, we agree with Dr Fea that the protection afforded by Condition D44 should be expanded beyond SNA027 and SNA029 to include areas of native vegetation on the site. We consider that

there needs to be a lower limit of the size of native vegetation areas triggering this requirement, else ornamental gardens and individual trees or shrubs are read to be subject to it. We nominate an area of 100m^2 for this purpose. This is necessarily an arbitrary figure, but parties can suggest alternatives in their Comments on our draft decision.

[811] Condition D44 would therefore read:

> Vegetation clearance within SNA027 and SNA029 or in any contiguous area of indigenous vegetation greater than 100m^2 must be avoided through the native bird nesting season (1 September to 28 February) where practicable. Where it is necessary to undertake vegetation clearance in this period, the vegetation must be trimmed/thinned prior to the native bird nesting season and a pre-clearance avian survey must be undertaken by a SQEP in ornithology to ensure there are no active native bird nests in any clearance area. Where native nesting birds are found, then clearance must be halted for those trees in and adjacent to the nest until such time as the chicks have fledged or the nest has failed as determined by a SQEP in ornithology. Pre-clearance survey reports must be provided to Council within 5 working days of clearance works commencing within the SNA027 or SNA029 or affecting any contiguous area of indigenous vegetation greater than 100m^2 in area on the site.

[812] We find that it is unlikely that bats are present on the site. The records of bat presence within 25km (the DoC trigger for considering possible bat presence) are sparse: two widely separated sightings, some distance from the site, one of which was on Kāpiti Island.

[813] We have considered Dr Fea's recommendation that acoustic bat surveys be required as a condition of consent and have concluded that that it is not warranted, even on a precautionary basis. The applicant has not sought approval under the Wildlife Act to disturb native bats. Dr Keesing's position was that it would need to apply DoC guidelines to ensure compliance with that Act. In the Terestrial Ecology JWS, Dr Fea described that position as posing a risk to the applicant. We agree with that view. From an RMA

perspective, however, we do not consider the risk is sufficiently large to demand that it be addressed by conditions.

[814] We have addressed Comments seeking predator proof fencing around SNA029 and greater constraints on cats in our consideration of herpetology issues. We refer to and rely on our findings in that context.

[815] We have identified the following additional condition issues in relation to terrestrial ecology:

(a) Condition D46 cross references Condition 0. It should reference Condition D44;

(b) Condition D87 cross references Condition D22 at line 2. It should be Condition D25;

(c) Condition D87(b) requires maintenance of planting "up to a period of three years or until 80% canopy cover has been achieved, whichever the lesser". It should read, "…whichever is the greater"

(d) Condition D122A requires monitoring "for a minimum period of three years, or until 80% wetland vegetation cover has been achieved across the ground surface, whichever occurs first". It should read, "… whichever occurs last".

[816] The conditions accompanying this decision reflect those changes.

[817] With those changes to conditions, we find that effects on terrestrial ecology and indigenous biodiversity will be appropriately managed, with adequate offsetting of more than minor residual effects.

Freshwater Ecology and Biodiversity

The Application

[818] Freshwater ecology is supported by the wetlands and streams within the site. Wetlands have different values from streams and both national and regional direction distinguishes between them. We therefore consider the adverse effects of the project on wetlands and streams separately.

Wetlands

[819] The Applicant's Assessment of Environmental Effects identified wetlands as the most prominent ecological feature on the property[196] and reproduced a map showing their distribution across the site taken from the Ecological Report supporting the applications authored by Dr Keesing.

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[196] Paragraph 5.4.2.

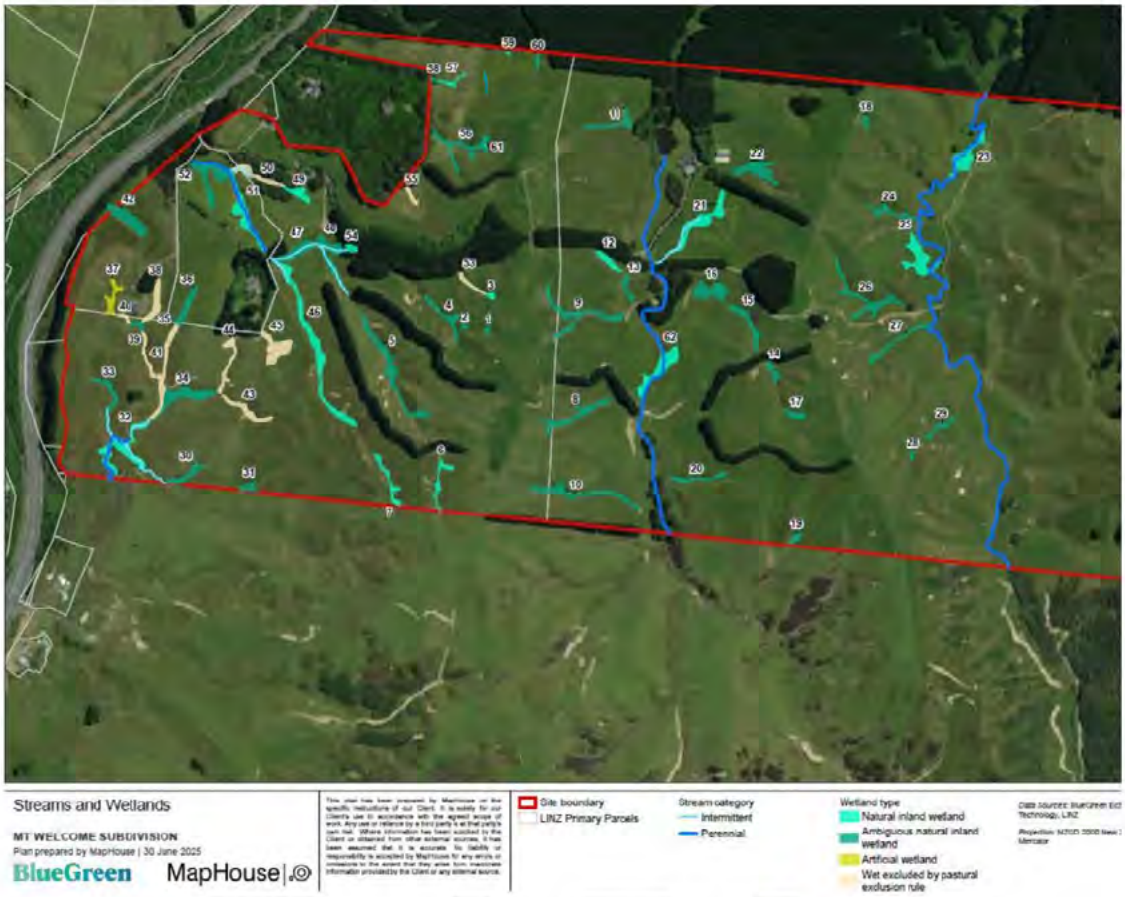

Figure 8: Wetlands mapped across the landscape from rapid and plot delineations, including streams and their categories[197]

[820] Figure 8 distinguishes between different categories of wetlands, reflecting Dr Keesing's assessment. We will return to that issue.

[821] It is apparent from Figure 8 that many of the wetland systems on the site exist within the gully complexes traversing the site, although they are also prevalent on the lowest level of the site adjacent to SH 59.

[822] In his assessment, Dr Keesing noted that he had assessed 62 wetlands on the site (those shown on Figure 8). He excluded one site because it was a derivative of a deliberately constructed water body. This is the 'artificial wetland' identified as #37 on the western margins of the site in Figure 8. We

[197] Source: Mt Wellington Station Ecology, BlueGreen, 20 November 2025, Figure 6

agree that that falls within (c) of the definition of 'natural inland wetland' in the NPSFM and its exclusion is therefore appropriate.

[823] At page 16 of his report, Dr Keesing noted his view that none of the gully systems or wetland systems on the property should be considered as "natural" wetlands in the sense of wetlands representing an indigenous assemblage in a landform that was historically wetland (i.e. not forest).

[824] Nor were any of the features he had identified representative assemblages of indigenous wetland species. In his view, they derived their current characteristics from deforestation and decades of farming. However, as Dr Keesing acknowledged, the National Policy Statement for Freshwater Management (**NPSFM**) (and the NRP) do not distinguish between wetlands on that basis. Rather the RMA defines wetlands as including:

> Permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.

[825] The NPSFM focuses on 'natural inland wetlands'. The term 'natural inland wetland' is defined in clause 3.21(e) to exclude:

> A wetland that:
>
> (i) is within an area of pasture used for grazing; and
>
> (ii) has vegetation cover comprising more than 50% exotic pasture species (as identified in the *National List of Exotic Pasture Species* using the *Pasture Exclusion Assessment Methodology* (see clause 1.8); unless
>
> (iii) the wetland is a location of a habitat of a threatened species identified under clause 3.8 of this National Policy Statement, in which case [this] exclusion…. does not apply.

[826] Dr Keesing quantified the total area of wetland within the site, excluding the artificial wetland noted above, at 5.031 hectares, of which he considered that 0.631 hectares fell within the exclusion above,

[827] Dr Keesing's position was that the wetlands in those 0.631 hectares satisfied the first two pre-conditions of the definition and were not excluded by the third consideration. At paragraph 4.2 of his assessment, he advised that there are no rare species on the site. They were therefore not natural inland wetlands in his view.

[828] That left 4.4 hectares categorised as natural inland wetlands for the purposes of the NPSFM.

[829] DoC and GWRC challenged that approach. They pointed in their Comments to MfE Guidance suggesting that the intention of the exclusion was to exclude wetlands that would remain within an area of pasture used for grazing, "rather than its conversion to urban development"[198].

[830] This is potentially important because the Legislation Act instructs us that the meaning of legislation (and the NPSFM is legislation for this purpose) "must be ascertained from its text and in the light of its purpose and its context".[199]

[831] We asked DoC and GWRC if they could point out to us anything in the NPSFM development phase that would support the observation in the MfE Guidelines on which they had relied. In its response dated 2 September 2026, DoC advised us that when the 2022 amendments were made to the NPSFM the Section 32 report supporting those amendments recorded that the 'pasture exclusion' was intended to "… exclude highly modified wetland landscapes now utilised for pasture from the regulations, so they can continue to be used for pastoral purposes".[200]

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[198] M Dixon report dated 6 July 2026, supporting the Comments of GWRC at paragraph 5, citing Ministry for the Environment (MfE) (2022). *Pasture exclusion assessment methodology*. Wellington: Ministry for the Environment, page 9, section 3. DoC (Ms Hooker) noted the same section.

[199] Legislation Act 2019, Section 10(1).

[200] At page 30. The following page has similar statements.

[832] When we asked him about it at the conference held on 3 September 2026, counsel for the Applicant pointed out that the 2022 Section 32 report DoC had referred to us postdated the pasture exclusion.

[833] Counsel for the applicant also relied on the text of the exclusion[201]. On the other hand, Mr Banks told us that the text supported GWRC's position (that the pasture exclusion did not apply).

[834] Clearly, the wetlands in issue currently sit within an area of grazed pasture. We observed that while on our site visit. However, it appeared likely to us that at the point they are infilled, which is what Policy 6 of the NPSFM is directed at, that will not be the case (Mr Banks' point). The disputed wetlands are at the western side of the site and would be developed as part of the bulk earthworks for the initial stages of subdivision.

[835] We asked if counsel for the applicant could refer us to any decisions of the Environment Court, or the superior courts that address the correct interpretation of the amended (2022) 'pasture exclusion'. Counsel advised that they had been unable to identify any judicial authority, but noted that the Expert Panel determining the Maitahi Village FTAA applications in 2025 had applied the same reasoning as the one they advocated; applying the exclusion on the basis of the current use of the land, not the use proposed to be made of it[202].

[836] Dr Keesing assessed the ecological values of the natural inland wetlands he had identified at paragraph 4.2 of his report. He noted that while wetlands are recognised as greatly depleted in the Wellington Region, that categorisation relates to indigenous representative natural wetlands, not exotic induced wetlands. He noted that there are no representative indigenous wetlands present. If there had been, that would, in his view, be

[201] Expanding in this regard on the reasoning at paragraphs 54 of the Memorandum of Counsel that accompanied the applicant's response to Comments

[202] Maitahi Village Expert Panel Final Decision, dated 18 September 2026 at [671],

a rare habitat type. He also observed that there were no distinctive patterns or high (or even moderate) diversity of flora and fauna or a biotic condition, no gradients of a special note and no unusual environmental factors. He also considered that the wetlands on the site offer no refugia or good condition habitat for aquatic species and wetland birds. Rather, they are low diversity, exotic damp gully bottoms, narrow in the main, which suffer from high levels of modification depending on the farming cycle. They do not provide corridors with links or connections for any species.

[837] While he recognised that the wetland gullies on site do have a functional role in mitigating farm run off, he considered the extent of positive contribution to be limited and that the wetlands of the property were at the low end of the scale of wetland functions. Overall, Dr Keesing categorised wetland features on the site as having a low to negligible ecological value.

[838] Dr Keesing described the effects of the development on the wetlands across the site in paragraph 5.1 of his report noting that while it was proposed that a number of ephemeral headwater sections of some of the gully systems would be infilled, existing gully wetland and streams would be altered into lake-wetland features. In his view, the end result would be a better aquatic habitat and wetland. In Table 4 of his assessment, Dr Keesing quantified the area of natural inland wetland under the proposed stormwater retention areas as being 6,900m^2 across the site and other natural inland wetlands infilled by earthworks as occupying 15,311m^2.

[839] Testing the magnitude of effects, Dr Keesing compared the loss of wetland habitat in each catchment with the total wetland area in the catchment, concluding that the effect of the loss of wetland habitat in the Taupō Stream Catchment was very low or a less than minor adverse effect and that in the Kakaho West and Kakaho East less than minor.

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[840] Dr Keesing recognised that this categorisation was not a complete answer given the policy directions in the NPSFM that[203]:

> There is no further loss of extent of natural and land wetlands, their values are protected, and their restoration is promoted.

[841] Dr Keesing described the loss of 6,900m^2 of current wetland features as being remedied by development of 12,000m^2 of wetland retention areas, giving a surplus of 5,170m^2, which could be offset against the remaining 15,311m^2. As regards the balance of 10,141m^2, while Dr Keesing did not consider offsetting was required by the NPSFM given the assessed no more than minor level of adverse effect, he noted that the Applicant had nevertheless offered an offset approach and he identified areas within the site suitable for wetland creation and enhancement. The combination of the two areas in the wetland equated to 1.6 hectares of currently poor quality exotic wetlands proposed to be transformed into indigenous natural wetlands with appropriate fencing, riparian buffer planting, removal of livestock and long-term protection and maintenance. Dr Keesing considered that a 1:1 ratio was appropriate given the low quality wetlands affected which, in his view had little or no current pathway to betterment.

[842] The end result, in Dr Keesing's view was a net gain.

Section 53 Comments

[843] Dr Keesing's assessment of adverse effects on wetlands and the mechanism for addressing the effects was critiqued by Ms Melanie Dixon, assisting GWRC, and Ms Tayla Hooker and Dr Kathryn Collins, assisting DoC. As above, both Ms Dixon and Dr Collins disagreed with the exclusion of

[203] Policy 6.

'pasture wetlands'. If accepted, that would add 5,020m^2 [204],`and give a total of 2.722 hectares of affected natural inland wetlands.

[844] Ms Dixon also disagreed with Dr Keesing's assessment of the current values of wetlands on the site. While she agreed that the 'pasture' wetlands were of low value, she assessed the balance of wetlands as having moderate to low values and that when assessed at the sub-catchment scale within the broader context of the Wellington Ecological District, the magnitude of effect of the wetland loss is high. She considered the overall level of effect from the loss of 15,311m^2 to be a moderate level of effect which required offsetting.

[845] As regards the proposed use of retention wetlands to provide a significant proportion of that offsetting, Ms Dixon noted the hydrological evidence of Mr James Blyth provided in parallel by GWRC suggesting that the effective area within the retention wetlands providing suitable wetland habitat was significantly overstated, in part because Dr Keesing had used the 10% AEP flood extent in each case which would include areas that would not be covered by water sufficiently often, and in part because the main bodies of the retention wetlands were likely be 'too wet' (i.e. in excess of 0.5 metres deep). Ms Dixon also expressed concern about the potential conflict between the need to provide access to and to actively remove sediment from the retention wetlands, and their value from an ecological perspective.

[846] As regards the proposal for offsetting in the form of wetland planting, Ms Dixon noted that such work would not offset the loss of wetland extent.

[847] Ms Dixon also expressed concern about the lack of information regarding the staging of wetland offsetting relative to development. She recommended the preparation and implementation of an holistic eco-hydrological management, offsetting and monitoring plan to address these concerns. She described the purpose of such a plan as being to provide coordinated

[204] Refer Dr Keesing's confirmation of the affected area dated 28 October 2026

framework for ecological, water quality and hydrological monitoring, management and reporting.

[848] Dr Collins and Ms Hooker raised a number of the same issues as Ms Dixon. Both took issue with Dr Keesing's assessment of the value of the wetlands on the site. Ms Hooker suggested that the application of the NRP would produce a conclusion that those wetlands were significant by reason of their rarity and representativeness. Dr Collins suggested that while they were showing signs of an impairment typical of rural land management, they did have potential values.

[849] Dr Collins similarly agreed that the proposed offsetting was not 'like for like' as required in the principles for aquatic offsetting set out in Appendix 6 to the NPSFM.

[850] She questioned whether the retention wetlands would provide compensation either, given their purpose is for stormwater retention.

[851] Lastly, Dr Collins took issue with Dr Keesing's reliance on the proportion of the site wetlands to wetlands within the relevant catchments. She agreed with Ms Dixon's approach in this regard.

[852] The Panel also received Comments from the Wellington Conservation Board suggesting that freshwater ecosystems generally deserved greater emphasis. The Board suggested that protection and restoration measures be strengthened to require a measurable improvement in ecosystem health.

[853] As part of its Comment, TRoTR expressed concern about the fundamental approach of combining ecological offsetting with stormwater management. It did not support the proposed use of streams and wetlands as stormwater management devices and considered the proposed 'in-line' stormwater wetland approach inappropriate.

Applicant's Response to s53 Comments

[854] Dr Keesing responded to the detailed expert Comments summarised above. He disputed Ms Dixon's assessment of wetland values and defended the logic behind comparing wetland loss on the site with the wetlands within the respective catchments. He also defended the use of the 10% AEP line based on the likelihood that the saturated soils within that area would support wetland plants. In his view, 0.5 metres was not too deep. He noted wetland species that would grow in up to 1 metre of water.

[855] More generally, Dr Keesing noted that the site provided no opportunities to create new wetlands. The remediation he supported enhanced the value of onsite wetlands, but he acknowledged it did not address the extent. Essentially, it was a trade of quality for quantity.

[856] The JWS of the freshwater experts (and representatives of Ngāti Toa) provided a useful summary of the differences in view, but little narrowing of the issues. We note from the JWS:

(a) Dr Keesing's observation that in the absence of any other land use, the wetlands on site would remain as they are, supporting his adoption of a 1:1 ratio[205].

(b) Dr Collins and Ms Hooker expressed the view that the current offsetting proposal lacks additionality, because the gullies would be planted irrespective. Dr Keesing's view, however, was that as the retention wetlands were not intended to provide water treatment, there was no requirement to plant the gullies for mitigation[206].

[205] Aquatic Ecology and Wetlands JWS dated 18 August 2026 at paragraph 61.
[206] Ibid

(c) Ms Dixon identified potential additional areas that might be suitable for wetland offsetting[207].

(d) Dr Keesing confirmed that the intention was to have dense vegetation in the retention wetlands and so any vegetation removal would be unacceptable in an offset wetland. However, the view of the Applicant's hydrological expert, Ms Grant, was that maintenance would not be required[208].

(e) As regards concerns expressed by Dr Collins and Ms Hooker about contaminant loading in the retention wetlands, Ms Grant's view was that the rain gardens providing upstream were adequately sized and there was no intention of discharging any contaminants downstream[209].

(f) As regards Ms Hooker's concern that the suggested approach did not meet additionality requirements for offsetting, Dr Keesing's view was that while retention ponds would be required for stormwater management, they would look very different to what the Applicant had proposed[210].

(g) Dr Keesing and Ms Dixon agreed that any areas subject to stormwater maintenance need to be excluded in any offsetting calculation[211].

Further Information

[857] Following the issue of the JWS, Dr Bramley's report provided further insight into the issues. Dr Bramley suggested that the Applicant's wetland proposals did not constitute offsetting according to international standards, but in an

[207] Ibid.
[208] Ibid at paragraph 71
[209] Ibid
[210] Ibid
[211] Ibid at paragraph 71.

ecological context of highly degraded wetlands, they might be considered mitigation.

[858] Dr Bramley also addressed the issue of scale, noting that the scale at which an effect is assessed is a matter of judgment, based on the nature of the ecological attribute in question, but that an assessment using the same scale for both the assessment of value and the assessment of effect deserves greater weight.

[859] In their Comments on Dr Bramley's report, both GWRC and DoC disagreed that the Applicant's proposals might appropriately be classified as mitigation. GWRC pointed to the NRP definition of 'mitigation' which requires that actions be taken at the same location as the adverse effect and that the trigger for offsetting is more than minor residual adverse effects.

[860] Following up, we asked Dr Keesing to investigate Ms Dixon's suggestion that there might be options for additional wetlands within the site. He confirmed that the areas Ms Dixon had identified were suitable and would provide 0.3873 hectares of additional wetland habitat and that the Kakaho East Catchment was the only other viable option for wetland creation in the vicinity. Ms Dixon commented that of the identified 0.3873 hectares, 0.174 hectares is creation of new wetland habitat, and the balance is enhancement either of areas already the subject of works or of existing wetland habitat.

[861] Turning to the applicant's alternative scheme design, Dr Keesing addressed this in his 28 September 2026 paper. He noted that the applicant had arranged access to an area in the East Kakaho Catchment that would provide an additional 12,100m^2 to address the deficiency should the proposed retention wetlands be converted to stormwater basins with machine access and sediment management and thereby cease to provide the remedial and offset functions of the original design. Together with 12,500m^2 of

remediation in offset on site, this would make a total of 24,600m^2 of natural inland wetland available for offsetting.

[862] We asked the aquatic ecology and wetland experts to conference on the suggested redesign. Their JWS was dated 15 October 2026. Putting aside issues that appear to have been addressed by the subsequent further redesign, we note:

(a) Mr Blyth and Ms Grant agreed that conditions need to ensure that the offset wetland hydrology is created in a manner that maintains wetland habitat and that additional monitoring is required to inform hydrological design inputs for the offset wetlands[212].

(b) All agreed that staging requirements needed to be in conditions and if offset actions were delayed until works in the upper catchment were finalised, the time lag would be too long and the outcome to uncertain[213].

(c) Ms Dixon was recorded[214] as being of the view that:

> The Applicant has pretty much maximised the opportunities to restore/create wetlands on the site.

(d) Ms Dixon, and Drs Keesing and Collins agreed that the revised proposal better addressed offsetting of wetlands because it provides for the offset of the loss of extent[215].

[863] In his memorandum dated 22 October 2026 discussing the further revised scheme design, Dr Keesing noted that the Kakaho East offset might be implemented before or at the start of Stage 1 earthworks, simplifying the relationship between the timing and effects and staging of offset works. In particular, it would establish at least half the wetland offset required for the

[212] Paragraphs 104-105
[213] Paragraph112
[214] Paragraph124
[215] Paragraph126

development (and all of the stream offset) and enable Stage 1 Wetland reclamation to proceed without relying on Stage 1 gully wetland restoration. His proposal was that once the Stage 1 earthworks were complete, the commencement of wetland offsets in the Stage 1 gullies could be initiated before the corresponding Stage 2 effects occurred.

[864] Both GWRC and DoC provided comments on Dr Keesing's revised position.

[865] The experts advising GWRC considered that greater direction was required in conditions, supported by a Wetland Compensation Plan, regarding the minimum area of wetland compensation, monitoring of hydrological, and ecological conditions, along with a longer period prior to handover.

[866] Ms Hooker on behalf of DoC noted her analysis of the applicant's position is that a maximum of 6,900m^2 of wetland extent is being created, leaving a loss of 21,031m^2 across the site (assuming the 'pasture exclusion' does not apply.

Findings

[867] As discussed above, the issue of whether the pasture exclusion rule in the NPSFM definition of 'natural inland wetland' applies to the wetlands Dr Keesing identified in that category was in contention.

[868] In the aquatic ecology and wetland JWS, Dr Collins suggested that because the Pasture Exclusion Assessment Methodology is incorporated by reference in the NPSFM, it forms part of the NPSFM. However, the only reference to the Pasture Exclusion Assessment Methodology in the NPSFM is for the limited purpose stated in 3.21(e)(ii), as quoted above. It is incorporated by reference to that extent certainly, but we do not consider everything else in it should be treated as incorporated by reference.

[869] We also cannot put much weight on the MfE Guidelines as the Environment Court has previously declined to place weight on MfE Guidelines that purport to suggest how national policy instruments should be interpreted.[216]

[870] The Section 32 Report DoC referred us to, however, is a different matter. That is part of the statutory process, and a clear indicator of the legislative intent that we are required to interpret the National Policy Statement in light of.

[871] In relation to counsel for the applicant's point regarding the s32 analysis post-dating the NPSFM, while this was true, the original pasture exclusion in the 2020 version of the NPSFM was framed differently. It focussed on the position at the commencement date of the NPSFM. The 2022 amendment to the exclusion removed that focus, and that was the position the Section 32 report was assessing.

[872] While the decision on the Maitahi Village application indicating the exclusion would apply (as counsel for the applicant contended) is entitled to respect, it would have carried more weight if that expert panel had considered the argument that GWRC and DoC have put to us and explained why it was not accepted. There is no indication on the face of the decision that the Maitahi Expert Panel was alerted to the documents we have been provided with.

[873] We find that the text of the exclusion is ambiguous. It can be read as speaking at the time a decision is required (which would support the applicant's view) or at the time when actions are taken that affect a wetland (which would support GWRC and DoC's view). Against the background of the statement in the section 32 report that the purpose of the exclusion (as amended) was to enable pastoral land to continue to be used for that purpose, we prefer the position advanced by GWRC and DoC. It follows

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[209] See e.g. *Greater Wellington Regional Council v Adams* [2022] NZEnvC 25 at [136]; *Federated Farmers of New Zealand and Others* v *Northland Regional Council* [2022] NZEnvC 016; *Grey v District Council* [2023] NZEnvC 45 at [205]-[207].

that the wetlands Dr Keesing excluded need to be considered as 'natural inland wetlands' to the extent they are adversely affected by the development.

[874] Having said that, we note that the NRP uses the version of the definition of 'natural inland wetland' that prevailed prior to amendment of the NPSFM in 2022, that would exclude the disputed wetlands. In our view its provisions need to be read with caution as a result.

[875] As regards the value of the wetlands on the site, we consider even Ms Dixon's categorisation of the so-called pasture wetlands as being of Low value overstates the position.

[876] The value of the remaining wetlands remained in contention. Ms Dixon and Ms Hooker categorised them as rare because wetlands are rare. They did not directly respond to Dr Keesing's contention that exotic dominated wetlands are not rare. Nor did they discuss the inter-relationship between representativeness and the extent of indigenous vegetation. The EIANZ Guidelines that were much discussed for other reasons state that one criterion for representative vegetation and aquatic habitats is that indigenous species dominate[217].

[877] Ms Hooker referenced NRP Policy 42, which directs that all natural wetlands are protected on the basis that they have significant indigenous biodiversity values. A note to the Policy explains that all natural wetlands are considered rare and representative. We do not consider our findings can turn on a policy that effectively deems a position to be the case. It is a relevant consideration because the NRP is a relevant planning document, but section 85(4) of the FTAA directs that our decision whether to grant or not grant approvals cannot turn solely on a relevant Plan provision.

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[217] EIANZ, *'Ecological Impact Assessment, EIANZ guidelines for use in New Zealand terrestrial and freshwater ecosystems'*, 2nd edition, May 2018

[878] Ms Dixon suggested that some wetlands in the Taupō Stream catchment supported native species and implied that in those wetlands exotic species were not dominant. Dr Keesing noted in his response that Ms Dixon had not undertaken the specific detailed wetland assessments he had done, and suggested she had used an aggregated view of west draining features when in reality each feature is dominated by exotic species and is heavily affected by livestock.

[879] We prefer Dr Keesing's evidence as to the distribution of exotic and indigenous species because of the extent of his on-site observation and assessment.

[880] We accept Ms Hooker's evidence that absence of indigenous species is not decisive and that wetlands provide other functions that can make them significant. However, we also accept Dr Keesing's evidence that this is not the case on this site.

[881] We note that it did not appear to be contested that the wetlands on site were in poor condition. Dr Bramley described them in his report for instance as "degraded". However, the August Aquatic Ecology JWS records Dr Collins' view that the adverse effects of rural land uses are reversible. That may be the case, but it is not the case at present, and Dr Collins did not explain why such a reversal would occur, or the timeframe within which it would occur. We do not consider that we can rely on an enhanced future wetland value in the absence of the enhancements the applicant proposes as part of its development.

[882] In summary, we find that the wetlands on the site are generally of 'Low' quality. There may be exceptions, but we did not have clear evidence as to the extent of such exceptions. In particular, we had insufficient evidence to persuade us that any exceptions might be material given the absence of any rare aquatic or plant species on the site.

[883] Dr Keesing tested the magnitude of effect on the site's wetlands by comparing the area affected with the area of wetlands in each catchment. That produced percentage losses of 1.6% (Taupō catchment), 12.75% (Kakaho West catchment) and 3.4% (Kakaho East catchment). He categorised those as a low, moderate, and low magnitude of effects respectively.

[884] The other experts on wetland ecology contested whether that was a relevant or reliable basis for determining the scale of effect.

[885] As above, Ms Dixon and Dr Collins suggested that the magnitude of effects should be tested on a site/ sub catchment basis, citing the EIANZ guidelines in support of that view, in the context of the broader ecological district. This would have identified a much higher percentage of wetlands lost, and a corresponding increase in the assessment of the magnitude of effects. This issue was linked to the question of whether Dr Keesing had assessed the value of the wetlands at a site scale, but considered the magnitude of effect at a broader catchment scale, contrary to the EIANZ Guidelines.

[886] We accept that EIANZ mandates the assessment of the magnitude of effects on a site basis, but we also consider that there is weight in Dr Keesing's observation that site boundaries are inherently arbitrary, particularly as they relate to freshwater systems. We also note Dr Bramley's caution that the EIANZ Guidelines have no legal standing.

[887] We agree with Dr Bramley's observation that just as zooming out to a larger spatial frame of reference risks under-estimating the magnitude, so too, zooming in to a smaller spatial frame of reference risks over-estimating that magnitude, and that the appropriate scale of reference is a matter of judgment, depending on the ecological attributes in question.

[888] We accept also Dr Bramley's view that assessments applying the same spatial scale of reference in relation to the value of the habits/ features lost deserve more weight than assessments which do not.

[889] As Ms Hooker noted, however, the wetlands on this site formed part of a broader ecological context, inter-acting with high value habitats downstream. That is particularly the case with the Taupō Stream catchment. We do not consider that that context can be ignored in the assessment of the magnitude of effects on the basis that the assessment should be site/sub-catchment specific. Having said that, we also consider that Dr Keesing put too much stock on the percentage of wetland habitat that will be lost in each catchment. It is relevant, but not in our view determinative.

[890] Overall, some 2.7 hectares of natural inland wetland (c. 2.2 hectares without the lower quality pasture wetlands) are affected. In our view, that is a substantial loss of wetland habitat in absolute terms. We do not agree with Ms Dixon that the loss is 'High', given the broader ecological context, but neither is it Low, as Dr Keesing classified the Taupō Stream and Kakaho East catchments. We find that the wetlands in each catchment would be subject to a 'Moderate' adverse effect.

[891] The combination of a Low value habitat subject to a Moderate magnitude of effect translates to a Low level of effects, according to the EIANZ Guidelines[218]. Dr Keesing categorised the effect as 'less than minor' in RMA terms, but we do not consider that follows. The EIANZ Guidelines suggest that a minor effect is "Adverse effects that are noticeable but that will not cause any significant adverse impacts" and that a more than minor effect is "Adverse effects that are noticeable that may cause an adverse impact but could be potentially mitigated or remedied"[219].

[218] Table 10
[219] Table 11

[892] These descriptions overlap. They are also not legally binding. We find that it is certainly more than a 'less than minor' effect, which the EIANZ guidelines describe as a day-to-day event, but too small to affect others. There is also a strong case that effects on the so-called 'pasture' wetlands fall within the minor effects category due to their poor quality. That is our conclusion. We find that on balance, effects on non-pasture wetlands would be more than minor. We do not find the effects are 'significant'.

[893] Dr Keesing addressed management responses to the loss of wetland habitat on the basis that it was too small to warrant a response normally, but the NPSFM requires no loss of natural wetland extent or values[220].

[894] As above, Dr Keesing's initial position was that the adverse effects on wetlands might be addressed (to use a neutral expression) by establishment of the retention wetlands on the site of 6,900m^2 of wetlands which he described as remediation and an offset of the balance of affected wetlands partly within the footprint of the retention wetlands and partly at other locations on the site through a combination of creation of new wetlands and enhancement of existing wetlands on a 1:1 basis.

[895] As we have also noted, there was considerable contention as to how the applicant's proposed response should be characterised and whether it would be effective.

[896] Categorisation is important because of the sequenced approach that the effects management hierarchy mandated by the NPSFM directs: first avoided where practicable, then minimised where practicable, then remedied where practicable, then offset where possible and residual adverse effects are more than minor, then compensated where appropriate.

[220] NPSFM, Policy 6

[897] We are satisfied that the applicant has avoided loss of wetland habitat to the extent that its project concept permits.

[898] Dr Keesing described the retention wetlands as providing part remediation and part offset. In so far as the retention wetlands would replace existing wetlands, we struggle with the suggestion that they would remediate the adverse effect of the loss of existing wetlands within the footprint. They will do in part (arguably they remedy the loss of extent), but it is hard to conclude that they would entirely remedy the loss of existing wetland values because what is proposed is different to what currently exists. Dr Bramley queried whether they (and the other measures the applicant proposed) might be better characterised as mitigation. For similar reasons we consider that to be a fair characterisation at least for the loss of wetlands within the wetland footprint, but that acknowledges that there is likely a residual adverse effect which has not been minimised. We agree with Ms Dixon and Dr Collins that the retention wetlands cannot properly be considered an offset because they do not provide like for like habitat. Rather, they provide environmental compensation in circumstances where the NPSFM would not preclude that option.

[899] We find that the fact that the retention wetlands were proposed to have a stormwater management function does not mean that any ecological benefits they provide should be disregarded for that reason alone. Dr Keesing satisfied us that those benefits would be additional.

[900] We also find that while establishment and maintenance of wetland species in the proposed wetland might be challenging, as Dr Collins put it, Dr Keesing satisfied us that it would be possible with careful choice of plant species and sufficient effort. We likewise accept Dr Keesing's response to the concern expressed by Mr Blyth and Ms Dixon that not all of the area within the 1% AEP line would be sufficiently wet to sustain wetland species.

[901] The bigger question is whether the stormwater management function the wetlands have would lead to their environmental benefits being degraded. As we have noted, Dr Keesing accepted that if the retention wetlands had to be physically maintained, they should be excluded from any offsetting calculation. At the conference we convened on 3 September 2026, he told us that sediment accumulation within the retention ponds would not be a bad thing from an ecological perspective. The existing wetlands already accumulate sediment. But the physical removal of sediment using heavy equipment was a different matter. The advice he had received from the project engineers was, however, that it should not be required.

[902] As discussed in our review of stormwater effects, we do not agree with that view and consider that active sediment management will likely be required.

[903] We also agree with Ms Dixon and Dr Collins that the proposed works outside the retention ponds do not constitute either mitigation (as Dr Bramley suggested) or offsetting (as Dr Keesing suggested), or at least not wholly so.

[904] As GWRC noted, and the NRP records, mitigation is the direct reduction of adverse effects at the location where they occur. Actions elsewhere on the site may be beneficial, but they are not 'mitigation'.

[905] Similarly, enhancement of existing wetlands does not offset the loss of wetland extent. Dr Keesing's description of the proposal as replacing quantity with quality was both apt, and illustrative of the issue. We accept that the applicant is proposing some offsetting in the form of the creation of new wetlands. To the extent that it relies on enhancement of existing wetland habitat, it should be considered compensation.

[906] As we have noted, Ms Dixon accepted that the applicant has identified all practicable offset sites and thus the effects management hierarchy permits

compensation. Again, we are satisfied that compensation is not precluded in this case.

[907] The problem is that if the ecological benefits provided by the retention wetlands cannot be relied upon because they are subject to periodic maintenance, there is a substantial deficit in the proposed offset and compensation proffered. While not a significant adverse effect, this demands additional action on the applicant's part in order to demonstrate consistency with the NPSFM given our conclusion that effects on existing non pasture wetlands would reach the 'more than minor' threshold.

[908] The alternative design provides that additional action. Dr Keesing quantified the total area 'offset' as comfortably exceeding the area of non pasture wetlands. The reverse would be the case if the pasture wetlands are included, but given our finding the effects on them do not reach the 'more than minor' threshold, the NPSFM effects management hierarchy does not require that they be offset or compensated for, therefore we find that this is acceptable.

[909] We find that the arrangements Dr Keesing has proposed for the offset/ enhancement works are generally acceptable.

[910] We are less comfortable with the conditions directing how those works are undertaken. The applicant largely relied on the 'general accordance' obligation in Condition G1. GWRC considered that more detail was required and suggested inserting performance standards as new Condition R51B and a specific works package in new Condition 51A. It also suggested a new Condition 51G related to monitoring in retained wetlands and amendments to Condition 52 to add detail as to what the Landscape and Ecology Plan should contain.

[911] The applicant did not support the suggested changes.

[912] We agree in substance with GWRC that more detail is required on the face of the conditions and that the suggested performance standards are appropriate, with one exception. GWRC suggested that conditions specify the area of created wetland required and the area of enhanced wetland. In our view this will likely generate classification disputes and that one overall areal figure of both created and enhanced wetland to be undertaken in the Kakaho East sub-catchment, and a second overall areal figure across the balance of the site, is sufficient.

[913] We also considered that the format suggested by GWRC could be simplified if the other suggested performance standards were located in condition 56A which specifies the content of the EHMP.

[914] We agree that the LEP condition (R52) should have more detail as to what is required, but consider that some elements GWRC suggested belong in the LEMP. We have therefore duplicated and expanded condition D26.

[915] We have not accepted the expansion of provision for monitoring at this point, but we have inserted a requirement that TRoTR receive monitoring outcomes.

[916] We also disagree with GWRC's suggestion that a condition be inserted requiring that 'retained wetlands' be monitored. Given the number of wetlands on the site, and the fact that they are already subject to sediment inputs, this would seem to us to be an onerous and not particularly helpful obligation. If GWRC disagrees, it can provide its reasons in its Comments on our draft decision.

Streams

[917] Figure 8 above shows the four primary sub-catchments on the site.

[918] The identified northwestern and southwestern draining catchments are in the Taupō Stream Catchment. Both join the Taupō Stream main stem via culverts under State Highway 59. The stream flows south into the Taupō Swamp immediately north of Plimmerton. The identified Kakaho West and Kakaho East systems join south of the site and flow ultimately into Pāuatahanui Inlet.

[919] Dr Keesing recorded that the total length of streams on the site was 3,288.65 metres, of which, 2,576.69 metres were of perennial streams and 711.96 metres of intermittent streams.

[920] Dr Keesing described the fauna sampling that had been undertaken as "partial", reflecting the fact that the perennial systems would not generally be directly affected except by culvert crossings or through the introduction of the new lake/wetland retention areas discussed above that would replace existing stream habitat. Shortage of water at the time of survey had also made sampling impractical. Dr Keesing relied on his experience and sampling undertaken in the Lower Kakaho to predict the likely assemblages. That said, he had undertaken night spotlights and a sample eDNA survey of the two west draining systems which provided greater information and his report sets out his findings. In particular, taxa richness with respect to aquatic macroinvertebrates in those sub-catchments was identified as extremely low. He noted that the culverts under SH59 provided significant fish passage difficulty, meaning that fish presence on the property and in the Upper Taupō Stream could not be expected to be abundant or even present for some species. The investigations that were undertaken did not identify any fish in the western catchments, but eDNA results indicated the presence of banded kokopu, short-fin eels, and a weak indication of long-fin eels in the northern system. In the southern system only a low eDNA signal for short-fin eels was indicated. Overall, Dr Keesing described the data collection methods he had employed as not overly conclusive, but showing

some native fish in both sub-catchments, although in his view, the habitat was marginal at best.

[921] Dr Keesing considered that both Kakaho sub-catchments would likely contain relatively sensitive macroinvertebrate taxa. Available literature and fish data was both old and limited, but Dr Keesing considered it highly unlikely that inanga, giant bully and common smelt were present within or upstream of the site, however short-fin and long-fine eels, banded galaxids, common bully and red-fin bullies would likely all be present. Long-fin eels were noted as having an At Risk-Declining status.

[922] Dr Keesing's assessment also discusses the reach of Taupō Stream west of SH59, which the applicant proposes to culvert in order to allow for a future SH59 roundabout.

[923] He described it as having aquatic habitat generally of reasonably good quality, and a reasonable benthic habitat. He noted the presence of an existing culvert downstream that was perched well above the stream bed so as to preclude all upstream fish passage. Dr Keesing noted GWRC records of native fish present in the Taupō Stream, including fish species with an At Risk-Declining threat status. However, in his view, none of these species could move upstream because of the existing barrier, and because of the challenges and modifications present, the aquatic habitat has a moderate ecological value.

[924] Dr Keesing also assessed an eastern tributary of the Taupō Stream which would be affected by extension of an existing culvert under SH59. He described it as having very poor habitat quality and very low value as an aquatic habitat.

[925] Overall, Dr Keesing described the intermittent/perennial streams on the site within the Taupō Stream Catchment as having a low value, the East Kakaho as having moderate value and the West Kakaho as being of low value by

reason of its lesser water quantity and higher modification. He classified the Upper Taupo Stream as being of moderate value, with a Stream Ecological Valuation (**SEV**) likely to be 0.6 based on similar examples affected by the Transmission Gully Highway and other open pasture examples he had assessed.

[926] Dr Keesing noted a number of proposed changes to waterways. These involved extended culverts, replacement of existing culverts and new culverts. In addition, the proposed wetland retention areas would result in perennial or intermittent stream sections being converted from a riverine environment to a lacustrine system in four locations, creating the need for fish passage to be established. Dr Keesing considered that this provided a significantly greater aquatic habitat potential.

[927] Given the highly modified nature of the waterways affected, Dr Keesing did not consider the use of culverts would result in any meaningful loss of stream extent.

[928] More generally, overall, the proposed works would affect 450 metres of stream (approximately 300m^2). In Dr Keesing's view, the end result would be much more and better quality aquatic habitat. Further, assuming appropriate stormwater quality controls and management before the water enters the gully wetland and stream systems, Dr Keesing considered the end result a positive effect.

[929] Addressing the proposed Taupō Stream Culvert, Dr Keesing noted that the stream was straight in this reach, meaning that the stream loss was 110m. He calculated that there would be a loss of around 77m^2 of aquatic habitat for which there was no practical avoidance or remedy. He was of the view that fish passage was not required as there was already no fish passage into the upper reach affected by the proposed culvert, but noted that ensuring

that it complied with the relevant national environmental standard would not be problematic.

[930] Dr Keesing's position was that the loss of 450 linear metres of stream on the site was remedied through the creation of the retention wetlands with large areas of permanent water.

[931] He assessed the 110 metres of Taupō Stream Culvert as requiring a further 193 metres of perennial stream enhancement as an offset.

[932] Dr Keesing also identified a proposed fish salvage process for works in any perennial and intermittent stream.

[933] Dr Keesing identified 195 metres of stream length in the Kakaho West Catchment where fencing and riparian revegetation between on average 20 metres either side of the streams banks would provide enhancement.

[934] Documentation provided with the applications indicated that throughout earlier engagement with the applicant, TRoTR had voiced strong opposition to the piping and reclamation of approximately 110 metres of Taupō Stream for the roundabout, and urging exploration of alternative access options. It highlighted concern with using waterways as stormwater retention wetlands, and considered the proposed offsetting approach to be inconsistent with Te Mana o te Wai and mātauranga Māori, and not accounting for cultural and spiritual values generally. TRoTR stressed that waterways are taonga that should be protected, restored and enhanced, particularly in the context of the wider cultural landscape of Te Awarua o Porirua and Pukerua Bay which have recognition as statutory acknowledgement areas under Treaty settlement.[221]

[221] Fast Track Substantive Application, Pukerua Property Group Limited Partnership, 16 March 2026, Appendix 2, Attachment 6, Letter from Mr Robert McLean, dated 5 November 2025

[935] As part of its application, the applicant acknowledged that while the proposal includes extensive restoration and offsetting of wetlands and streams, its approach conflicts with TRoTR's principle of full protection of these taonga and opposition to wetland and stream reclamation and the use of offsets such as converting waterways to stormwater retention wetlands. The applicant stated that given the Structure Plan, topography, and road safety/engineering constraints, there are no practicable alternatives that avoid wetland and stream loss while achieving a viable development. As a result, culverting and reclamation are operationally necessary and will be managed through the effects management hierarchy with offsets. The applicant accepted effects on values of significance to Ngāti Toa may be more than minor, but pointed to a shared commitment to ongoing, meaningful engagement between the parties[222].

[936] Prior to the applications reaching the Expert Panel, Dr Keesing provided an SEV calculation for the Taupo Stream Culvert dated 2 June 2026 as part of the applicant's response to the directions of the Panel Convenor. This showed an overall mean SEV score for the Taupo Stream currently of 0.506 (compared to the 0.6 Dr Keesing had predicted in his assessment report) and a post culvert SEV of 0.203. The end result was a reduced offsetting multiple compared to Dr Keesing's original assessment of 1.55.

[937] Dr Keesing noted that a further 1.5 multiplier had not been employed in either calculation. He explained that this additional multiplier is usually used to reflect a default or to account for a lag time in approvements to result from offset work.

[938] Dr Keesing did not consider that a multiplier should be required as there were no difficult site circumstances that would make the proposed works difficult or at risk of success, and most of the positive functions and gains of

[222] Ibid, section 5.12.6.

riparian edge treatment would occur sufficiently quickly that a multiplier reflecting lag times would not be warranted.

[939] The end result was a slight reduction in the assessed stream length required to be enhanced (from 193 metres to 170.5 metres).

[940] Dr Keesing provided additional SEV analysis of the area of the Kakaho West proposed to be occupied by Retention Wetland E as part of a package of material the Applicant provided in response to the Panel's request for information on 2 July 2026. That assessment suggested that SEV values would increase from 0.344 to 0.552 if the development proceeded as proposed.

Section 53 Comments

[941] Dr Gareth Taylor provided a review of these aspects of Dr Keesing's report for GWRC. Dr Taylor critiqued Dr Keesing's reliance on SEV methodology in his assessment. He noted the absence of any detailed validation, while acknowledging the subsequent work Dr Keesing had provided in relation to the Taupō Stream.

[942] Dr Taylor also addressed the issue of a multiplier. He noted the risk of urban contaminants and run off passing through the upstream retention wetland and reaching the area of enhanced stream habitat, and the absence of details regarding staging of offsetting. In his view, if no multiplier was to be applied, then offsetting needed to be undertaken prior to construction of the roundabout and staged to avoid risk of impact on the offset stream reach. He calculated a multiplier of 2.163 (with no additional multiplier for defaults and lags) or 3.245 (with a 1.5 additional multiplier) for Taupō Stream.

[943] As regards effects on watercourses within the site, Dr Taylor noted the absence of SEV based assessment, the absence of consideration of staging and sequencing, and the absence of any direct offsetting for stream loss.

Accordingly, if the wetland retention ponds were not considered suitable as an offset for stream habitat, that would result in a loss of ecological value.

[944] Dr Taylor described the fish data relied upon as "relatively light".

[945] He recommended a set of conditions which would require fish passage on all culverts that is informed by fish survey (to ensure appropriate design), GWRC certification of designs, and a fish salvage plan which had been informed by sufficient survey to confirm fish absence, or which took a conservative approach to fish salvage.

[946] Dr Taylor also queried the estimate of total stream length affected. His reading of the overall ecological areas plan was that it showed an additional 295 metres of stream proposed to be reclaimed under the bunds for the retention wetlands or culverted as part of road crossings (making a total of over 745 metres of intermittent and perennial stream affected).

[947] Commenting on Dr Keesing's view that fish passage might not be required where downstream barriers precluded fish swimming upstream, Dr Taylor considered that the Freshwater Fisheries Regulations required fish passage in all cases.

[948] Dr Collins provided additional commentary for DoC making similar points. She also commented that, in her view, the retention wetlands were not like for like offsetting of stream habitat and were not appropriate due to their stormwater retention purpose.

[949] In its formal Comments, TRoTR reiterated its continued opposition to the proposed modification of Taupō Stream to provide access to the development, viewing it as a significant impact on the stream's mauri and other values. Further, it did not support the applicant's assessment of stream values or reasoning around provision of fish passage. Ngāti Toa emphasised the stream's role in the Te Awarua o Porirua Statutory Acknowledgement

Area, maintaining its preference to avoid reclamation unless changes clearly restore or enhance the stream.

Applicant's Response to s53 Comments

[950] In his response to Comments:

(a) Dr Keesing noted the overall improvement in water quality that would accompany the development through reduction in rural prediction related contaminants and their substitution by urban based contaminants. He also observed that unlike farming practices, urban development would come with stormwater treatment reducing stormwater contaminant loading by 70-90%. He regarded this as a positive ecological outcome of the project.

(b) As with his response in relation to wetlands, Dr Keesing noted that he saw no need for management of what would be representative indigenous wetlands post creation.

(c) In relation to Dr Taylor's critique of Dr Keesing's SEV analysis, Dr Keesing noted the additional information he had provided in relation to the Kakaho West SEV assessment discussed above and further details that were recorded in relation to the Taupō Stream calculation. Dr Keesing provided additional commentary on the basis for his calculations. He considered that the inputs were correct and commented that Dr Taylor's analysis had failed to take account of subsequent updates in the information used.

(d) In relation to Dr Taylor's re-estimate of stream length, Dr Keesing advised that more of the road culverts identified are in fact replacements of existing culverts with possible minor extensions. His advice was that after rechecking by the engineers, the total assessed length was 478 metres, equating to around 150m^2 of aquatic habitat area

on site. He regarded that as close enough to the original measure of 450 metres as to make no difference given the areas of gained habitat provided.

(e) In relation to the criticism that the applicant was not providing a direct offsetting for stream loss, Dr Keesing considered that the effects not avoided had been mitigated through remedial actions and that there is no significant residual effect.

(f) In relation to the absence of detail in relation to staging, Dr Keesing agreed with the suggestion of an effects management-ecology-hydrology overarching plan which could detail timing of effects and actions to manage those effects in associated monitoring.

(g) In relation to criticisms of the extent of fish survey data, Dr Keesing considered that given the size, amount of water and condition of the waterways in question, and the type and extent of interaction and loss, the data used was more than adequate. He noted that he had assumed that there were nevertheless fish to cater for. He also did not consider that further surveys were required given that passage was already being considered for eels, red-fin bullies and banded kokopu, but he was not intrinsically opposed to more fish presence data if it was appropriate to the stream and culvert involved.

(h) Dr Keesing agreed with a condition requiring fish passage for the Taupō Stream Culvert and for fish access to Retention Wetland Band E. He did not consider that there was any other culvert that required passage within the project area.

(i) Dr Keesing opposed greater prescription in relation to fish salvage. He recommended allowing the expert to adapt onsite as matters arise.

(j) Responding to both Drs Taylor and Collins, Dr Keesing noted that it would not be possible to ensure flows to enable fish passage into the

retention wetlands at all times without draining the wetland which would be self-defeating, but the important fish migration times would be catered for.

(k) Dr Keesing remained of the view that the gains related to the proposed wetland creation were significant, with aquatic habitat potential much greater than the habitat of "the current stock pugged, sedimented, highly eroded minimal water depth, channels that currently form the streams". He considered that this outcome would far outweigh the provision of fish habitat to two intermittent streams with low quality upper head water systems with likely no or very low abundance of eels.

[951] We noted the following relevant points in the initial (18 August 2026 Freshwater Ecology JWS) that followed the applicant's response to Comments:

(a) There remained a continuing difference of opinion as to whether fish surveying on the site was adequate and whether more surveying was required to inform fish passage provision and fish salvage location[223].

(b) The experts agreed that fish salvage should be undertaken in all intermittent and perennial watercourses and in standing water[224].

(c) All experts agreed that providing fish passage throughout the site is desirable regardless of the presence of downstream barriers and designs should be in accordance with the 2025 Guidelines[225].

(d) It was also agreed that while removal of downstream off-site fish barriers was of high value, its viability remained unknown[226].

[223] Aquatic ecology and wetlands JWS dated 18 August 2026 at paragraph 31.
[224] Ibid
[225] Ibid at paragraph 43.
[226] Ibid at paragraphs 43-44.

(e) Drs Taylor and Keesing agreed that the draft Fish Salvage Plan requires certification and can be adapted to accommodate staging and future project changes[227].

(f) Statements in the application documents that fish passage would not be provided in and out of Retention Wetlands A, C and D, and through culvert 39 needed to be revised[228].

(g) Dr Keesing noted that there was no suitable like for like option to offset stream loss[229].

(h) Ms Hooker and Drs Collins and Taylor were of the view that the approach of providing wetlands for streams would not deliver no-net loss or better in terms of stream extent and values[230].

(i) Drs Keesing and Taylor agreed that retention wetlands are suitable for offsetting of stream loss provided, among other things, areas subject to stormwater maintenance are excluded. Further, if monitoring identifies the wetland habitat as temporarily unsuitable for fish during drought conditions then a contingency response/remedy is required to salvage any fish that are stranded. Ms Hooker and Dr Collins disagreed, noting that ecological functions are so different that they are not like for like[231].

(j) The only retention wetland not providing fish passage is Wetland D[232].

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[227] Ibid at paragraph 47.
[228] Ibid at paragraph 51.
[229] Ibid at paragraph 56.
[230] Ibid
[231] Ibid
[232] Ibid

Further Information

[952] Dr Bramley provided feedback of stream issues as part of his report to us dated 7 September 2026.

[953] We have already noted his comments on the scale of analysis in relation to wetlands. They apply equally to streams.

[954] As with wetlands, Dr Bramley considered that the use of retention wetlands was not an offset for the loss of stream values, because it was not 'like for like' but rather mitigation.

[955] Dr Bramley noted the concerns expressed by TRoTR regarding the culverting of Taupō Stream and observed that SEV analysis did not factor in any cultural degradation of mauri (life force) caused by piping a stream. He advised that he was unable to provide useful advice on that issue.

[956] Dr Bramley confirmed that riparian planting had the potential to provide material benefits to aquatic ecology, but that whether it was sufficient to address upstream catchment changes would depend on the quality, extent and maintenance of the planting within the wider catchment context. It requires holistic catchment planning and effective management until ecologically appropriate targets are achieved and maintained.

[957] Many of the Comments on Dr Bramley's report already noted are equally relevant in this context.

[958] Dr Taylor noted that Dr Bramley had not discussed the desirability of undertaking a SEV assessment to determine the quantum of offsetting required.

[959] Dr Collins recommended that riparian planting should provide a minimum 10 metres buffer. She also recommended greater consideration of

remediation of downstream fish barriers as part of an offset. While she acknowledged the practical difficulties (Dr Bramley had noted that this could not be required by consent conditions because it involves third parties), it could have significant benefits.

[960] The Panel has drawn the following points from the subsequent (15 October 2026) JWS following redesign of the project:

(a) The quantification of 450 metres of stream loss remains an outstanding issue. The questions are whether that quantification is correct and whether a 1:1 ratio is appropriate to account for the values it impacted and compensated streams given the time lag between loss and replacement[233].

(b) Dr Keesing's view was that conditions can address concerns about a time lag by requiring offsetting in the Kakaho East sub-catchment to occur in advance of Taupo Stream works[234].

(c) Conditions could require a SEV to be completed to confirm the appropriate ratio, and be certified as such. Dr Keesing confirmed that there is sufficient stream available in the Kakaho East Catchment even if more than 450 metres is required and/or the ratio is greater than 1:1[235].

[961] As mentioned above, TRoTR provided further Comment following the exchange of views on the applicant's alternative design. TRoTR retained its opinion in relation to the proposed culverting and permanent reclamation of Taupō Stream. It emphasized that the stream is a taonga with important values, including mahinga kai, puna raranga, rongoā, wai māori/wai ora, wāhi tūpuna and wāhi maumahara, and must be protected and enhanced for future generations of Ngāti Toa Rangatira. TRoTR acknowledged

[233] Aquatic Ecology and Wetlands Joint Witness Statement dated 15 October 2026 at paragraphs 28 and 62.
[234] Ibid at paragraph 64
[235] Ibid at paragraphs 65 and 66

stormwater and ecological offset improvements in the redesign. However, its concern about the permanent loss of part of the stream remained unaddressed. TRoTR maintained the view that adverse effects on waterways should first be avoided, with mitigation and offsetting only considered where avoidance is not reasonably achievable. As a source of mauri, degrading Taupō Stream risks significant effects on the health and wellbeing of the environment and Ngāti Toa whānau.

[962] Following further redesign, Dr Keesing advised of a revised calculation of stream offset requirements. He assessed 169 metres of the Taupō Stream as being affected, and at a 1.75 ratio, that equated to 295.75 offset metres. Together with 215 metres of stream length in the Taupō Stream tributaries and the Kakaho West Catchment, that made a total of 511 metres. He advised both that the Kakaho East enhancement area could accommodate that length and that Stage 1 of the development would include the Kakaho East stream and wetland enhancement programme.

[963] In response, the experts for GWRC noted a number of outstanding issues:

(a) While the removal of standing water reduced the fish stranding risk, Dr Taylor noted that it was not eliminated. Steps would need to be taken when flows are very low to ensure fish are salvaged within the forebays, if retained (he preferred they be removed).

(b) While it would be preferable to utilise Kakaho West for offsetting stream effects in that catchment, if it was transferred to Kakaho East, Dr Taylor had undertaken a SEV for the 95m of affected stream using the information in Dr Keesing's assessment which produced a requirement for 160m of offset. Applying the same multiplier for streams on the balance of the site produced a requirement for a total of 363.8m of stream offsets if no additional multiplier for time lags is made (or 659.55m including Taupō Stream if a 1.5 multiplier was used).

[964] We directed Drs Keesing and Taylor to conference regarding the difference in opinion on offsetting requirements. They identified that the difference turned on whether the hypothetical future stream state is assumed to be improved or the same condition as at present. Dr Taylor has adopted an improved value. Dr Keesing has adopted a current value.

[965] Both acknowledge that a final SEV calculation would be undertaken with completed design.

[966] On 16 October TRoTR provided further Comment responding to the applicant's alternative proposal. It considered the proposed separation of stormwater management from ecological offsetting and provision of additional stream remediation and offsetting in the Kakaho East catchment to be an improvement, better distinguishing infrastructure from restoration and aligning with protecting the mauri of natural waterways. Notwithstanding this, Te Rūnanga remained uncertain that the offsetting would achieve the intended ecological and water quality outcomes and support the objectives of Te Wai Ora o Porirua – Porirua Harbour Accord, noting the limited focus on enhancement within the affected Taupō and Waimāpihi catchments.

[967] TRoTR was supportive of the introduction of rainwater tanks for every residential lot as a positive step in water conservation and protection of freshwater mauri. However, it pointed to outstanding technical issues identified by GWRC, Tiaki Wai, and PCC regarding the design, effectiveness, maintenance and long-term performance of the stormwater system. TRoTR stressed that ongoing monitoring, adaptive management, and resolution of these technical matters was considered essential.

Findings

[968] Many of the same issues arise in relation to streams as for wetlands. A key difference is that the streams on the site, and the reach of Taupō Stream the

application proposes to culvert, are clearly of higher ecological quality than the affected wetlands. Dr Keesing classified the upper Taupō Stream and the Kakaho East Stream as being of 'Moderate' value, and the balance of streams as being of 'Low' value. While Dr Collins considered that this assessment downplayed their importance because it failed to take account of their potential values, as with her assessment of wetland values, she did not identify why they would change and in what timescale.

[969] We do accept, however, Dr Collins' view that the streams acquire added importance because they feed into valued habitats downstream of the site.

[970] We also record that the affected streams acquire added importance because of their cultural values. As above, Ngāti Toa expressed particular concerns about culverting Taupō Stream.

[971] Another important difference is in the level of national direction. As above, Policy 6 of the NPSFM is unqualified. The only qualification is in the implementation provisions.

[972] Policy 7, governing rivers and streams, is expressly qualified:

> The loss of river extent and values is avoided to the extent practicable.

[973] Some of the issues initially raised in Comments were also resolved during the process. The applicant shifted from its initial position of proposing that fish passage would be restricted in some identified streams, and we have assessed the applications before us on the basis that fish passage will be provided at all proposed structures on streams. The only issue in contention is therefore the conditions governing construction of appropriate fish passage.

[974] As we will discuss in Part I of our decision, that meant that the scope of the complex freshwater fisheries approval sought reduced as a result.

[975] As above, Dr Keesing considered that loss of stream habitat on site would be remedied by creation of the retention wetlands, and the effects of culverting Taupō Stream would be addressed by enhancement of 195 metres of the Kakaho West Stream.

[976] Similarly to wetlands, we find that the retention wetlands would mitigate/ remedy loss of stream values to only some extent, and would not offset that loss because wetlands are not streams and do not have the same values. Similarly, while retention wetlands are not automatically precluded from compensating for adverse effects on streams if they have a stormwater management function, periodic active maintenance of the ponds to remove or redistribute sediment is a disqualifying factor. We therefore agree with Drs Keesing and Taylor that areas subject to such maintenance should be excluded.

[977] We note also issues posed by the timing of the creation of the retention ponds relative to the adverse effects on streams. While they might not be sufficient to require a 1.5 multiplier on the stream length offset/ compensation required (we accept Dr Keesing's reasoning to that extent), we consider that some allowance would need to be made for the time lag before value remediation and enhancement takes full effect.

[978] As it is, however, we have identified that the proposed retention wetlands were seriously flawed as a stormwater management mechanism in our discussion of stormwater effects, so as to require adoption of the alternative design. We do not therefore need to resolve that issue.

[979] As regards the proposed enhancement of the Kakaho West catchment in lieu of loss of Taupō Stream values, we find that this would not be 'mitigation' because it would occur in a different catchment, and would not offset that loss because it is not 'like for like'. We accept Ms Dixon and Dr Collins'

views on the first point and rely on Dr Keesing's acknowledgement noted above that no suitable like for like option is available to offset stream loss.

[980] We accept that the proposed enhancement of Kakaho West stream values could be a satisfactory compensatory mechanism for the loss of ecological (but not cultural) values in the Taupō Stream, provided the enhancement covers a sufficient stream length and the other factors Dr Bramley identified are satisfactorily addressed.

[981] However, the effective loss of the retention wetlands as remediation/ compensation for the reasons we have discussed leaves a substantial deficit in the suite of measures the applicant proposed and, in our view, demands additional steps be taken if practicable, consistent with Policy 7 of the NPSFM.

[982] The alternative the applicant proposed was enhancement work in the Kakaho East catchment instead of relying on retention wetlands and Kakaho West enhancement demonstrates that those additional steps are practicable. We think Dr Keesing was right when he said that this simplifies matters materially, and as per his and Dr Taylor's JWS, is to be preferred. In particular, we agree with his view that the proposal that the Kakaho East enhancement occurs before Taupō Stream culverting works resolves concerns about time lags for those works, provided it occurs sufficiently in advance of them. It does not address potential time lag effects between other on-site stream works and stream enhancement work, but we consider that can be addressed via management plan conditions.

[983] The principal residual issue we need to determine is the difference of view between Drs Keesing and Taylor regarding the spatialextent of enhancement work.

[984] In their JWS, they anticipated a final SEV being undertaken in conjunction with completed (presumably detailed) design. We agree that the extent of

enhancement work should reflect the extent to which streams are actually affected. We disagree that conditions should leave open the potential for the extent of enhancement to turn on completion and certification of a fresh SEV. As Dr Bramley noted in his report to us, methodology such as the SEV provides a deceptively precise answer to complex questions, and depends on the robustness of a range of inputs. The disagreement between Drs Keesing and Taylor clarified in their JWS illustrates the potential for a condition requiring completion of a future SEV to result in an impasse. Put another way, reservation of a power of certification for GWRC over a fresh SEV delegates an unsatisfactorily broad discretion[236].

[985] We consider that we need to resolve the parameters determining the extent of enhancement, so that GWRC has a more mechanical role certifying whether what the applicant proposes in its detailed design is satisfactory.

[986] The key issues we have to determine are:

(a) whether a multiplier is required in the SEV calculation to cater for time lags between loss of stream values and enhancement being effective; and

(b) whether potential improvements in stream values in future are sufficiently realistic to be factored into the calculation.

[987] For the reasons set out above, we consider that conditions can address the potential for material time lag effects, and therefore no multiplier is required on that account.

[988] As regards the second, we have addressed this point in relation to Dr Collins' view that adverse effects on stream values were reversible, and potential stream values recognised. As above, we had no evidence as to why or when

[236] Compare *Director General of Conservation v Marlborough District Council* CIV-2003-485-2228, High Court, Wellington, 3 May 2004

such changes might occur absent changes that follow implementation of approvals we might grant. We agree with Dr Keesing's view in this regard that enhancement should be based on the current value of the relevant streams.

[989] It follows that we accept Dr Keesing's 28 September 2026 paper as providing the appropriate basis for calculation of Kakaho East stream enhancement works, namely:

(a) A multiplier of 1:1.75 for the linear length of Taupō Stream culverting and related works; and

(b) A multiplier of 1:1 for the linear stream length of other streams (including tributaries of Taupō Stream) affected by project works on the site.

[990] Dr Keesing calculated a linear stream length of 511 metres of stream enhancement on this basis.

[991] We address below whether and what additional conditions are required to ensure that the end result appropriately addresses the ecological effects of adverse effects on streams, consistent with the NPSFM, but at best it provides only a partial response to TRoTR's concerns about the adverse cultural effects of the applicant's proposals.

[992] As set out below in our discussion of cultural effects, we consider the proposed conditions, including our amendments, satisfactorily address the majority of issues raised by TRoTR. However, impacts on TRoTR's relationships and associations with the wider Te Awarua o Porirua and Pukerua cultural landscape, namely Te Kakaho, Waimapihi, and Taupō Streams and Swamp require further examination.

[993] For the reasons set out above, we find that, compared with the original proposal, the revised alternative stormwater solution and the conditions we have imposed are a considerable improvement, and help address the concerns held by TRoTR regarding effects on the mauri of downstream environments.

[994] In relation to the culverting and permanent reclamation of Taupō Stream, TRoTR has been consistent in its opposition to this, as the awa is regarded as a taonga with intrinsic values that require protection and enhancement. As kaitiaki, Ngāti Toa want to ensure that present and future generations of Ngāti Toa Rangatira will be able to connect with the awa.

[995] The applicant has accepted that in this regard adverse effects on TRoTR may be more than minor[237]. In light of TRoTR's Cultural Values Assessment (**CVA**), correspondence with the applicant, and Comments to us, and considering the Ngāti Toa Rangatira Claims Settlement Act 2014 and statutory acknowledgements, we agree.

[996] In reaching a position on the significance of the adverse cultural effects, we have been cognisant of TRoTR's statement that "the avoidance of adverse effects on waterways should remain the primary objective, with mitigation and offsetting considered only where avoidance is not reasonably achievable"[238]. As discussed above in relation to Traffic effects, we consider the applicant has exhausted all practicable options currently available to it to avoid the selected roundabout location. Further, our exploration with the applicant (and other parties) of a potential realignment of Taupō Stream was unable to advance a superior outcome in relation to ecological and cultural effects, as it would ultimately result in increased earthworks and SNA

[237] Substantive application at 15.12.6
[238] TRoTR Comments in response to Minute 21, dated 16 October 2026

vegetation clearance. To that end, the avoidance of this particular effect on the cultural values of on Taupō stream is currently unable to be achieved.

[997] We emphasis the word 'currently'. NZTA's opposition to any alternative to the proposed roundabout is based on the function and posted speed of the State Highway. There is the potential that either or both may change before the trigger requiring construction of the roundabout, at which point NZTA may be amenable to alternative options.

[998] We propose to require reassessment of the need for culverting of Taupō Stream when the trigger for requiring the roundabout approaches, to ensure that road conditions, and NZTA's view regarding those conditions still requires the roundabout as outlined in the evidence before us if the development is to expand beyond 110 lots.

[999] We also consider that more effort needs to be put into possible options for enhancement of cultural values generally, and fish passage in particular downstream of the proposed culvert in Taupō Stream. The ecological experts agreed that removal of downstream fish barriers could only be a positive step, but it seems to have been put in the 'too hard' category, because it is outside the applicant's control.

[1000] More generally, we have carefully considered mitigation of cultural effects against the backdrop of the development, its redesign and proffered mitigation, offset and compensation measures as a whole. We note that while this particular section of Taupō Stream will be adversely affected in a cultural sense, the suite of conditions proposed by the applicant provide for the ongoing exercise of kaitiakitanga by TRoTR within the cultural landscape of Te Awarua o Porirua and Pukerua Bay more generally. To further ameliorate the effects identified by TRoTR specific to Taupo Stream, we have amended the proposed conditions as follows:

(a) In the EHMP Condition R56A, we have introduced the wording "cultural" into line 5 objective and a new subsection between clause a and b that provides for the assessment and implementation where practicable of opportunities for improving fish passage and other means to enhance cultural and ecological values in the downstream area between the culvert and Taupō Swamp.

(b) We have added a new clause (dd) to condition 59A with a requirement to consider, after consultation with TRoTR, whether circumstances have changed to permit an alternative to the proposed roundabout, or a revised roundabout design, reducing the extent of culverting required.

[1001] We acknowledge that the proposed culverting poses the risk of a potential residual adverse effect on the mauri of Taupō Stream. Notwithstanding that, the Panel considers that these conditions, in conjunction with those mentioned in the section on cultural effects, will allow for meaningful engagement of TRoTR as kaitiaki, opportunities to further input into the wellbeing of the Taupō catchment, and potential reconsideration of the need for a roundabout and consequently culverting in future. In the round, there will be opportunities through the project to contribute positively to the mauri of te taiao across the wider cultural landscape of Ngāti Toa, consistent with the outcomes TRoTR seek.

[1002] More generally, we consider the following additional changes are required to the proposed conditions:

(a) As above, provision needs to be made for calculation of stream enhancement works based on the multipliers discussed above. This has been inserted into new condition 51A.

(b) Other performance standards are required, as suggested by GWRC. We have amended condition 56A e. accordingly.

(c) Condition 56(f) needs to be amended to align with Dr Keesing's 22 October 2026 memorandum supplied in response to Minute 23 as regards staging of stream and wetland offsetting/compensation: i.e. to specify that wetland and stream offset works in the Kakaho East Catchment are undertaken at the same time as commencement of Stage 1 earthworks, and wetland and stream offsetting/compensation works for subsequent stages are undertaken in advance of the relevant stage.

(d) We agree with GWRC's suggestion that the conditions should be amended to require more detail as to how and where the performance stands for both streams and wetlands will be met. As above, we have separated relevant provisions according to whether they best sit in the LEP or the new LEMP condition we have inserted

[1003] There may be a need for SEV analysis to assist in quantifying the extent of riparian enhancement from a qualitative perspective, in combination with the above changes. Comments are invited on this aspect of our draft decision.

[1004] GWRC also suggested that a new Condition 58B be inserted requiring that a fish survey be completed prior to commencement of works in the bed of any stream. The applicant did not support this requirement in this context, or in the context of the Complex Freshwater Fisheries Approval.

[1005] We have noted criticism of the fish surveying Dr Keesing undertook. His response was that he had been conservative in his predictions as to what species might be present, and thus further surveys would serve little purpose.

[1006] We consider that there is value in additional fish surveys to inform both culvert design and fish salvage. As regards the former, however, culvert design needs to take account both of fish currently present and those that might be expected to be present when and if downstream fish barriers are removed. We have added wording into conditions 57A, 58A and 59A to

address this issue, and the parties can provide feedback on it when they provide Comments on our draft decision.

[1007] GWRC also sought further detail on how and what fish salvage would be undertaken through amendments to Condition R59(e). We consider that request is reasonable and have inserted a modified form of the condition suggested.

Historic Heritage

The Application

[1008] The applicant provided an expert Archaeological Assessment with its substantive application[239].

[1009] While no archaeological sites were previously recorded on the property, test pit investigations of depressions on the farm revealed a possible post hole feature and charcoal flecks beneath topsoil, indicating potential pre-1900 Māori occupation or gardening activity on higher slopes with viewpoints to Pukerua Bay, Taupō Swamp, Porirua Harbour, Mana Island and Kāpiti Island.

[1010] The applicant's archaeologist concluded there is a moderate–high risk that earthworks will disturb pre-1900 archaeological remains associated with Māori gardening/settlement and historic farming and occupation at Mt Welcome.[240]

[239] Archaeological Assessment of Effects Addendum: Mt Welcome Station Subdivision Development, Pukerua Bay, Porirua, December 2025

[240] Fast Track Substantive Application, Pukerua Property Group Limited Partnership, 16 March 2026, section 15.12.4

[1011] The assessment also identified potential for pre-1900 historic farming and occupation evidence to be encountered during works. A woolshed on the site was found to be early 20th century (post-1900), while a cottage was constructed pre-1900; the cottage has moderate historic-period archaeological value associated with rural settlement and activity.

[1012] Section 25.3 of the substantive application describes how, as a result of the archaeological site inspections, two archaeological sites have now been recorded in the NZAA ArchSite database, site record R26/885 (pre-1900 cottage) and site record R26/886 (potential Māori pit feature).

[1013] Given the scale of works, any archaeological sites discovered are likely to be destroyed and permanently lost, resulting in moderate adverse effects on archaeological values. As all pre-1900 archaeological sites are protected under the HNZPTA, an Archaeological Authority has been applied for to cover subdivision earthworks. We discuss this further in Part J of this decision, but recommended conditions include adherence to an accidental discovery protocol developed with Mana Whenua, and preparation of an Archaeological Management Plan (**AMP**) to manage the project's archaeological response, monitoring and data recovery[241].

Section 53 Comments

[1014] In the substantive Comments of PCC, its planner noted no concerns in relation to historic heritage or archaeological effects and confirmed there are no historic heritage items, extents or settings identified on the site on the PDP 2025 planning maps.[242] PCC considered the proposed conditions requiring adherence to an accidental discovery protocol and submission of

[241] Archaeological Assessment of Effects Addendum: Mt Welcome Station Subdivision Development, Pukerua Bay, Porirua, December 2025, section 11.2

[242] Planning Report on behalf of Porirua City Council, dated 31 July 2026

an Archaeological Management Plan as approved by HNZPT to be appropriate, advising it will be necessary to integrate with rather than duplicate the archaeological authority process in conditions.

[1015] In its Comments, TRoTR acknowledged the applicant's work to identify archaeological values, prepare an Archaeological Management Plan, and provide for monitoring, discovery protocols, and Ngāti Toa involvement in managing any material uncovered. In its role as kaitiaki TRoTR acknowledged that given the scale of earthworks, there will be limited opportunities to retain archaeological features in situ. TRoTR further highlighted the cultural significance of the existing woolshed to Ngāti Toa whānau, and the need for engagement with Ngāti Toa to determine how best to record, preserve, or otherwise acknowledge this history prior to any demolition.

Applicant's Response to Comments

[1016] In the applicant's response to Comments received on 7 August 2026, it provided an updated Archaeological Management Plan in response to HNZPT Comments under section 51.[243] It also provided a commentary on the Panel's SMART review of the Archaeological Authority conditions, including minor proposed amendments to the conditions.

[1017] The applicant's advice in its response to TRoTR's Comments (Issue 4) was that it was continuing to engage with TRoTR and planned to meet to discuss opportunities to preserve culturally significant materials associated with the woolshed. In Minute 22 we requested an update on this matter. In its response, the applicant described a meeting held with TRoTR on 20 August 2026 to discuss preserving the shearers' tags. It confirmed that while the

[243] Attached as Appendix K

Woolshed's future remains undecided, the parties had agreed the tags would at least be professionally photographed in collaboration with Te Rūnanga.

Findings

[1018] Archaeological effects have been the subject of expert assessment and PCC is generally supportive of the assessment and proposed authority and consent conditions.

[1019] No further comment was received from HNZPT post provision of its s51 report.

[1020] TRoTR was generally satisfied with proposed conditions providing for their involvement in archaeological management. The applicant's proposed amendments to the authority condition were not material and provide clarity and we have accepted these. Besides the Authority conditions, including the AMP, that provide for TRoTR involvement through pre-commencement engagement, upholding of tikanga, protocols for artefact and kōiwi discovery, and reporting requirements, the district conditions provide for TRoTR to carry out cultural inductions for contractors and kaitiaki monitoring associated with earthworks (for example, conditions D34, D35, D50 and D51). Condition D85 provides for TRoTR involvement in reserve and street naming. In acknowledgement of the significance of the shearers' tags in the Woolshed to Ngāti Toa, we have imposed an additional requirement that the photographic record exercise is to occur in conjunction with TRoTR (condition D85A).

[1021] As such, we find that potential effects on historic heritage and archaeological values have been appropriately assessed by the applicant and that with the authority and condition amendments we have outlined, an appropriate level of effects management will be achieved during project works. We find agreement with the applicant that overall, the proposal is consistent with the purposes of both the HNZPTA and the FTAA in this regard.

Cultural Effects

[1022] Engagement with TRoTR is described in Appendix 2 of the substantive application where a summary of engagement is set out along with a summary of key issues raised and responses to those issues[244]. Engagement included hui and site visits, and feedback on draft technical assessments and conditions. A CVA and correspondence from TRoTR has been included[245].

[1023] The engagement record shows that TRoTR highlighted the cultural values of waterways and Mana Whenua urban development principles, and identified significant concerns with the piping of Taupō Stream, the use of waterways for stormwater retention, and the offsetting approach. We discuss TROTR's Taupō Stream concerns in more detail in relation to freshwater ecology effects above

[1024] The CVA explains that Pukerua is an ancestral landscape of Ngāti Toa Rangatira, made up of interwoven elements and connections, including to Te Awarua o Porirua, the Taua Tapu track, and various pā, urupā, papakāinga, mahinga kai, and waterways. It noted that TRoTR supports development that delivers net environmental benefit and reflects mana whenua values, including indigenous urban design, protection of viewshafts, reduced light and traffic impacts, supports improved public/active transport, and genuine housing affordability for whānau[246].

[1025] The CVA recommended the Project recognise the cultural landscape through design, naming and storytelling guided by Ngāti Toa Rangatira. It advocated for the protection and restoration of wetlands and waterways, and provision for ongoing cultural monitoring and iwi involvement. This includes determining tikanga in relation to management of archaeological

[244] Appendix 2, Tables 8 and 9.

[245] Appendix 2, Attachment 6.

[246] Ibid, CVA page 8

sites, as well as measures to respectfully preserve local histories, such as those associated with the woolshed[247].

[1026] Subsequent correspondence from TRoTR recorded draft conditions which were supported, amendments sought or additional conditions[248] and we return to this shortly.

[1027] We note for completeness that, when invitations were sent out pursuant to section 53 of the FTAA, besides TRoTR, an invitation was also extended to Muaūpoko Tribal Authority to comment on the application given their identification in MFE's Section 18 report as potentially having relevant interests[249]. No response was received from Muaūpoko Tribal Authority.

Section 53 Comments

[1028] TRoTR provided s53 Comments outlining outstanding issues. In summary the remaining issues were:

(a) Taupō Stream culverting and reclamation – TRoTR reiterated its opposition to culverting Taupō Stream to provide access, citing impacts on its mauri and other values, and disputing the applicant's assessment of stream values and fish passage provision. Ngāti Toa emphasised the stream's significance within the Te Awarua o Porirua Statutory Acknowledgement Area and called for reclamation to be avoided unless it clearly restores or enhances the stream. These matters are discussed further in relation to freshwater ecology effects.

(b) Stormwater management, offsetting and combined wetlands: TRoTR expressed low confidence in the proposed offset package due to information gaps and opposed use of natural streams/wetlands as inline

[247] Ibid, CVA pages 9-12
[248] Ibid, Email from Ms Ella Jaspers, dated 13 November 2025.
[249] Minute 3 of the Panel, dated 2 July 2026, at 11(d).

stormwater devices. It considered a combined offset-stormwater approach is not consistent with upholding intrinsic waterway values, querying the adequacy of hydrological control to avoid increased runoff, erosion and sedimentation that could potentially undermine the Te Wai Ora o Parirua – Porirua Harbour Accord. Our discussion of freshwater ecology effects above provides further analysis of these matters.

(c) Archaeology and cultural landscape: TRoTR is supportive of the Archaeological Management Plan, monitoring and discovery protocols, but noted that due to the scale of development and associated earthworks there would be limited ability to protect and retain identified archaeological sites in situ. It stressed the need for ongoing engagement regarding the culturally significant features of the woolshed and restated the importance of Mt Welcome as part of a wider cultural landscape that extends beyond recorded archaeological sites. We note that further discussion of these matters is provided in in relation to historic heritage effects.

Findings

[1029] There was no dispute as to engagement between the applicant and TRoTR not being satisfactory and we note there is commitment to engagement continuing.

[1030] For reasons we have set out elsewhere in this report (eg. landscape and visual effects, historic heritage effects), we consider that potential effects on the cultural landscape, including interwoven heritage and archaeological effects are able to be appropriately mitigated through project design and consent conditions.

[1031] Apart from cultural effects in the freshwater space, which we discuss separately, we consider provision for the expression of Ngāti Toa kaitiakitanga, tikanga, mātauranga and other values, has been appropriately

encapsulated in conditions agreed by the applicant, and in some cases further strengthened by us. We set these out below.

[1032] Proposed District conditions:

(a) D15 requires the consent holder to engage with TRoTR to provide Mātauranga Māori input into key management plans (ECMP, SSECMP, SSESCP, LEP and LEMP) prior to submitting to Council for certification. We have amended this condition to provide for 15 rather than 10 days notice to TRoTR for consistency with other conditions (e.g. D34 and D35) and in recognition of Ngāti Toa's potential time and capacity constraints and tikanga based decision-making requirements. We have also strengthened the obligation for a feedback loop to ensure that if TRoTR input is not taken on board by the consent holder reasons for this must be explained to the Council as certifier.

(b) D34 requires the consent holder to invite TRoTR to carry out a tīmatanga (karakia) ceremony before starting earthworks for the first subdivision stage.

(c) D35 requires the consent holder to invite TRoTR to provide a cultural induction for the site and all relevant earthworks and construction contractors.

(d) D50 requires the consent holder, prior to commencement of bulk earthworks and on an ongoing basis for that activity, to invite an iwi monitoring representative of TRoTR to undertake cultural monitoring of earthworks where archaeological features may be affected, and for earthworks within streams or wetlands related with restoration and offsetting.

(e) D51 ensures that iwi monitors have appropriate access to the site at any time throughout the duration of relevant earthworks so kaitiaki monitoring can occur.

(f) D85 provides for TRoTR involvement in reserve and street naming.

(g) As explained in relation to historic heritage effects, we have conditioned a requirement for the photographic record of the culturally significant shearer's tags in the woolshed to be prepared in collaboration with TRoTR.

[1033] Proposed Regional Conditions:

(a) R10 is the regional equivalent of condition D15, and for the reasons given above, we have made the corresponding amendments to both conditions.

(b) R34 and R35 are the regional equivalents of condition D34 and D35 above.

(c) R50 provides for annual hydrological and water quality monitoring reporting to TRoTR during and for at least 3 years post earthworks commencing.

(d) R51E provided for reporting of the monitoring of works to remediate, offset, or compensate for the residual adverse effects of the consented activities on rivers and natural inland wetlands to TRoTR biannually until performance targets were met. However, the monitoring requirements of R51 were reproduced in a similar fashion in the EHMP conditions at R56A. Given we made other minor alterations to the EHMP to provide for cultural as well as ecological values which we discuss in more detail under freshwater ecology effects, it seemed better to relocate this

requirement to report monitoring outcomes to TRoTR under the EHMP. Condition 56A b (v) provides for this.

(e) R58 requires all fish rescue data (number, length, and species of each fish captured) to be provided to TRoTR within 5 working days of completing any fish rescue for any temporary diversion.

(f) R62 requires all information required under regulations 62, 63 and 66 of the NES-FW 2020 (including the time and date of data collection) be provided to TRoTR, along with the associated response number once culvert details are uploaded to the NIWA Fish Passage Assessment Tool.

[1034] As regards other approvals, we note that the involvement of TRoTR is provided for in the Wildlife Approval conditions, and as a matter for inclusion in the LMP.

[1035] Putting to one side our findings on cultural effects specific to Taupō stream reclamation and culverting, in light of the conditions we have imposed and the demonstrable commitment to an ongoing relationship by the applicant and TRoTR, we are satisfied that the potential cultural effects of the Project will be mitigated by the conditions we have imposed to be no more than minor.

Conclusions Regarding Adverse Impacts

[1036] Our conclusions in relation to adverse impacts generally have been materially (and positively) affected by the applicant's readiness to proffer an alternative to its original stormwater design. We have found that the original design would likely have resulted in significant adverse effects to either downstream receiving waters, the proposed wetlands, or both, and would have led to a significant deficit in proposed offsetting/compensation for loss of stream

and wetland extent. The absence of a public entity prepared to accept ownership of stormwater management assets on this basis was an interconnected and significant flaw in the applicant's proposals.

[1037] Adoption of the alternative design addresses our principal concerns in this regard and produces a situation where the only potentially significant adverse effect is in the loss of mauri and related cultural effects of the proposed culverting of Taupō Stream.

[1038] We have assessed potential adverse effects on herpetofauna as material, due to the uncertainty surrounding the ability to successfully find, relocate and re-establish lizards elsewhere on the site, but not significant. We were not prepared to approve the LMP as submitted by the applicant and have instead reverted to the condition structure suggested by DoC that sets out the process for certification of the final LMP post consent by DoC.

[1039] Otherwise, we have found the adverse effects of the proposal, taking into account the additional conditions we have imposed to be minor or less than minor.

DRAFT

PART F: RELEVANT STATUTORY INSTRUMENTS

[1040] As above, clause 17 of the Schedule 5 of the FTAA directs that we consider the same matters in relation to RMA approvals as we would consider if exercising jurisdiction under the RMA, except for Section 104D. That means that we must have regard to relevant statutory instruments.

[1041] We have addressed key plan provisions influencing our effects assessments in Part E of our Decision. The purpose of this part was for us to undertake a more comprehensive analysis of the relevant planning network.

[1042] We are assisted in that regard by the inputs we have received from Mr McDonnell, as part of his planning assessment that accompanied the Application (Appendix 5), by Mr Banks in the sections of GWRC's section 53 Comments dealing with Policy and Plan matters, and by Mr Smeaton in his planning report for PCC.

[1043] All of these planning inputs assessed the applications on the basis set out in the substantive application. Key aspects of the project have been amended. In particular, the alternative arrangements for management of stormwater, and the addition of wetland and stream offsets/enhancements in the Kakaho East Catchment have overtaken the planning assessments we were provided with.

[1044] Given our assessment of the adverse effects of the original scheme design in relation to these matters and our finding that conditions based on the original design would not satisfactorily address relevant effects, we will not traverse all of the Comments we received on planning matters in relation to the original design, but will rather focus on the alternative design ultimately tabled on 10 November 2026.

[1045] Ideally, we would have had the benefit of revised planning assessments of the alternative design. However, confirmation of the final form of that

design arrived too late in the statutory process to permit that step and we have had to make the best assessment we can on the material before us.

[1046] The starting point, and the instruments which we consider should be given most weight are those at the national level.

National Instruments

[1047] Mr McDonnell identified five relevant National Policy Statements, being the National Policy Statement for Urban Development 2020 (**NPSUD**), the National Policy Statement for Natural Hazards 2025 (**NPSNH**), National Policy Statement for Infrastructure 2025 (**NPSI**), the National Policy Statement for Freshwater Management 2020 (**NPSFM**), and the National Policy Statement for Indigenous Biodiversity 2023 (**NPSIB**). As part of the applicant's comments, responding to Messrs Banks and Smeaton's input, Mr McDonnell provided additional analysis of the NPSI.

<u>NPSUD</u>

[1048] The objectives of the NPSUD focus on directing local planning to bring suitably serviced land forward to enable the creation of well-functioning urban environments and, in doing so, assist in addressing underlying issues relating to housing affordability and a degree of historical inertia in responding positively to proposals that would supply significant development capacity.

[1049] In Mr McDonnell's assessment, the proposal before us aligns well with the objectives of the NPSUD. In his view, the proposal would make a significant contribution to development capacity in an area subject to high demand for mid-point priced housing and will be 'well-functioning' in the sense that it

features good accessibility with multi-modal options, reasonable internal connectivity (including provision for active modes), 'nature-based solutions' in the form of retention wetlands, and an integrated neighbourhood centre.

[1050] Mr Banks, for GWRC, agreed that if the project is fully implemented, the benefits associated with the provision of housing and business land would be generally consistent with relevant NPSUD policy.

[1051] Mr Smeaton, for PCC, was less sanguine about the degree of alignment with the NPSUD. While he acknowledged that the proposal would support a competitive land and development market in the region, he was concerned at the lack of external and internal connectivity and public transport integration, adequacy of three waters infrastructure, the proposed constraints on development density, the degree that the proposal departed from the Structure Plan in these respects and, ultimately, the compromise this represented in terms of creating a 'well-functioning' urban environment.

[1052] Rebecca Davis and Jonathan Burchel raised similar issues about external connectivity in their s53 Comments. Te Awarua-o-Porirua Harbour and Catchments Community Trust and Guardians of Pāuatahanui Inlet also expressed concern about the development's location more generally and lack of coordination with development in the balance of the NGA.

[1053] In Part D of our Decision, we have reached a finding on the benefits of the proposal as we are required to do under section 22(2)(a) of the FTAA, with reference to Mr Thompson's economic assessment (for the applicant) and Mr Smeaton's position. There, we find that the benefits of the Mt Welcome development would be regionally significant, albeit overstated to some degree. The principal benefits we identify relate to the contribution the development would make in meeting assessed future housing demand and promoting greater competition in the housing market.

[1054] This naturally leads us to a conclusion that were we to approve the proposal, that decision would reasonably align with NPSUD Objectives 2, 3(c) and 6(c) relating to the support of markets, supply of housing and business land and significant development capacity, albeit we remain reasonably dubious about the contribution the site's development would make to housing affordability.

[1055] With respect to the proposal's alignment with other NPSUD objectives that focus on the creation of 'well-functioning' urban environments (notably Objectives 1, 3(a) and (b) and 6(a)), and Mr Smeaton's concerns in this regard, and with reference to the assessment of adverse impacts we have undertaken in Part E of our Decision, we:

(a) Accept the applicant's proposition that the proposal provides a reasonable level of internal connectivity (with reference to active modes), and external connectivity with the development blocks to the north and south, given significant topographical and ecological constraints;

(b) Observe, also with reference to those constraints, that the proposed internal roading layout is designed to accommodate future bus services and certainly does not preclude their provision;

(c) Find that issues regarding the adequacy of three-waters infrastructure can be appropriately addressed through conditions;

(d) Accept that the proposed constraints on development density are intended to ensure that infrastructure is not overwhelmed but that the way in which the proffered conditions are framed provides a pathway for accommodating greater density following a reassessment of that capacity; and

(e) Consider that the degree to which the proposal in its final form departs from the Structure Plan is not material when the practical constraints referred to above are taken into account.

[1056] Concerns about the location of the development have already been addressed in the District Plan context, and the District Plan anticipates urban development on the site. While it would be preferable to have all elements of the NGA before us, the reality is that the different blocks do not have common ownership, and each owner is entitled to seek consent for their land separately.

[1057] This leads us to an overall finding that the proposal supports the creation of a 'well-functioning' urban environment, to the extent that it is practically able to, and as such is not inconsistent with the intent of the NPSUD.

NPSNH

[1058] The objective and policies of the NPSNH focus on use of a risk-based proportionate approach where the management responds to the level of risk.

[1059] Mr McDonnell assessed two categories of relevant risk, being flood hazards and geohazards. He assessed flood risk as being 'very low' and its management consistent with the NPSNH. Mr Banks did not advance a view on this issue, but as we note below, he did provide feedback on hazard management vis a vis the NRP.

[1060] In relation to those risks, we have found that potential adverse effects from flooding are low. It follows that the level of risk is similarly low. While higher than Mr McDonnell's assessment, we find the end result consistent with the NPSNH.

[1061] We have similarly found that hazard issues from a geotechnical perspective can be managed by conditions so that hazard risks are low and potential adverse effects minor.

NPSI

[1062] Mr Smeaton's principal concern as regards consistency with the NPSI related to the operation of three waters infrastructure. Based on our findings in relation to relevant effects, this concern has largely but not completely been addressed by a combination of the alternative scheme plan design and additional information and analysis regarding wastewater systems and the conditions governing same.

[1063] We note also Mr McDonnell's analysis in the applicant's response to Comments pointing out Policy 2, which relates to the operational or functional need of infrastructure to be in a particular location. Mr McDonnell reasoned that the State Highway 59 infrastructure has both a functional and operational need to locate in the particular location it has. While we accept that this is the case at present, as we have noted both in relation to effects on terrestrial ecology and on streams, this may not be the case in future, at the point when the trigger for a roundabout to be required is reached. We have put in place conditions requiring reconsideration of the roundabout design, and its consequential effects on terrestrial ecology and the Taupō Stream in that event.

[1064] We also note Mr Smeaton's observation that as the policies of the National Policy Statement generally provide direction for decision makers, the proposal itself cannot be directly consistent or inconsistent with them.

NPSFM

[1065] The sole objective of the NPSFM prioritises, among other things, the health and wellbeing of water bodies and freshwater ecosystems. Policy 1 in turn directs that freshwater is managed in a way that gives effect to Te Mana o te Wai. Mr McDonnell noted that there were aspects of the proposal that Ngāti Toa did not support and that, as a result, there would be adverse cultural effects associated with some works, and the proposal may not give effect to Te Mana o te Wai as articulated by Ngāti Toa. That remains the position and, as a result, we find that this is an area of inconsistency with the NPSFM.

[1066] Policies 6 and 7 of the NPSFM relate to natural inland wetlands and rivers (which includes streams). As we have noted in our discussion of freshwater ecology effects, Policy 6 is framed in a way that is more directive in relation to natural inland wetlands than Policy 7 is in relation to the loss of the extent and values of rivers.

[1067] We have discussed the application of these provisions, and the implementation methods that accompany them in some detail. Suffice it to say, we have found that if the 'pasture' wetlands are properly included within the definition of natural inland wetland, which we believe to be the case, there is a deficit in the extent to which wetland values are protected. This is inconsistent with Policy 6. However, the end result is not a significant adverse effect on the environment and is consistent with the relevant implementation methods[250].

[1068] We have similarly found that the alternative proposal will result in a loss of extent and some of the values of streams. The qualified wording of Policy 7 means that this is not inconsistent with the policy and, the provision of

[250] Clauses 3.10 and 3.11

extensive compensation work (to the extent that offsetting is not provided) is consistent with the implementation methods of the NPSFM.

NPSIB

[1069] Our discussion of adverse effects on herpetofauna and other terrestrial ecology canvases the principal provisions of the NPSIB. Effects on wetlands and streams also require consideration of the NPS-IB to the extent they provide indigenous biodiversity. In this case, that extent is limited and, the NPSFM provides more targeted direction that we discuss above.

[1070] We find that the conditions we have imposed address the principal issue that Mr Smeaton identified in relation to potential inconsistency with the NPSIB, being the failure to provide any management response to the removal of an area of SNA029. Similarly, the conditions we have imposed requiring offsetting of the principal area of indigenous biodiversity outside SNAs on the site significantly reduce potential inconsistency with Policy 8 of the NPSIB that Mr Smeaton identified.

[1071] In our discussion of adverse effects on herpetofauna, we have identified uncertainties around the practical ability to successfully find, relocate and re-establish native lizards, particularly copper skinks at alternative locations on the site. This means that we cannot be satisfied that adverse effects on them will be offset or compensated for to the extent directed by the NPSIB. This is an inconsistency with that instrument, although we have found that the level of potential effects will not be significant.

[1072] Mr Smeaton also identified a potential inconsistency based on the Applicant's proposed management of risks to highly mobile fauna. In our discussion of terrestrial ecology effects issues, we have disagreed with Dr Fea in relation to the potential for adverse effects on bats and addressed potential adverse effects on nesting native birds through amended conditions.

[1073] We consider that effects on highly mobile fauna will be addressed consistently with the NPS-IB.

Regional Instruments

Regional Policy Statement

[1074] The operative Regional Policy Statement (**RPS**) is dated 2013. It is subject both to a Plan Change (#1) and Variation (#1). Decisions were made on Plan Change 1 and Plan Change Variation 1 at first instance and they are now subject to appeal on some issues. All the planners who provided feedback to us referenced the Plan Change 1 Appeals Version dated September 2025 and we will do the same.

[1075] Mr McDonnell's analysis of the RPS identified provisions related to:

(a) climate change both in terms of reducing contributions to climate change and responding to it;

(b) freshwater;

(c) indigenous ecosystems;

(d) natural hazards;

(e) regional form, design and function;

(f) integrating land use and transportation and other infrastructure; and

(g) tangata whenua.

[1076] He identified general consistency with the RPS, while noting as an exception the failure to give effect to Te Mana o te Wai as articulated by Ngāti Toa and evidenced by Ngāti Toa's opposition to aspects of the development.

[1077] For his part, Mr Smeaton pointed to inconsistencies in the following respects:

(a) absence of any public transport or connection to the active transport network outside the site, together with the absence of any public transport infrastructure within the site to the Pukerua Bay train station, contrary to Policy 57;

(b) failure to consider and propose rainwater harvesting as an efficiency measure, inconsistently with Objective 14 and Policy 45;

(c) failure to maximise mode shifts from public vehicles to public transport or active modes or supporting low and zero-carbon modes, inconsistently with Policy CC.9;

(d) failure to manage SNAs in accordance with Objective 16 and Policy 47;

(e) failure to mitigate effects on indigenous biodiversity outside of SNAs inconsistently with Objective 16A and Policy EL.2A;

(f) failure to provide cross sections or earthworks plans for the section of the bulk wastewater main in State Highway 59 that is located within an outstanding natural landscape and feature so as to preclude assessment of the matters in Policy 50 around managing effects on such features.

[1078] To the extent that the proposal may be inconsistent with RPS Policies 57 and CC.9, as Mr Smeaton considers that it is, this is partly due to significant topographical and ecological constraints that, as we have discussed with respect to urban design matters in Part E of our Decision, limit

interconnections with the Muri and Skaiffe Blocks to the north and south respectively.

[1079] While Policy 57(d), for example, is clear in its intent that in considering plan changes decision makers should seek to provide "safe and accessible multi-modal transport networks along connected routes that are designed for public and active transport" it does go on to acknowledge "that the delivery of public transport services may not always be efficient or practical."

[1080] Notwithstanding these constraints, we note that the proposal includes a collector road designed to accommodate buses entering the site from SH59, providing a loop through the adjoining development blocks. While we agree with Mr Smeaton that the 'loop' arrangement means that bus services to Pukerua Bay train station are unlikely to be available until the Muri Block is also developed, there is nothing about the site's roading layout or design that appears to preclude that future provision. We are also reminded of Mr Whittaker's assurance that the collector road network is designed to accommodate bus manoeuvring and bus shelters.

[1081] RPS Policy CC.9 requires that we give particular regard to whether subdivision or development "has been planned in a way that contributes to reducing greenhouse gas emissions by optimising overall transport demand, by maximising mode shift from private vehicles to public transport or active modes, and supporting low and zero-carbon modes."

[1082] The explanation to the policy suggests we keep a look out for "provision for bus stops and a transport network designed to support public transport or active modes which has co-benefits including improved health outcomes" as examples of the practical expression of policy intent. As noted above, it is apparent that the proposed layout does make allowances for future public transport connections and facilities even if the operational viability of those services is reliant on the development of adjoining blocks. Further, it is clear

to the Panel that in situations where internal road connections are precluded due to the topography, trail linkages for active modes between road heads within the development and into adjacent development blocks pick up the slack. Beyond the limits of land use planning, it is not an unreasonable assumption that support for 'low and zero-carbon modes' will also be afforded by the choices individual future residents increasingly make with respect to hybrid and electric vehicle options.

[1083] All this suggests to us that the proposal is not diametrically oppositional to Policies 57 or CC.9 and is in fact generally consistent with that policy direction, to the extent that it can practically be. We also note that Mr Banks did not identify any particular issues where the proposal's fit with the above RPS provisions (or indeed any RPS provisions) were concerned.

[1084] Issues around rainwater reuse have been addressed by the applicant's shift in position on that issue.

[1085] Based on our findings in relation to terrestrial ecology effects, we consider that the inconsistency identified in relation to point (d) has been addressed by conditions. The identified inconsistency in (e) has similarly been reduced by conditions we have imposed, but not entirely eliminated.

[1086] The identified Outstanding Natural landscape and Feature is located southwest of the site and outside the area within which consents have been sought. If the proposed wastewater treatment main upgrade within the Landscape/Feature requires consent, that would need to be addressed outside this process.

[1087] Mr Smeaton identified under the category of not achieving full consistency:

(a) discharges of wastewater and stormwater that may lead to adverse effects on downstream environments (Integrated Management Objective A);

(b) absence of any part of the proposal relating to climate change mitigation or climate change adaptation (Objective CC1);

(c) absence of any ability to access the development other than by private car (Objective 9 and Policy 39);

(d) development within high hazard areas and hard engineering methods proposed for risk reduction that are not part of a hazard risk management strategy that represents the best practicable option for the future (Objectives 19, 20 and 21 and Policies 51 and 52);

(e) precluding more than one dwelling per allotment, not giving effect to Te Mana o te Wai, absence of contribution to the reduction in greenhouse gas emissions through the form of the development, not including provision for active or public transport to or from the site, inconsistencies with the proposed staging between delivery of infrastructure and delivery of vacant allotments, failure to deliver predominantly medium density development, and absence of any mechanism to deliver commercial development or a viable and vibrant centre (Objective 22);

(f) poor integration of existing water and wastewater infrastructure and the proposed infrastructure on the site (Policy 58); and

(g) inefficient land use, not providing a diversity of housing typologies, absence of provision for any access to or from the site via any modes other than private vehicles, not providing for tangata whenua values (Policy UD.5).

[1088] In relation to these matters, we have found that the alternative stormwater management design will significantly reduce potential adverse effects on downstream environments, so that residual effects are minor, and that conditions will appropriately manage wastewater leaving the site.

[1089] As regards climate change mitigation and climate change adaptation, we agree that there is an issue, posed mainly by the fact that while the development enables multi-mode transport options, whether they occur is dependent on the nature of the development on adjacent sites, particularly the Muri Block. This also an area of inconsistency with Policy UD.5. More generally, we consider that the development has generally been designed in a way which addresses climate change hazard issues, and the effects of changing weather patterns.

[1090] The applicant has not proposed a hazard risk management strategy for activities within high hazard areas (stream beds) and hard engineering methods proposed, which is an inconsistency with the relevant objectives and policies, but our assessment is that the potential adverse effects of these activities are minor.

[1091] As regards issues related to the density and nature of development, and related issues around efficient land use and providing a diversity of typologies, we have already accepted that, with respect to our assessment against the NPSUD, proposed density constraints ensure that infrastructure capacity is not breached until such time as a reassessment is undertaken.

[1092] Where other aspects of Mr Smeaton's critique of the proposal when held against omnibus RPS Objective 22 are concerned, we have already discussed the relative 'fit' of the proposal with respect to greenhouse gas emission reductions, multi-modal access, and external active and public transport connections in relation to Policies 57 and CC.9 above.

[1093] While the applicant is ultimately not able to guarantee the feasibility or viability of a neighbourhood centre, as set out under our assessment of urban design matters in Part E of our Decision, we consider that suitable planning 'mechanisms' are in place to guide its development and design and appearance and provide reasonable assurance of a positive outcome.

[1094] Overall, we find ourselves in general agreement with Mr McDonnell that the proposal is generally consistent with Objective 22, with the exception of clause (c) requiring that Te Mana o te Wai be given effect to.

[1095] We consider that integration with existing water and wastewater infrastructure has improved over the processing of the Application and some of the issues identified in relation to Objective 22 have been addressed through the scheme redesign. We have also addressed absence of integration with wastewater network facilities through additional and amended conditions.

[1096] As noted above, issues around providing for and protecting mana whenua values remain a live point and an area of inconsistency with Policy UD.5.

Natural Resources Plan

[1097] The NRP was made operative in June 2023. It is currently the subject of a significant proposed plan change (#1) that has been paused, part heard at first instance. Mr McDonnell suggested in his response to Comments that Plan Change 1 should be given little weight, certainly as regards provisions it introduced requiring financial contributions in respect of stormwater effects of the Project, the provisions of which he described as strongly opposed by a number of submitters.

[1098] Addressing the operative NRP first, Mr McDonnell identified Objectives O1-O4 and Policy 1 which seek to manage natural resources as integrated and connected resources with an importance and contribution to social, economic and cultural wellbeing and the health of people and the community that needs to be recognised, along with intrinsic values that need to be sustained (including mauri) or recognised (other intrinsic values). He also noted Policy 4 directing application of a precautionary approach where

there is limited information regarding effects and if adverse effects are potentially significant.

[1099] He noted issues around mauri and that the proposal likely does not provide for the outcomes sought by these objectives and policies as articulated by Ngāti Toa. We consider that a fair reflection of the position given TRoTR's feedback.

[1100] Mr McDonnell identified another series of objectives and policies[251] providing for recreational values of rivers and natural wetlands, maintenance and enhancement of public access to rivers and for uses of both land and water that enable urban development "where it maintains the quality of the natural environment". He also noted Policy 7 which recognises certain activities as beneficial and generally appropriate including management of riparian margins and the retirement of erosion prone land from livestock access, activities for the purpose of restoring natural character, removal of pest plants and monitoring of resource use. He noted that the Project included many of the listed beneficial activities. We had no planning evidence that would contradict Mr McDonnell's view.

[1101] Mr McDonnell also noted Policy P11 and P13 that direct particular regard be had to the benefits of regionally significant infrastructure and that such infrastructure be provided for. He observed that the proposal involves the construction of new and extended regionally significant infrastructure including water supply distribution, wastewater, stormwater and power infrastructure. We consider that a reasonable assessment.

[1102] Objectives O12-O13 and Policies P18-P21 relate to the recognition of Māori and their culture and traditions with their ancestral lands, water and other taonga (among other things, recognition of kaitiakitanga, recognition of the mauri of freshwaters, recognition and provision for the relationship between

[251] Objectives O7-O8, Policy P6

mana whenua and Ngā Taonga o Nui a Kiwa). The latter includes Te Awarua o Porirua (Porirua Harbour), including contributing streams. Mr McDonnell considered that overall the proposal was consistent with these objectives and policies, a conclusion which appears inconsistent with his recognition that Ngāti Toa have serious concerns about aspects of the development's effects on streams and wetlands, including but not limited to culverting of Taupō Stream.

[1103] Mr McDonnell referenced Objective O14 and Policy P24 that relate to preservation of the natural character of, among other things, natural wetlands and rivers and their margins. Policy P24 distinguishes between areas with outstanding natural character, areas with high natural character and other areas with corresponding directions as to the extent to which adverse effects must be avoided. Mr McDonnell was of the view that the proposal is consistent with this objective and policy given that there are no areas identified as having outstanding natural character. We had no planning feedback to contradict Mr McDonnell's view.

[1104] Objectives O15-O16 and Policies P25, P27-P29 relate to management of hazard risk. These provisions appear to anticipate what is now in the NPSNH and distinguish between high hazard areas and other areas the subject of hazard risk. Functional need or operational requirement is necessary to locate in high hazard areas along with a number of other preconditions focussed on avoiding an increase in harm and not exacerbating hazard risk beyond the site, and avoiding, remedying or mitigating adverse effects on riverine processes. Policy P27 discourages hard hazard engineering mitigation protection methods. Policy P28 directs particular regard be given to the potential for climate change and Policy P29 provides for restoration of natural features such as wetlands. Mr McDonnell considered the proposal consistent with these objectives and policies.

[1105] Mr Banks noted that the beds of rivers are high hazard areas, and thus Policy P25 applies to replacement and installation of culverts. He expressed concern that culvert design was conceptual and suggested both that more information was required and conditions imposed on culvert design to ensure flood hazards are not exacerbated and to avoid erosion effects. We find that these issues are now appropriately addressed by conditions.

[1106] Objectives O17-O18 relate to water quality and seek maintenance or improvement of the quality of surface water bodies and that the quality of water in rivers and natural wetlands will at minimum meet secondary contact recreation standards. Again, Mr McDonnell considered the proposal consistent with these objectives. We had no planning feedback that would suggest his view is incorrect.

[1107] Mr McDonnell noted Objectives O19, O21-O23 and Policies P30-P35 and P110 relating to biodiversity, aquatic ecosystem health and mahinga kai. Objective O19 seeks to safeguard all of those elements through management of water quality, flows, levels and habitats, improving freshwater bodies to meet specified objectives as required, and encouraging restoration of aquatic ecosystem health and mahinga kai. Policy P110 directs among other things maintenance or where practicable restoration of natural flow characteristics and hydro-dynamic processes, maintenance or improvement of water quality, restoration of aquatic habitat, diversity and quality, maintenance or where practical restoration of riparian habitats. Policy P31 relates to adverse effects on biodiversity, aquatic ecosystem health and mahinga kai and directs management of activities that risk adverse effects on values of identified ecosystems and habitats (which include both Taupō Stream and Kakaho Stream and their tributaries), should be avoided, and if that is not possible, an effects management hierarchy should be applied. Objective O21 seeks establishment and maintenance of vegetated riparian margins or their restoration, Policy P52 directs avoidance of the construction or creation of new barriers impeding efficient and safe passage of fish. The following

policy directs that fish passage restoration be promoted, including specifically when expanding, altering or reconstructing instream structures. Objective O22 seeks that the extent and significant values of natural wetlands are protected and their condition is restored. This is supported by Policy P34 that directs that management of activities in and adjacent to natural wetlands maintain and where appropriate restore their condition and relevant values. Policy P35 directs that restoration of natural wetlands be encouraged and supported. Policy P110 directs avoidance of the loss of extent and values of the beds of lakes and rivers and natural wetlands except in specified situations including activities necessary for the construction or upgrading of specified infrastructure.

[1108] Mr McDonnell considered that overall, the proposal was consistent with these objectives and policies. As regards Policy P110, Mr McDonnell suggested that it did not give effect to clause 3.22(1)(c) of the NPSFM which provides a more enabling pathway for urban development with regard to these works and on that basis, should be given little weight.

[1109] Mr Banks addressed the relevance of Policy P110 in his commentary on policy and plan issues, querying whether there was a functional need for reclamation of Taupō Stream. We have addressed that issue in our discussion of freshwater ecology and traffic effects, finding that there is currently a functional need to accommodate the proposed roundabout.

[1110] As regards the apparent inconsistency of the proposed loss of other wetlands relative to Policy P110, we agree with Mr McDonnell's point. This policy predates amendments to the NPSFM specifically addressing loss of wetlands associated with urban development and can be given little weight as a result. The same point might be made about Policy P34. We agree with Mr McDonnell's assessment of the other NRP provisions he noted.

[1111] Objective O28 and Policy 42 relate to ecosystems and habitats with significant indigenous biodiversity values. The objective seeks their protection from the adverse effects of use and development and where appropriate restoration. Policy 42 reads as follows:

> **Policy P42** Ecosystems and habitats with significant indigenous biodiversity values
>
> Protect in accordance with Policy P31 and policies P38-P41 and, where appropriate, and restore the following ecosystems and habitats with significant indigenous biodiversity values:
>
> (a) the rivers and lakes with significant indigenous ecosystems identified in Schedule F1 (rivers/lakes), and
>
> (b) the habitats for indigenous birds identified in Schedule F2 (bird habitats), and
>
> (c) significant natural wetlands, including the significant natural wetlands identified in Schedule F3 (identified significant natural wetlands), and
>
> (d) the ecosystems and habitat-types with significant indigenous biodiversity values in the coastal marine area identified in Schedule F4 (coastal sites) and Schedule F5 (coastal habitats).

[1112] A note to that policy records that all natural wetlands are considered to be ecosystems and habitats with significant indigenous biodiversity values. We note that Schedule F1 referenced in Policy P42(a) includes both Taupō Stream and Kakaho Stream and their tributaries.

[1113] Policy P31, which is cross referred in this policy directs use of an effects management hierarchy to manage adverse effects on biodiversity, aquatic ecosystem health and mahinga kai. Policies P38-P41 do not appear to be relevant to the current application.

[1114] Mr McDonnell considered the proposal consistent with this objective and policy pointing to steps to restore impacted ecosystems, apply the effects

mitigation hierarchy, monitor the health of wetlands, and implement a range of sediment control tools.

[1115] While Mr Banks noted this as a point in contention, based on Ms Dixon's evidence, we agree with that position. Ms Dixon's analysis has been overtaken by the alternative design and as discussed in relation to freshwater ecology effects, the applicant has employed the relevant effects hierarchy. Consideration of Policy P42 also needs to factor in the fact, as noted above, that the NRP uses the former (2020) definition of 'natural inland wetland' which would exclude the 'pasture wetlands'.

[1116] Policy P43 directs avoidance of more than minor adverse effects on indigenous fish species known to be present in identified waterbodies that include Taupō Stream and Kakaho Stream and their tributaries during known spawning and migration periods. Mr McDonnell noted in this regard proposed conditions to ensure that instream works and adjacent construction works minimise potential adverse effects on indigenous fish species.

[1117] Mr Banks' commentary on this policy has been overtaken by the applicant's commitment to provide fish passage at all structures on streams.

[1118] Objectives O34 and O35 relate to the adverse effects of land use activities. The first objective seeks to minimise those effects. The second seeks to avoid, remedy and mitigate the adverse effects of livestock access on surface waterbodies. Mr McDonnell noted that the proposal seeks to exclude stock from waterbodies and retire erosion prone land from stock access, which would reduce associated erosion and sediment loss to waterbodies associated with grazing. We had no planning feedback that sought to challenge that position and we accept that the proposal is consistent with these objectives.

[1119] Objectives O36-O38 relate to discharges to land or water and focus on runoff or leaching of contaminants from discharges to land, sediment laden

runoff and stormwater discharges. The first two are sought to be minimised. Objective O38 seeks that the adverse quality and quantity of stormwater discharges from urban land uses are improved over time. Mr McDonnell considered that the proposed sediment treatment approach aligned with these objectives, would limit the amount of sediment laden water being discharged to water, and would minimise sediment and stormwater discharges. He suggested it would also achieve hydraulic neutrality.

[1120] Management of sediment utilising retention wetlands, as the applicant proposed in its application, was the subject of much comment and contention. In our discussion of stormwater effects, we largely accepted GWRC's position that the applicant's proposed stormwater management was seriously flawed, and focussed instead on the alternative design. We have found that the latter will ensure adverse effects are minor. We consider therefore that the applicant will achieve consistency with Objective O38, and with Policies P83 and P84 that support Objective O38 and that Mr Banks also referred us to.

[1121] Mr Banks addressed Objective O37 and its supporting Policy P107 separately. These provisions relate to management of earthworks and Mr Banks identified issues with the applicant's approach. In our discussion of earthworks effects we have found that the applicant proposals are consistent with industry practice and are an appropriate way to ensure the desired outcomes are achieved. We are satisfied that they are consistent with the relevant NRP in this regard.

[1122] Policy P65 implements NPSFM requirements for discharge permits and directs that a series of matters be considered in the context of an application for a discharge consent, including the extent to which contamination having an adverse effect on the life supporting capacity of freshwater will be avoided, and the extent to which it is feasible and dependable that more than minor adverse effects on freshwater and any associated ecosystem would be

avoided. Mr McDonnell considered that the proposal would be consistent with this policy because sediment discharges would have less than minor adverse effects and there will be positive effects from the retirement of farming activities and extensive planting of erosion prone land. In his view, any adverse effects would be temporary and less than minor. We agree with that view given our findings on stormwater effects.

[1123] Policies P66 and P83 direct the minimisation of discharge of contaminants to water or land and the adverse effects of stormwater discharges. Policy P84 directs that land use impacts generally, including stormwater discharges, be managed so that runoff volumes at peak flows avoid or minimise scouring erosion of stream beds and banks and do not, among other things, increase or exacerbate the risk of inundation, erosion or damage to property or infrastructure. Mr McDonnell considered that discharges of contaminants would be minimised through a variety of proposed measures implemented through the stormwater management plan. As above, we agree with that view if the alternative design is adopted.

[1124] Turning to NRP Plan Change 1, Objective P.O1 seeks that the health of Te Awarua-o-Porirua's rivers, natural wetlands, estuaries and harbours (among other things) is progressively improved and meets a number of qualitative standards including restoration of mauri by 2100.

[1125] Mr McDonnell noted a series of policies (P.P9- P10, P.P13, P.P27- P28 related to stormwater management and stormwater discharges. Policy P.P9 specifically directs that stormwater discharges are managed so as to maintain baseline water quality state for copper and zinc, or improve water quality where it is degraded. Policy P.P10 directs that source control be used to minimise contaminant loading and stormwater discharges, use of hydrological control and water sensitive urban design measures to avoid, remedy or mitigate adverse effects of stormwater quantity and maintain to the extent practicable natural steam flows, and installation of practical

stormwater treatment systems. Policy P.P13 directs that the adverse effects of stormwater discharges from new greenfield development be minimised through implementing onsite stormwater treatment systems, and hydrological controls where stormwater discharges will enter a river. Policy P.P27 directs management of the risk of sediment discharges from earthworks through a series of measures. Policy P.P28 imposes a general discharge standard on the discharge of sediment from earthworks over an area greater than 3,000m^2 whereby such discharges may not exceed 100g/m3 at the point of discharge to a surface waterbody except where the background suspended solids exceed that figure and that the discharge should not, after the zone of reasonable mixing, decrease visual clarity in receiving water by more than 20% in Taupō Stream and the Kakaho Stream.

[1126] Again, Mr McDonnell considered that the proposal would be consistent with this objective and the policies he had noted due to the steps proposed to limit the amount of sediment laden water discharging to water and to achieve hydraulic neutrality.

[1127] As with the objectives and policies on this topic in the NRP, Mr Banks' commentary on these provisions has largely been overtaken by adoption of the alternative design and our findings on stormwater effects.

[1128] We also note that limiting the amount of sediment laden water and achieving hydraulic neutrality suggests a 'no material adverse effect' position, which is consistent with our findings, but it does not contribute to a long-term improvement to water quality or restoration of mauri. Water quality will be improved in other respects due to the conversion of grazing land, but this position appears inconsistent with Objective P.O1.

[1129] Mr Banks drew our attention also to Objectives P.O3 and P.O6 that seek reductions in sediment and heavy metal loads entering Pāuatahanui Inlet and heavy metals (specifically copper and zinc) within the Taupō catchment by

2040, by reason of the degraded status of those catchments. Again, a 'no material adverse effect' position will not contribute to the desired improvement and appears inconsistent with those objectives.

[1130] Lastly, Mr Banks noted Policy P.P14 of NRP Plan Change 1, which reads as follows:

> **Policy P.P14**: Stormwater contaminant offsetting for new greenfield development
>
> The adverse effects of residual (post-treatment) stormwater contaminants from new greenfield development, roads (not already captured as part of a greenfield development) and state highways where the discharge will enter a surface water body or coastal water, including via an existing or new stormwater network, are to be offset by way of a financial contribution in accordance with Schedule 30 (financial contribution).

[1131] The applicant did not propose a financial contribution provision and on the face of the matter, this is an area of inconsistency with Plan Change 1. The significance of that inconsistency is another matter.

[1132] In his response to Comments, Mr McDonnell took a strong position opposing imposition of a financial contribution. He noted that application of Schedule 30 would carry a cost to the applicant of $4.3 million for the whole development, and that given no projects or environmental outcomes are identified from payment of the contribution the policy requires, it was difficult to determine what environmental benefit it would have.

[1133] Mr McDonnell suggested that given submissions have not been heard on this aspect of Plan Change 1 at first instance, and that a number of submitters have opposed it, the policy should be given little weight.

[1134] We tend to agree with Mr McDonnell's position. This is a novel approach to management of stormwater effects and it needs to be endorsed following a proper hearing and consideration of submissions before we would be justified in giving it material weight.

[1135] For similar reasons, we have rejected GWRC's request to impose conditions requiring financial contributions be paid in respect of stormwater discharges.

District Plan

[1136] Given the comprehensive nature of the proposed Mt Welcome development, it is unsurprising that it has a significant number of intersections with the provisions of the PDP.

[1137] Mr McDonnell's assessment of the proposal against what he considered were the relevant District Plan objectives and policies appended to the substantive application concluded that the proposal was 'generally consistent' with the District Plan policy framework.

[1138] This contrasted markedly with Mr Smeaton's assessment that led him to a conclusion that the proposal was variously consistent, inconsistent with, or contrary to that planning framework with the primary gap in relation to policy settings for the provision of infrastructure and, in particular, a lack of alignment with the site-specific DEV – NG – Northern Growth Development Area provisions in the District Plan.

[1139] Because of the wide range of District Plan provisions engaged and the detailed analysis undertaken by Messrs McDonnell and Smeation of those provisions, the Panel has elected to take an 'exceptions' approach to considering these matters, whereby we focus on the areas of significant disparity between the planning experts as to points of perceived inconsistency and contrariness with the District Plan policy framework. The Panel's assessment of these contended provisions reflects our findings on effects issues set out in Part E of our Decision, and we draw on these findings where relevant below.

[1140] Before addressing these matters, we note for the record that Mr Smeaton concluded that the proposal is generally consistent with the District Plan chapters relating to ECO – Ecosystems and Indigenous Biodiversity, PA – Public Access, EW – Earthworks, LIGHT – Light, NOISE – Noise, TEMP – Temporary Activities, CL – Contaminated Land and NH – Natural Hazards topics. We accept and adopt that uncontested position and accordingly do not assess those provisions any further.

[1141] Turning to the Strategic Direction objectives which are located at the beginning of Part 2 of the District Plan, we note that these are intended to set the Plan's overall direction and reflect the intended outcomes expected to be achieved through its implementation. Mr McDonnell provided no assessment against these objectives, whereas Mr Smeaton was of the view that the proposal was:

(a) contrary to Objective UFD-O4 relating to the servicing of future urban areas due to departures from the Structure Plan particularly in relation to a lack of transport connectivity within the development and with the broader Northern Growth Area;

(b) inconsistent with Objective FC-O1 for similar reasons and also because of a lack of capacity in the proposed three waters network; and

(c) inconsistent with Objectives NE-O1, NE-O2, NE-O4 and NE-O5 due to potential effects on natural environment values, Objective REE-O5 due to an 'inefficient' use of residential zoned land and Objectives UFD-O1 and UFD-O3 due to departures from the Structure Plan.

[1142] In Part E we set out our findings with respect to the proposal's alignment with the Structure Plan, concluding that elements of inconsistency in terms of transport connectivity are inevitable given topographical and ecological constraints and are not material in that context. With respect to the capacity of the three waters network and natural environment values, we have found

that the conditions we have imposed address potential three waters capacity issues and ensure that most, but not all, natural environmental values are maintained. We note that Mr Smeaton's perceptions regarding the 'inefficient' nature of the development of the land are based on the applicant's proposed limitations on development density, which we conclude are not unreasonable given the need to build in an assessment point for stormwater and wastewater infrastructure capacity, before medium density housing proposals can be entertained.

[1143] Overall, we conclude that the extent to which the proposal may be contrary to or inconsistent with the above referenced Strategic Objectives is not material, given the practical constraints associated with the development of the site in question.

[1144] Turning now to the Proposed Plan's energy, infrastructure and transport-related provisions as set out in the INF – Infrastructure, THWT – Three Waters and TR – Transport chapters, it was Mr McDonnells's position that the proposal achieves consistency through its provision of appropriate or sufficient infrastructure to service the development as well as enabling other developments to the north and south, the remedying, mitigating (or offsetting) of flood hazards and adverse effects in situations where considerations of operational and functional need dictate the placement of infrastructure, the achievement of hydraulic neutrality, and the accommodation of the development within the existing transport network without compromising its function, capacity or safety.

[1145] Mr Smeaton, on the other hand, identified areas of inconsistency with Policies INF-P15, INF-P21, INF-23 and INF-P24 due to what he considered was a lack of:

(a) demonstrated operational or functional need with respect to the location of the SH59 intersection;

(b) information regarding earthworks matters that would enable a suitable assessment of effects; and

(c) justification for the inclusion of no exit roads.

[1146] He also considered that the proposal was not fully consistent with Three Waters objectives and policies due to a failure to meet the necessary standards, would not achieve Objective TR-O2, and was inconsistent with Policy TR-P4 with respect to on-site connections to roads.

[1147] In Part E of our Decision we have accepted the applicant's position that no reasonable alternative currently exists with respect to the location and design of the SH59 intersection. There, we have also found that adverse effects arising from earthworks can be managed through appropriate conditions and the employment of certified management plans, with reference to the additional information and revised plans provided by the applicant. Further, we are satisfied with the applicant's explanation as to why opportunities to design through-roads are limited by topography. Finally, where the proposal's alignment with Three Waters objectives and policies are concerned, some of the identified issues have been addressed by redesign of the stormwater management system and we have found that conditions will ensure that development proceeds within network capacity limits.

[1148] In the absence of any assessment from Mr McDonnell, and given what Mr Smeaton considered was a lack of information in the application relating to the effects of earthworks on the riparian margins of streams within the development area, the latter reached a tentative conclusion that the proposal is generally not consistent with the objectives and policies of the NATC – Natural Character chapter. As we note in our discussion of earthworks and construction effects in Part E of our Decision, the applicant has latterly provided an updated draft ECMP that includes new sections dealing with works near streams. This, together with our assessment of the effects of the

proposal on freshwater ecology and biodiversity values, enables us to conclude that the effects of earthworks on riparian margins have been properly accounted for, such that we can have confidence that the proposal is now consistent with Objective NATC-O1 and Policies NATC-P3 and NATC-P4.

[1149] Having considered the proposed approach to subdivision design, integration with infrastructure, the shaping, servicing and distribution of allotments and the internal layout and design of the transport network and its external linkages, Mr McDonnell concluded that the proposal is consistent with SUB – Subdivision Objectives SUB-O1 and SUB-O2 and Policies SUB-P1, SUB-P4 and SUB-P5.

[1150] Mr Smeaton demurred. He considered that the proposal was:

(a) contrary to Objective SUB-O2 and Policies SUB-P4, SUB-P5 and also SUB-P11 due to its non-achievement of policy expectations with respect to infrastructure provision and integration; and

(b) inconsistent with Objective SUB-O1 as it would not achieve the requirements of the policies set out above as well as certain clauses of SUB-P1 relating to the creation of allotments and effects on indigenous vegetation not located within SNA, access to the proposed stormwater network for the purposes of maintenance, the potential for natural hazards to be exacerbated downstream of the Taupō Swamp and a lack of information regarding the design of proposed open spaces.

[1151] As noted above, we have elsewhere acknowledged the practical limitations faced by the applicant in designing the transport network, such that we consider the degree of non-alignment with Policy SUB-P4 to be inevitable and acceptable. With respect to the non-achievement of expectations relating to three waters infrastructure, effects on indigenous vegetation,

stormwater / flood management and proposed parks and reserves, not all indigenous vegetation will be maintained, but the largest and most significant area of non-SNA vegetation will be appropriately offset as a result of amended conditions and the alternative stormwater design, together with amended conditions will ensure that the development is integrated with the provision of infrastructure. We do not consider any residual inconsistencies are material.

[1152] Mr Smeaton provided an assessment against the objectives and policies of the relevant zones pertaining to the proposal, namely the RESZ – General Residential provisions, MRZ – Medium Density Residential Zone provisions and the NCZ – Neighbourhood Centre Zone provisions. In his view the proposal was:

(a) contrary to Objectives RESZ-O1 and RESZ-O3 and Policies RESZ-P1 and RESZ-P2 in limiting development in all residential allotments to one dwelling each and precluding any future subdivision;

(b) not fully consistent with Objective MRZ-O1 as the application contained no mechanisms to ensure how the proposals contained in the MLUDS might be implemented; and

(c) not consistent with the intent of Objective NCZ-O3 and Policy NCZ-P8 given that the application contained no assessment of how the interface between the proposed commercial lot and an adjacent park reserve might be managed.

[1153] As far as the proposed limits on development density are concerned, we have already indicated, in relation to our consideration of the proposal against the Strategic Direction objectives above, that these density limits are not unreasonable given the need to build in an assessment point for stormwater infrastructure capacity. We also accept the applicant's position that the market remains to be further tested before any commitment to a component

of medium density housing can be made. Where the interface between the commercial lot and adjoining reserve is concerned, we expect this will be appropriately addressed at the resource consent stage with reference to the requirements and expectations set out in Policy NCZ-P8.

[1154] Finally, Mr McDonnell provided a detailed clause-by-clause assessment of the proposal against the provisions of the directly relevant DEV – NG – Northern Growth Development Area chapter in the District Plan. In summary, his conclusion was that the proposal is consistent (or broadly or generally consistent) with Objectives DEV-NG-O1, DEV-NG-O2 and DEV-NG-O3 and Policies DEV-NG-P1, DEV-NG-P2, DEV-NG-P3 and DEV-NG-O4.

[1155] With respect to the specific requirements of Policies DEV-NG-O1, DEV-NG-O3 and DEV-NG-O4, Mr McDonnell did acknowledge some departures from the indicative internal roading layout (including bus-enabled components) and externally connected road and track details as shown on the Structure Plan, but justified these on the basis of topological constraints, ecological sensitivities and engineering practicality.

[1156] Mr Smeaton also provided us with a detailed clause-by-clause assessment of the proposal against the DEV – NG – Northern Growth Development Area chapter in the District Plan, in coming to a largely opposed conclusion. On the basis of the departures Mr McDonnell identified, and others from the policy framework for the North Growth Development Area and the detail of the Structure Plan that Mr Smeaton identified, he concluded that the proposal is contrary to Objective DEV-NG-O3 relating to the provision of infrastructure, Policy DEV-NG-P1 relating to use and development, Policy DEV-NG-P2 relating to subdivision, and Policies DEV-NG-P3 and DEV-NG-P4 relating to the appropriateness of development. He also concluded that the proposal is not fully consistent with Objective DEV-NG-O2 and is contrary to some specific clauses. Overall, as we signalled at the start of this

section, Mr Smeaton found the proposed development to be contrary to the DEV - NG - Northern Growth Development Area chapter as a whole.

[1157] When we consider the matter of alignment between the proposal and the DEV – NG – NGDA chapter on a provision-by-provision and clause-by-clause, we identify similar inconsistencies as those identified by the planning experts, but we do not reach the conclusion that the proposal as it is now constituted is fundamentally at odds with that chapter's policy framework.

[1158] Where the development on this scale is proposed and, to support it, the design moves to a much more detailed level than may have been undertaken for the purposes of a structure planning exercise, it is inevitable that practical constraints will arise and compromises will need to be made and, as a result, inconsistencies with and departures from the policy framework will emerge.

[1159] In our evaluation these inconsistencies are not of material significance, such that we find ourselves unable to conclude that the proposal must fail by being substantively contrary to the relevant policy framework. On balance, and taken as a whole, we consider that it appropriately aligns with that framework in matters large and small, such that it will not undermine the integrity of the District Plan.

Other Relevant Instruments

[1160] The applicant advised in its Application that were no iwi management plans that we needed to consider[252]. It did point out to us a number of Growth Strategy documents that provide general support for development of the site for residential purposes that we have noted.

[252] Substantive application at section 13

[1161] GWRC's Comments drew our attention to the relevance of:

(a) Te Rautaki Whanaketanga ki tua a Wairarapa-Wellington-Horowhenua Future Development Strategy 2024-2054;

(b) Wellington Regional Land Transport Plan 2021, including the 2024 Mid-term Review;

(c) Wellington Regional Public Transport Plan 2025-2035;

(d) Te Wai Ora o Parirua Porirua Harbour Accord 2025.

[1162] The first was one of the documents the applicant noted.

[1163] The two transport documents are relevant to our discussion of Traffic effects where we have concluded that:

(a) The proposal will not have any adverse effect on the safety and efficiency of the state highway network.

(b) External connections via the state highway and via proposed future residential developments to the north (Muri Block) and to the south (Skaiffe Block) are appropriately enabled .

(c) Internal roading has an appropriate hierarchy, the road widths are sufficient for bus circulation, and there is sufficient provision for connectivity within the entire development, including adequate provision for walking and cycling connections in terms active mode transportation.

[1164] The fourth has been considered in relation to Stormwater, Freshwater and Cultural Effects.

[1165] Mr Smeaton similarly drew our attention to previous growth strategy documents that we have noted in Part B of our decision and which support development of the site.

DRAFT

PART G: PART 2 OF THE RMA

[1166] Clause 17 of the Fifth Schedule of the FTAA requires that we have regard, among other things to Part 2 of the RMA (but excluding section 8), while giving greatest weight to the purpose of the FTAA.

[1167] As discussed previously, we have adopted the same approach as the Waihi North Expert Panel as regards the application of Part 2 as an exercise of "taking into account" those provisions.

[1168] Section 12 of the substantive application helpfully sets out an assessment of the Project against Part 2 (sections 5, 6 and 7) of the RMA in accordance with the Clause (5)(1)(g) Schedule 5 of the FTAA, as well as Section 104(1) of the RMA. We generally adopt that assessment, noting the proposed alternative stormwater design and refined conditions, including our additional amendments, have further assisted us to reach agreement with the applicant's conclusion that overall, the proposal meets the purpose and principles of the RMA. We provide a summary of our relevant findings and reasoning in this regard below.

[1169] Section 5: The purpose of the RMA as expressed in section 5 is to promote the sustainable management of natural and physical resources. Section 5(2) defines 'sustainable management' as: managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while— (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

[1170] Based on our findings, in particular in Part E of this decision, the Proposal meets the purpose and principles of the RMA. In particular:

(a) We agree with the applicant that the Proposal makes sustainable use of the Site's natural and physical resources and responds appropriately to the local context and the residential zoning anticipated under the PDP.

(b) We recognise that the proposal will provide for social and economic wellbeing of future occupants through increasing the supply of housing to meet future assessed demand.

(c) Our findings on cultural effects indicate that in the round, cultural wellbeing is provided for, while recognising there is potential for residual cultural effects on Taupō Stream.

(d) Given our findings in Part E we consider adverse effects on the environment will be appropriately avoided, remedied or mitigated, or offset or compensated to the extent this is practicably possible, sustaining the life-supporting capacity of air, water, soil, and ecosystems.

[1171] Section 6 of the RMA sets out matters of national importance that must be recognised and provided for when exercising functions and powers under the Act. The matters relevant to the Site are assessed as follows:

(a) Section 6(a) seeks to preserve the natural character of the coastal environment (including the coastal marine area), wetlands and lakes and rivers and their margins and protect them from inappropriate subdivision, use and development. We consider the Proposal is not inconsistent with 6(a) as the revised stormwater solution has reduced effects on streams and wetlands and residual adverse effects will be appropriately offset or compensated for and the natural character of the downstream (including coastal) environment will be maintained.

(b) Section 6(c) of the RMA seeks to protect areas of significant indigenous vegetation and habitats of indigenous fauna. As previously discussed regards terrestrial ecology including herpetofauna, and freshwater ecology we have imposed conditions to provide for appropriate offsetting and compensation to the extent practicable for the loss of SNA's and other significant areas of vegetation, along with wetland and stream loss. The wildlife and complex freshwater fisheries approvals further support outcomes for freshwater fish and lizards that are consistent with 6(c).

(c) Section 6(d) of the RMA seeks to maintain and enhance public access to and along the coastal marine area, lakes and rivers. Consistent with this, the Project provides for significant riparian and wetland enhancement works and the vesting of Local Purpose Reserves and therefore will create public access to rivers and wetlands within areas of the site that are currently in private ownership.

(d) Section 6(e) of the RMA requires that the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga be recognised and provided for. For the reasons set out in our discussions on cultural effects, for the most part, we consider the Project to be consistent with 6(e), with the exception of potential residual effects on the mauri of Taupō Stream that are unable to be avoided. We have however, imposed amendments and additional conditions in an attempt to ameliorate these, and provide for reconsideration of this aspect of the Project in consultation with TRoTR at the time the SH59 roundabout is required.

(e) Section 6(h) seeks to manage significant risks from natural hazards. As discussed in relation to stormwater effects we are satisfied the conditions we have imposed will manage flooding risk such that

potential effects are low. Similarly, as described in our findings on geotechnical matters, the Panel is also satisfied that the detailed design process and consent conditions will adequately manage geotechnical risks and hazards, and ensure adverse effects on the Site and downstream environment are minor.

[1172] RMA Section 7 lists other matters which all persons exercising functions and powers under the RMA must have particular regard to. Matters relevant to the Site and proposal are assessed below:

(a) Sections 7(a) and (aa) of the RMA require that particular regard be given to kaitiakitanga and the ethic of stewardship. As set out in our findings on cultural effects, a number of conditions have been agreed and adopted through engagement between the applicant and TRoTR and we have amended these as necessary to further support the expression of kaitiakitanga by Ngāti Toa through the implementation of the project. It follows that our findings in relation to kaitiakitanga, as well as freshwater and terrestrial ecological effects also demonstrate alignment with the ethic of stewardship. As such we are satisfied that the requirements of 7(a) and (aa) are met.

(b) Section 7(b) relates to whether a proposal involves the efficient use and development of natural and physical resources. we generally agree with the applicant that the proposal reflects an efficient use of natural and physical resources, and will enable the utilisation of a residentially zoned site for residential purposes. The only qualification to that view relates to PCC's concern that development is limited to one dwelling per site. While a more intensive form of development would allow the land to be used more efficiently, we have accepted the applicant's reasons for that limitation, noting that it reflects current and anticipated infrastructure constraints, and the need to have a clear reference point

against which infrastructure capacity issues can be assessed before development could be entertained.

(c) Section 7(c) relates to the maintenance and enhancement of amenity values. In relation to the effects of the development on the landscape and visual amenity of the Mt Welcome Block and surrounds, we agree with the applicant's assessment that those effects are likely to be no more than minor. As such, the Project is not inconsistent with 7(c).

(d) Sections 7(d), (f) and (g) of the RMA relate to the intrinsic values of ecosystems, the quality of the environment, and the finite characteristics of natural and physical resources respectively. Based on the conclusions discussed above regards other relevant Part 2 matters, the Panel considers that particular regard has been given to the intrinsic values of ecosystems and to the maintenance of the quality of the environment.

(e) Section 7(i) relates to the effects of climate change. On the subject of climate change mitigation and adaptation we have noted in our discussion on urban design that the Project has some limitations. Although it provides for a range of transport modes, the availability of those options is dependent on development on adjoining sites. Nevertheless, we consider that the Proposal has generally been designed to address climate-related hazards and the effects of changing weather patterns.

[1173] As discussed in Part C of our decision, we also consider it appropriate to have regard to the Principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

[1174] We are satisfied that the conditions proposed appropriately provide for the recognition of Treaty settlements in the context of this Project, in this case the Ngāti Toa Rangatira Claims Settlement Act 2014. Overall, we conclude that the Applicant has engaged with TRoTR in a manner consistent with the principles of the Treaty of Waitangi / Te Tiriti o Waitangi and that granting

the approvals sought is consistent with the FTAA and Part 2 RMA as it relates to cultural matters. In the main, implementation of the Panel's conditions should aid in minimising potential adverse effects on TRoTR arising from the Project, including a requirement for reassessment of the need for culverting of Taupō Stream when the trigger for constructing the roundabout occurs, in consultation with Ngāti Toa.

[1175] Given our conclusions as above, the requirement that we give greater weight to the purpose of the FTAA does not materially alter the conclusion we have come to that assessment of the relevant RMA provisions supports granting the RMA approvals.

DRAFT

PART H: WILDLIFE ACT APPROVAL

[1176] The Wildlife Act creates an offence of, among other things, killing, trapping, or capturing wildlife[253]. However, approval can be granted under section 53 to catch wildlife alive, including for the purposes of relocating it. Section 53A extends the jurisdiction to grant such approvals to include killing of wildlife that is incidental to carrying out an otherwise lawful activity. Section 53B imposes limitations on the grant of authorities under s 53A which require a decision-making focus on protection of both populations of, and individual, wildlife.

[1177] Native lizards on the site are 'wildlife' for this purpose.

[1178] As above, applications for approvals that would other be applied for under the Wildlife Act can be made under the FTAA, see s 42(4)(h), and we have discussed the considerations the FTAA makes relevant to such an application in Part C of our decision above.

[1179] We are required to consider the purpose of the Wildlife Act. The Wildlife Act does not have an explicit statement of purpose, but the Expert Panel determining the Waihi North applications described the purpose of the Wildlife Act as including "the protection of species and particular populations of wildlife that are at risk"[254]. We have adopted that view.

[1180] Clause 5(c) of FTAA Schedule 7 requires consideration of the national and international Threat Status of the wildlife concerned. As discussed in Part E, consideration of the national threat status of copper skink favours Mr Payne's view of their value and the extent of potential effects on them, rather than the contrary view of Mr Wedding and Dr Fea, based on the regional threat status.

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[253] Section 63

[254] Part J, paragraph [8]

[1181] FTAA Schedule 7, Clause 5(b) directs that we consider the effects on protected wildlife. We have discussed the potential adverse effects undertaking the project may have on native lizards at some length in Part E of our decision, finding that there is uncertainty around the ability to successfully find, relocate and re-establish native lizards, but that the potential adverse effects will not be significant.

[1182] Lastly, we are required to consider, and give greatest weight to the purpose of the FTAA. The earthworks that would affect native lizards in situ and require their relocation are an intrinsic part of the project and cannot practicably be avoided. Without those earthworks, the project cannot proceed, and the regional benefits accruing from it cannot be realised. That favours grant of consent.

[1183] In any event, our conclusion as to the level of effects means that under section 85(3), approval cannot be withheld.

[1184] In our Part E discussion of effects on lizards, we have discussed also the efficacy of the revised LMP that Mr Payne prepared at our request. We identified a number of issues with it that we were not able to resolve utilising the information we have received from the parties in the time available to us. We therefore determined that the appropriate way forward is to accept the recommendation of DoC and structure the wildlife approval we will grant around a LMP that is certified by DoC as meeting specified criteria.

[1185] Those criteria must reflect the requirements of Schedule 7, Clause 6(2) quoted in Part C above.

[1186] We consider that to avoid, minimise or remedy impacts on protected wildlife and to appropriately offset or compensate for more than minor residual effects on such wildlife, taking account of the applicable, New Zealand Threat Classification status the draft LMP should:

(a) Be based on the 27 October LMP that Mr Payne prepared.

(b) Identify habitat on the site within which native lizards have previously been located ('confirmed areas'), and provide for employment of a search methodology that reflects the likelihood that lizards will be found in those areas if sufficient effort is made.

(c) Identify areas elsewhere where works are proposed to be undertaken that potentially provides habitat for native lizards, including areas of native and exotic vegetation adjacent thereto (possible areas) and employ a search methodology that reflects the potential that they might be located, subject to health and safety considerations.

(d) Provide for upgrading of search effort if native lizards are identified in any 'possible area'.

(e) Provide Ngāti Toa with the option of accompanying personnel seeking to capture and relocate lizards, providing not less than 10 working days notice of same.

(f) Prepare the relocation areas already identified in the 27 October 2026 draft LMP in order that lizards captured on the site can be relocated to suitable habitat, including by planting not less than 60% of each area in appropriate indigenous species prior to lizard release and surveying them to establish the pre-existing lizard population (if any).

(g) Provide a suitable level of predator control measures for rats and mice for five years or until regular monitoring of lizards indicates the lizard population is stable, whichever is the longer.

(h) Consider the potential for additional cat control measures within the identified relocation areas over the same period.

(i) Provide contingency measures addressing:

a. More native lizards being captured than anticipated, identifying how they will be safely transferred to and accommodated in the identified relocation areas;

b. Different native lizard species being captured, particularly species with an elevated New Zealand Threat Classification status identifying how different relocation and habitat requirements will be accommodated; and

c. Relocated lizards not achieving stable population levels.

[1187] We acknowledge the applicant's concern that inviting Ngāti Toa representatives to observe lizard capture efforts may be burdensome to the applicant, but we do not agree that this should be the case.

[1188] We have made other amendments to the draft wildlife approval conditions, melding those suggested by the applicant and DoC as appropriate.

[1189] We are satisfied that the end result will ensure that adverse effects on native lizards, particularly copper skink will be minimised as far as practicable and that the approval should be granted on that basis.

PART I: COMPLEX FISHERIES ACTIVITY APPROVAL

[1190] As above, the applicant sought a complex freshwater fisheries activity approval (**CFFA**) for upgrading and installation of culverts and dams, and works that disturb waterbodies that would otherwise be considered by DoC under the Freshwater Fisheries Regulations 1983.

[1191] Section 17 of the substantive application sets out information requirements required by Schedule 9, clause 3 of the FTAA, setting out details of proposed upgrading and installation of culverts and dams in stream beds with associated design, flow and operating regime characteristics.

[1192] Information was provided in the ecological assessment submitted with the Substantive Application in relation to the freshwater species and values present (utilising the NZ Threat Classification System), along with a description of water quality and quantity at the Site and upstream/downstream of the Site[255].

[1193] An explanation of how fish passage will be provided and effects on wetland and stream values and freshwater fish managed was included in sections 15.11.3 - 15.11.5 of the substantive application. The applicant considered that overall, the proposed culvert and wetland system will remove existing barriers, provide continuous aquatic connectivity, and result in a net improvement to fish habitat and passage relative to the current condition[256].

[1194] Section 17 of the Substantive Application provided an overview of how the Application meets the requirements of Schedule 9, clause 5 FTAA, namely:

[255] Substantive Application, Appendix 15, 18 and 19.
[256] Substantive Application, Appendix C1.

(a) The purpose of FTAA: The applicant considers the proposal, including complex freshwater fisheries activities, is consistent with the purpose of the FTAA[257].

(b) The alignment of the proposed activity with best practice and the New Zealand Fish Passage Guidelines: The applicant's proposed SMP requires activities to align with the New Zealand Fish Passage Guidelines;

(c) How the proposed activity will manage risks to freshwater values or habitat, including prevention of access to or spread of invasive species: The proposed condition requiring a Landscape and Ecology Management Plan includes provision to address biosecurity risks.

(d) The availability and quality of the habitat upstream and downstream of the proposed activity: This information is set out in the Hydrology Assessment (Appendix 18), the Water Quality assessment (Appendix 19), and the Ecological Assessment (Appendix 15) of the Substantive application sets out these details.

(e) The presence of threatened, data-deficient, or at-risk species under the New Zealand Threat Classification System in the vicinity of the proposed activity: Freshwater species, including any threatened or at-risk species, are identified in Appendix 15 of the Substantive Application.

(f) The advantages and disadvantages of providing fish passage upstream or downstream of the proposed activity: This information is set out in the Ecological Assessment in Appendix 15 and the SMP in Appendix 11. The applicant notes that Culverts P-36 (Retention Wetland C), P37 (Retention Wetland A) and P-39 (upgrade for existing culvert E-18) do

[257] Substantive Application, Section 3.1.2

not provide for fish passage as there are no fish present in these waterways. We return to this matter later.

[1195] The applicant described its proposed mitigation measures in Section 15.4, and summarises proposed resource consent conditions in Section 14 that are contained in Appendix 7 of the substantive application. These include provision for the SMP, Streamworks Construction Management Plan and Fish Management Plan, that are relevant to managing the effects of the proposed complex freshwater fisheries activities.

[1196] DoC's Section 51(2)(e) Report provided background to pre and post lodgement engagement carried out with the Applicant, noting its recommendation that additional fish sampling would be beneficial to understanding the site values and potential effects. DoC also requested further information from the applicant per Clause 3 of Schedule 9 in relation to the 8 structures identified and a response was provided on 18 June 2026[258].

[1197] DoC's Section 51(2)(e) Report also included a detailed assessment covering the Schedule 9, clause 5 FTAA requirements, countering the applicant's assessment as follows:

(a) The alignment of the proposed activity with best practice and the New Zealand Fish Passage Guidelines (clause 4(a)).

DoC considered it is best practice, and consistent with the New Zealand Fish Passage Guidelines and National Environmental Standards for Freshwater, for all culverts and retention wetland outlets to provide fish passage. DOC noted that existing downstream barriers are not a valid reason to omit fish passage on site, that culverts must allow the same passage as if they were not present, and that any future remediation of downstream barriers could reopen habitat which would

[258] Response to Panel Minute 2, 2 July 2026 at Appendix B.

then be newly constrained by on-site barriers. Further, a lack of fish passage in all locations potentially undermines the offset package proposal which includes retention wetlands claimed to provide substantially greater and higher-quality aquatic habitat than the existing degraded streams, however for that to be so, fish passage must be provided in order for the habitat to be available.

DoC consider that existing fish surveys (two eDNA samples and one night spotlight at low flows) are insufficient to characterise fish populations or rule out fish presence, so further baseflow sampling and wider, replicated eDNA surveys are recommended.

(b) The management of risks to freshwater values or habitat, including prevention of access to or spread of invasive species (clause 4(b))

The Fish Management Plan provided with the application is too vague, and fish salvage is therefore recommended in all on-site waterways (since fish may be more widespread than detected. Relocated fish should be kept within their own catchment (or permits obtained if moved between catchments), and biosecurity requires strengthening by following MPI's Check Clean Dry gold-clam inclusive method.

(c) The availability and quality of the habitat upstream and downstream from the proposed activity (clause 4(c))

The degraded headwater streams and wetlands have reversible effects and therefore potential ecological values that could be realised through improved land management, particularly given they feed important downstream habitats such as Taupō Swamp, Muri Road Wetland and Pauatahanui Inlet. These potential values must also be considered in light of the fact that, without fish passage, about 2,100 m^2 of new permanent water in Retention Wetlands A, C and D, plus ~450 m of upstream Kākaho West Stream above culvert P-39, would remain inaccessible to fish.

(d) The presence of threatened, data-deficient, or at-risk species under the New Zealand Threat Classification System in the vicinity of the proposed activity (clause 4(d))

DoC considered the existing fish surveys inadequate to describe fish populations or their abundance, and notes that species potentially present include several At Risk taxa (e.g. banded kōkopu, longfin eel, redfin bully).

[1198] DoC's key recommendation in its Report was to impose conditions requiring adherence to the New Zealand Fish Passage Guidelines (Version 2.0, MfE 2024), including:

(a) Provision of a Fish Passage Plan to be certified by DoC demonstrating how fish passage will be maintained or provided at all culverts, wetland connections, and other structures that may affect the movement of indigenous fish, including during low-flow conditions, and how aquatic habitat connectivity will be retained to the greatest extent practicable;

(b) Monitoring of fish passage success, following best practice methods in the New Zealand Fish Passage Guidelines; and

(c) Robust biosecurity measures (Check, Clean, Dry protocols).

[1199] While DoC considered that there needed to be a requirement for separate approval and proposed conditions for complex freshwater fisheries activities, the applicant's view was that the FTAA does not require separate conditions to be identified for a complex fisheries approval. Mr Tolley noted that GWRC already regulates these activities, so adding DoC as an additional certifier would introduce unnecessary cost and potential delay, and the

proposed DOC conditions largely duplicate those included in the resource consent conditions[259].

[1200] Following conferencing, the various freshwater ecology experts produced an initial JWS[260]. There was disagreement about whether the fish surveys had been sufficient. There was agreement that fish salvage should cover all intermittent and perennial watercourses and standing water, and that fish passage should be provided throughout the Site in accordance with the most up to date version of the Fish Passage Guidelines.

[1201] The applicant's alternative stormwater scheme design necessitated further consideration of fish passage. The Panel issued Minute 23 seeking further information from the Applicant as to the implications of the proposed stream and wetland modifications associated with the redesign for fish passage and consequently, the scope of matters to be covered by the CFFA.

[1202] In the applicant's response, Dr Keesing advised that the redesigned outlets and culvert gradients substantially reduce the risk of restricting fish passage at stormwater detention ponds A, B and C, provided appropriate connections are formed between the pipes and streams and the culvert. He considered that fish passage at pond E should remain comparable to the previous design, and culvert P39 should be no greater barrier than the existing crossing. He confirmed that although fish passage will be provided at all culverts and dams, CFFA will still be required for ponds B, C and E, which contain intermittent streams, and therefore the approval requirements for those ponds would not change.[261]

[1203] In Minute 27 the Panel sought to clarify whether the applicant's position that approval is now limited to the dams at detention ponds B, C and E was based on the view that the temporary diversions covered by condition R60 are not

[259] Applicant Response to Comments and Panel Minutes, dated 7 August 2026, at Appendix 6
[260] Freshwater Ecology Joint Witness Statement, dated 18 August 2026.
[261] Memorandum from applicant, dated 23 October 2026, at para 15-17.

'diversion structures' for the purposes of the Freshwater Fisheries Regulations. Mr McDonnell was asked to confirm this and consider whether the approval description and proposed conditions required consequential amendment, in consultation with DoC and GWRC.

[1204] Mr McDonnell considered our query in the context of the definition in section 4 of the FTAA reproduced below:

> Complex freshwater fisheries activity means an activity that includes construction of any of the following:
>
> (a) a culvert or ford that permanently blocks fish passage:
>
> (b) a permanent dam or diversion structure:
>
> (c) works—
>
> (i) that require disturbance to a water body, including diversions, in-stream operations, and removal of gravel, that persists for more than 3 months; or
>
> (ii) that require disturbance of any duration during the whitebaiting season to a water body within 500 m of the coast; or
>
> (iii) that require disturbance of any duration during the relevant spawning season to a water body that is known for the spawning of trout, salmon, or native fish; or
>
> (iv) that require repeated disturbance to a water body and are temporary works for which there is a period of 6 months or less between each period of work.

[1205] His view was that the definition covered permanent dams and diversion structures, permanently impassable culverts or fords, and specified works involving disturbance to a water body. Accordingly, he considered that a temporary diversion did not qualify as a diversion structure under the permanent-structure limb, although it might have been captured by the separate provisions for specified works[262].

[262] Memorandum in response to minute 27, dated 3 November 2026, at para 10.

[1206] However, Mr McDonnell considered that the stream works to construct certain structures, together with the associated temporary diversion structures, would fall under (c)(i) of the definition because the construction works could take longer than three months. This would apply to the following works with waterbodies:

(a) Works to construct the Taupō Stream culverts P-32 and P-33 (noting those culverts themselves do not require complex freshwater fisheries approval); and

(b) Works to construct the dams and culverts to create stormwater detention ponds B, C and E (noting the dams also require complex freshwater fisheries approval).

[1207] Dr Keesing had advised that culverts P-35 (Stormwater Detention Pond B), P-36 (Stormwater Detention Pond C), P-37 (Stormwater Detention Pond A) and P39 (upgraded existing culvert) can provide for fish passage for species present or potentially present in their catchments, without complying with the New Zealand Fish Passage Guidelines. Taking Dr Keesing's advice, Mr McDonnell considered that these culverts would therefore fall under (a) of the CFFA definition, as they would potentially permanently block fish passage for some species of fish should these fish re-establish themselves in these waterways in the future[263].

[1208] Mr McDonnell provided a table setting out what he considered the scope of the complex freshwater fisheries should cover[264]:

Activity	**Relevant part of CFFA definition**
Culverts P-35, P-36, P-37 and P-39	(a) a culvert or ford that permanently blocks fish passage:

[263] Ibid, at para 12.
[264] Ibid, at para 13.

Dams constructed to create stormwater detention ponds B, C and E	(b) a permanent dam or diversion structure
Works requiring disturbance to a water body that persist for more than 3 months, including temporary diversions and in stream operations for the: • construction of culverts and dams required to create stormwater detention ponds B, C and E; and • construction of the Taupō Stream culverts (P-32 and P-33)	(c) works— (i) that require disturbance to a water body, including diversions, in-stream operations, and removal of gravel, that persists for more than 3 months; or …

[1209] A JWS was prepared by Mr McDonnell on behalf of the applicant, Andrew Banks for GWRC, and Ms Collins, Messrs Whitelock and Calmeyer on behalf of DoC specifically addressing the conditions for the CFFA[265].

[1210] The marked-up version of conditions showed that the experts agreed that the CFFA conditions should sit separately to the regional conditions. Mr McDonnell sought a 10-year lapse date consistent with that recommended for the regional consents. There was agreement on the activities and structures subject to the approval in line with Mr McDonnell's table above (condition FF2).

[1211] There was disagreement from Mr McDonnell to GWRC and DoC's proposed amendment to require all new structures to comply with the New Zealand Fish Passage Guidelines in condition FF3, in light of Mr Keesing's advice outlined previously. Similarly, Mr McDonnell disagreed with amendments proposed by these parties to condition FF4 and new condition FF5 requiring additional fish surveys to determine the timing of works within

[265] Joint Witness Statement, dated 3 November 2026.

the bed of the river during the spawning period of native fish present in the catchment.

[1212] Finally, the experts agreed that there were no consequential amendments required to the regional resource consent conditions as a result of the conferencing on the CFFA conditions.

Findings:

[1213] In setting conditions on the CFAA, the Panel has considered the matters in clause 9 of Schedule 5 of the FTAA. The applicant's position on fish passage has evolved with the project design, such that we are now confident that the effects of the proposed complex freshwater fisheries activities can be adequately managed and approval can be granted. We endorse separating the CFFA approval conditions from the regional conditions. In our view, the two sets of conditions are complementary rather than duplicative.

[1214] We have adopted the relevant conditions provided in the JWS dated 3 November 2026, noting:

(a) The Panel agrees with the proposed 10 year lapse date for the approval for the reasons set out in our discussion of regional lapse dates in Part K of this decision.

(b) In our findings on freshwater ecology effects, we determined that additional fish surveys were desirable. While we generally prefer the drafting proposed by DoC and GWRC as regards conditions FF3, FF4 and FF5 and have made some amendments to these to better reflect our finding that fish passage should be provided for:

- Species fish surveys identify; and
- Species likely to have been present naturally e.g. without downstream fish barriers.

[1215] There were no areas of disagreement between Messrs McDonnell, Banks, Whitelock and Calmeyer and Ms Collins as regards the remaining conditions FF6-FF9 dealing with temporary diversions within a stream channel and biosecurity management and we have accepted these.

DRAFT

PART J: ARCHAEOLOGICAL APPROVAL

[1216] As above, the applicant sought an archaeological approval to disturb, modify or destroy potential archaeological sites while undertaking earthworks that would otherwise be considered by HNZPT under the HNZPTA.

[1217] HNZPT provided a report on in accordance with Section 51(2)(d).

[1218] HNZPT's assessment of the proposal pursuant to clause 4 of Schedule 8 FTAA, found that an authority can be granted because there is no evidence that the known or potential archaeological sites have heritage values warranting their full protection; the site is not within a Statutory Acknowledgement Area and engagement with Ngāti Toa Rangatira has occurred.

[1219] HNZPT worked with the applicant to agree a set of amended conditions (including an updated Archaeological Management Plan (**AMP**)) that it considered will ensure archaeological works are carried out in a culturally appropriate manner, adequately mitigate adverse effects on archaeological values, provide for information to be properly recorded and made accessible to other archaeologists and interested parties, and enable robust monitoring and measurement of compliance.

[1220] Regarding the matter of the 'Approved person' under Section 45 HNZPT Act, HNZPT confirmed that the applicant's archaeology advisor, Patrick Harsveldt, is appropriately qualified, skilled, and supported to carry out the archaeological work required under the authority.

[1221] For completeness we note that HNZPT had no further comments to make under section 53 when invited to comment.

[1222] The applicant provided commentary on historic heritage and archaeology in its response to Comments received from invited parties, along with the

Panel's comments on conditions. This included provision of the updated AMP and marked up conditions.[266]

[1223] We discussed archaeology and historic heritage effects further in Part E of our report. Taken together, we consider the archaeological effects of the Project will be less than minor and the authority can be approved.

[1224] Given there were no comments received on the archaeological authority conditions we have adopted the set provided by the applicant on 7 August 2026. The only amendment we saw fit to make was to change the reference to Ngāti Toa Rangatira to Te Rūnanga o Toa Rangatira for consistency with the regional and district conditions.

DRAFT

[266] Applicant Response to Comments and Panel Minutes, dated 7 August 2026, at Appendix K and Appendix 8.

PART K: DECISIONS AS TO RESOURCE CONSENTS INCLUDING CONDITIONS

Grant or No Grant

[1225] We have considered the project on the basis of our assessment of the alternative scheme design, for the reasons set out above.

[1226] As discussed in Part G of our Decision above, consideration of Part 2 of the RMA favours grant of consents.

[1227] The activities for which consent is required are assessed as non-complying activities. This tells against grant of consent but is not decisive.

[1228] In relation to relevant statutory instruments, and considering national instruments first, we have found that:

(a) The project the proposal supports the creation of a 'well-functioning' urban environment, to the extent that it is practically able to, and as such is not inconsistent with the intent of the NPSUD.

(b) The project is consistent with the NPSNH.

(c) While issues of consistency and inconsistency do not arise with the NPSI because of the way it is framed, there is nothing in that instrument that causes us concern.

(d) We have found the project inconsistent with the NPSFM as regards the loss of wetland extent, and the failure to give effect to Te Mana o Te Wai vis a vis culverting of Taupō Stream, but is not otherwise inconsistent with that instrument.

(e) We have found the project potentially inconsistent with the NPSIB as regards the management of adverse effects on herpetofauna due to

uncertainty around the ability to successfully find, relocate and re-establish native lizards, particularly the regionally vulnerable copper skinks, but that with amended conditions, it is consistent with the NPSIB.

[1229] There are areas of inconsistency with both regional and district instruments, generally with respect to the same issues as above, but also large areas of consistency. We do not find any regional or district direction fundamentally opposed to grant of consent.

[1230] Section 85(3) of the FTAA directs that we can only decline the application before us if we find that the adverse effect(s) are sufficiently significant to be out of proportion to the project's regional and national benefits.

[1231] Section 85(4) directs that we cannot reach the view that that is the case solely on the basis of a document we are required to take into account. Accordingly, our finding that the project is contrary to some aspects of statutory direction at all levels is a relevant but not decisive consideration.

[1232] Our finding on effects is that the only potentially significant effect is in the loss of mauri and related cultural effects of the proposed culverting of Taupō Stream. Those effects may be able to be reduced, but whether this is so depends on processes neither we nor the applicant can control.

[1233] We have found in Part D of our Decision that the Project would have regionally significant benefits, albeit not as significant as the applicant contended. The principal benefits would be from meeting assessed future housing demand and promoting greater competition in the housing supply market.

[1234] The two conflicting considerations are not able to be compared in any quantifiable way. We have to form an opinion on the basis of the material before us, taking account both of the potential that the identified adverse

effects might be able to be reduced. and the uncertainty as to whether this will occur, and if so, to what extent.

[1235] We find that the potential adverse effects identified are not of a different order to the assessed positive regional benefits.

[1236] This finding means that the only permissible option under the FTAA is that we grant the RMA applications before us.

Lapse and Duration

[1237] The applicant originally sought a lapse date of 15 years for both the district and regional consents to be given effect to. During the course of the process, however, this morphed into the following lapse dates:

(a) fixing a 15-year lapse period for district land use resource consents;
(b) stipulating a dual lapse period for the subdivision consent with Stage 1 lapsing after 5 years and all subsequent stages lapsing 15 years after the date that consent is granted (i.e. an additional 10 years from Stage 1).
(c) fixing a 10-year (as opposed to the original 15 year) duration and lapse periods for regional resource consents (with the exception of a 35 year duration for specific water permits and discharge consents associated operational activities).

[1238] The three issues for the Panel to consider relate to the rationale for the 10 and 15 year lapse periods, secondly whether the dual lapse period for the subdivision consent is problematic, and third, whether the different lapse periods are problematic.

[1239] Dealing firstly with the quantum of the lapse period, we note that at 10 and 15 years respectively, the regional and district consents are longer than the

five years provided by section 125(1)(a) of the RMA. In considering this carefully, the Panel is aligned with the applicant's reasons for the additional lapse period which cite the project's complexity and construction staging for the extended periods being sought. In particular, we note and concur with the following:

(a) In terms of construction staging - we acknowledge that the development is planned in multiple stages under multiple consents. We agree that an extended lapse period allows the developer to implement the development incrementally without risking the consent lapsing during the early phases of work. In addition, a subdivision consent is given effect to when a survey plan under section 223 of the RMA has been submitted to the Council and is subsequently deposited (s125(2)), therefore all of the survey plans need to be lodged for the subdivision consent to be given effect to. We therefore accept that a lapse period of 15 years equates to the estimated time when all the survey plans will be deposited.

(b) In terms of project complexity - the size and scale of this development is such that there are complex and interrelated planning design and construction phases, including multiple stages involved in the proposed development, adjacent developments being undertaken by other developers, and the rollout of council bulk infrastructure upgrades. We agree that this complexity is appropriately matched by a 15 year lapse period.

[1240] The issue with dual lapse period is that is unclear to us what happens when the first lapse period is met, but not the second. Counsel for the applicant told us that other expert panels had adopted this approach[267]. These decisions do not, however, address the question that was troubling us: given that there is one subdivision consent, if that consent lapses at the 15 year

[267] Referring us to the Sunfield and Homestead Bay Expert Panel decisions

point, does that mean that previous stages that have been progressed under that consent cease to be authorised?

[1241] Counsel suggested that the solution might be to rely on a condition to address the issue at that point, rather than rely on the section 125 lapse provisions, and suggested condition wording. We consider that this would be preferable, if only out of an abundance of caution, and have adopted counsel's suggestion.

[1242] Turning to the variability of lapse periods, we note that for those consents where the applicant has sought a 10-year duration, GWRC had commented that it does not make sense for a consent to have a lapse period that is longer than its duration, as a consent cannot be given effect to after it expires. We note that Mr McDonnell for the applicant agreed with that and altered the conditions such that the regional consents with a 10 year duration should all have a 10 year lapse period.

[1243] We acknowledge and adopt that alteration. Whether the different lapse periods between the district and regional consent is problematic is something for the applicant, but the adoption of the lesser lapse period for the 10 year duration regional consents is something that the applicant has agreed to. We do note that there is always the remedy of an extension to a lapse date under s125 of the RMA should that become necessary.

[1244] Overall, we are satisfied that the duration and lapse dates that we have landed on for all RMA consents are appropriate given the scale complexity and staging the project.

[1245] For completeness, we note that was no dispute regarding duration and lapse periods for the non-RMA consents and we make no changes to the applicant's proposed dates.

Conditions

Context

[1246] The applicant's substantive application on the project included a proffered set of volunteered conditions for both PCC – Land Use and Subdivision and GWRC – Water Permit, Discharge, Land Use and Wetland and Stream Works consents applied for under the RMA.[268]

[1247] The applicant provided an updated set of volunteered conditions relating to the applications made under the RMA on 2 July 2026.[269] This version of the volunteered conditions reflected amendments that the applicant had made in response to initial feedback on contaminated land, three waters and transport matters from PCC, Tiaki Wai and their advisers. The Panel had already commenced its initial review of the volunteered conditions on the basis of the original version when the updated version was received. In the event, we were able to complete our initial review with reference to the amended conditions and therefore it is the latter version that effectively provided the starting point for our evaluation.

[1248] Separately and subsequently (on 17 July 2026), we received section 51 reports from DoC and HNZPT relating to three non-RMA approvals required under the Wildlife Act 1953, Freshwater Fisheries Regulations 1983 and HNZPTA. These reports were accompanied by three draft condition sets relating to the prospective approvals, that expanded on the original conditions volunteered by the applicant and attached to the substantive application. It is these versions of the draft condition sets recommended by the respective authorities that we folded into our own review.

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[268] Appendix 7 (Proposed Conditions of Consent) attached to substantive application lodged on 1 April 2026

[269] Appendix A (Updated Proposed Conditions of Consent) attached to the memorandum from the applicant (2 July) in response to Panel Minute 2 (25 June 2026)

[1249] The Panel's evaluation of the actual and potential effects of the proposal on the physical and natural environment including people and communities that comprise that environment and the influence of conditions on those effects in terms of avoidance, mitigation and remediation, has been canvassed in Part E above. The conclusions reached were threefold:

(a) There will be a number of positive effects, including significant economic benefits, arising from the proposal as discussed in detail in Part D of this report.

(b) The actual and potential effects of the project relating a number of matters (including, but not limited to, stormwater management and ecological enhancement) will be appropriately avoided, remedied or mitigated through a robust suite of conditions on the RMA consents (being the district and regional consents) and the non- RMA consents (being the Archaeological Authority, Wildlife Approval and Complex Freshwater Fisheries Approval);.

(c) The project is capable of being adequately serviced in terms of wastewater, water supply and stormwater management without any significant anticipated adverse effects through conditions of consent.

[1250] The key theme for the Panel in the aforementioned assessment was the suitability of conditions to appropriately manage and reduce potential or actual adverse effects on the social, physical and natural environment. The Panel also focused on the ability of conditions to be easily understood and implemented.

[1251] This focus on conditions was intentional and was open to full scrutiny by all parties. To this end, and given the importance of the suite of conditions that have been adopted, the Panel records below the evolution and scrutiny of conditions. Through that process, most focus was placed on the conditions relating to stormwater management, terrestrial and freshwater ecology, and

detailed design for geotechnical engineering and three waters infrastructure provision and management.

Evolution and scrutiny of conditions

[1252] The Panel initially conducted a mechanical or SMART[270] review of the applicant's draft consent conditions relating to applications made under the RMA to assess if they were fit for purpose. This initial exercise identified mechanical issues relating to:

(a) The structure of the condition set, internal numbering, standardised cross-referencing, and placement of references to application documentation;
(b) Primacy with respect to conflicting documentation;
(c) The relative responsibilities of key parties including the consent holder and the administrating authorities;
(d) Definition and qualification of responsible professionals;
(e) Recasting advice notes as consent conditions;
(f) Specifying objectives of certain management plans;
(g) Clarifying in some instances what it is that administrating authorities will be asked to certify;
(h) Timing and sequencing of conditions;
(i) Process for certification or verification vs approval, 'satisfaction' or 'agreement'; and
(j) Some examples of imprecise language.

[1253] This resulted in the Panel requesting the applicant, via Minute 5,[271] to respond to the suggestions and comments that the Panel had made in a tracked version (inclusive of marginal comments) of the volunteered conditions attached to that Minute, by 31 July 2026. In doing so, the Panel sought to emphasise that the tracked amendments were suggestions only and

[270]SMART – conditions that are Specific, Measurable, Achievable, Relevant and Time-based
[271]Minute 5, dated 20 July 2026

did not represent a concluded view. Accordingly, the applicant was invited to propose revised wordings or indicate a preference for its original drafting, with reasons, if it disagreed with the suggestions of the Panel.

[1254] As part of its response, the applicant was requested to insert notes against the volunteered conditions it has annotated identifying those conditions that reflect the recommendations of the applicant's technical advisors and providing reference to where in the relevant report(s) those recommendations can be found.

[1255] In Minute 5, we also signalled that it was our preference that the exchange of inputs on the volunteered conditions proceed in a sequential manner. In other words, that it would be more efficient for the Panel to receive the applicant's input first (while PCC and GWRC were finalising their comments) and then seek feedback from the councils (while the applicant was preparing its response to comments from the Panel).

[1256] The applicant provided the feedback requested on 31 July 2026 in the form of a marked up set of conditions with notes in the margin and a separate 'clean' set of conditions.

[1257] Our observation at this point is that the applicant indicated it was minded to accept the majority of the Panel's suggestions for amendment. In other instances, it provided some clarification in response to our queries and suggested some additional or alternative wording. In a small number of instances, it indicated that it disagreed with the Panel's suggestions to amend or delete conditions or to recast some advice notes as conditions.

[1258] The approach of inviting feedback from the two councils, which we proposed in the interests of expediting the exchange process, was detailed further in Minute 6.[272] We sought the input of the two councils on the

[272]Minute 6, issued 31 July 2026

conditions within their respective jurisdiction, by 7 August 2026 at the latest. More specifically, we asked PCC and GWRC to add comments in the margin of the marked up set of conditions indicating whether they agreed or disagreed with the applicant's position, and if the latter, their reasons. We indicated that if either council wished to propose further text changes to the conditions consequent on their comments, then such amendments should be made to both sets of conditions in tracked change format. Finally, we noted for context that, consistent with our approach as outlined in Minute 5, council comments or condition text changes should be restricted to mechanical issues, with merits points to be addressed separately and subsequently.

[1259] Virtually contemporaneously with receipt of the applicant's input on conditions and issue of Minute 6, GWRC provided a complete revision of the conditions within its jurisdiction as part of its substantive comment. Its response to Minute 6 a week later referred back to that revised set of conditions, saying it preferred its own drafting to that of the applicant and provided covering comment on specific issues.

[1260] In contrast, as we had requested, PCC provided annotated comments on the condition set, set against the applicant's own response to our SMART review[273]. Our reading of that feedback indicated a large measure of agreement on the mechanical issues we had raised, but still a number of unresolved questions.

[1261] Contemporaneously, we received the applicant's commentary on the alternative condition set proposed by GWRC as part of its substantive comments, largely signalling the applicant's preference for its own drafting

[273] We received a corrected version of PCC's annotated Comments on 10 August 2026 that addressed some inadvertent IT errors associated with the previous version supplied

but also indicating agreement 'in principle' with a number of GWRC's suggested conditions.

[1262] As a result of the sequence of steps described above, we were faced with a series of 'competing' versions of condition sets that did not serve our purposes, in terms of easily enabling a comparison of either the differences between them, or of the differences of opinion among the planners representing the applicant and the councils and working on them.

[1263] In Minute 13,[274] we sought to explain that sequence as it had actually transpired, alert parties to the problems of 'version control' arising from it, and to map a way forward. Minute 13 therefore gave the parties notice of the Panel's intention to direct expert conferencing with a view to producing a single set of conditions as soon as practicable after resumption of processing (the application having been suspended at this point at the applicant's request, as detailed in Part B above).

[1264] While the Panel emphasised that this required a drafting exercise focused on meeting SMART criteria, it also indicated that the exercise should also inform how the various requests by parties (including the councils) seeking that additional or substantively varied obligations be imposed on the applicant might be engrafted into a solid set of base conditions (were they to be accepted).

[1265] Further, and following on from the request we made of the applicant referred to earlier, we indicated that we had an eye to tracking the process by which the technical reviews supporting the application had found their way into conditions. To assist the planners, we attached a table to Minute 13 accounting for all the instances we had identified wherein technical reviews directly or indirectly recommended conditions but provided no specific condition wording. We asked the conferencing planners to provide a

[274]Minute 13, issued 18 August 2026

commentary as to whether each recommendation had been accurately and appropriately captured as part of their conferencing process.

[1266] In Minute 16[275], the Panel confirmed its directions for expert conferencing on conditions and the outcome of this is canvassed further below.

[1267] Meanwhile, in parallel with the process we have described related to RMA conditions, and shortly after issue of Minute 6, we issued Minute 7,[276] wherein we provided the applicant with the outcomes of our own SMART review of the draft condition sets relating to non-RMA approvals provided in the section 51 reports on those approvals by DoC and HNZPT (as applicable). We asked the applicant to respond to our suggestions and queries in combination with its feedback on the draft condition sets as amended by the respective authorities.

[1268] This it did on 7 August 2026, tracking its commentary and tracked changes alongside our own, for each of the three draft condition sets.

[1269] In Minute 15[277], we gave notice of our intention to invite DoC and HNZPT to provide feedback on the applicant's comments and on the Panel's review of conditions relating to non-RMA approvals, and we also asked the two councils, DoC and Tiaki Wai whether they considered we had the jurisdiction to impose conditions requiring a redesign of the project (in response to their own suggestions), as an alternative to outright decline of the RMA approvals sought.

[1270] As mentioned earlier, the Panel agreed to a suspension of the processing of the application to enable some substantive matters to be further investigated,

[275] Minute 16, issued on 28 August 2026
[276] Minute 7, issued 4 August 2026
[277] Minute 15 issued on 24 August 2026, with directions to that effect confirmed in Minute 16, issued on 28 August 2026

assessed and presented, following a request from the Applicant (Minute 19, dated 9 September 2026 refers).

[1271] In the intervening period, the planners for the Applicant and Councils continued to work on providing a single set of draft Applicant-proposed conditions with a view to it acting as a 'master' going forward, as directed by the Panel via Minute 13, dated 18 August 2026. In issuing this direction, the Panel asked that the condition set note differences of opinion between the planners on condition drafting.

[1272] This directed exercise resulted in the preparation of a JWS, dated 14 September 2026, together with an 'Attachment A' containing the results of the planners' review of the condition set. The Attachment comprises three subsets; i.e., General Conditions, District Conditions and Regional Conditions.

[1273] Briefly, the JWS set out matters of scope and a series of principles its authors have applied in undertaking the exercise. The JWS usefully explained how the outcomes of the exercise are displayed in the condition set, identifying:

(a) All amendments previously proposed by the Panel as part of its mechanical/SMART review (Minute 5, dated 6 July 2026 refers) that the planners agreed were incorporated;
(b) Those amendments that the Applicant's planner supports but the relevant council planner does not were identified; and
(c) Those amendments supported by the relevant Council planner but opposed by the Applicant's planner were also highlighted.

[1274] In response, the Panel made it clear in Minute 20 dated 21 September 2026 that, it was not in a position to resolve identified points of disagreement in advance of any resolution of those substantive matters where the amended condition set is concerned. Nevertheless, the Panel did note that the exercise

had not been without value. In that respect, the Panel noted that the JWS had resulted in the preparation of a set of draft conditions that:

(a) Incorporated points of agreement;
(b) Isolated areas of dispute;
(c) Served as a 'master' against which any further amendments that might arise through additional conferencing that we may direct can be recorded; and
(d) Provided a basis upon which any party, including but not limited to the Applicant, may seek to suggest further amendments.

[1275] Accordingly, the Panel made the draft condition set available to all parties (attached as 'Appendix 1' to Minute 20). We asked all parties to regard it as the 'master' set of draft conditions going forward.

[1276] The condition set then went through a series of iterations based on amendments to the 'master' set, directed as follows:

(a) In Minute 21[278], and following the resumption of processing, we requested that the applicant update the conditions set to reflect its alternative proposal for management of stormwater and separation of stormwater management facilities from wetland and stream offsets.

(b) In Minute 22[279], among other matters, we asked the applicant to consider what amendments might be required to the LMP and consent conditions relating to lizard management to address the inputs of the relevant experts, and to the consent conditions to address the recommendations arising from Mr Wenden's urban design review.

[278] Minute 21, issued 6 October 2026
[279] Minute 22, issued 14 October 2026

(c) In Minute 23[280], and following the Panel's receipt of the JWS prepared by the freshwater ecologists, we asked the applicant to provide comment on whether the wetland quality targets favoured by the experts were adequately addressed by conditions or necessitated further amendments. We also noted the expert view that adaptive management of the potential additional wetland complex in the Kakaho East catchment proposed as part of the alternative proposal referred to in (a) above, and we asked the applicant to indicate how that adaptive management approach was, or should be, reflected in the conditions.

(d) In Minute 24[281], we acknowledged the applicant's partial response to the requests we made in Minute 22 regarding lizard management, but noted that we had yet to receive the applicant's amendments to the LMP and related consent conditions. In Minute 25, issued the same day, we granted the applicant more time to supply the requested documentation.

(e) In Minute 26[282], we acknowledged our receipt of the documentation requested via Minute 22 and again via Minute 24 relating to the proposed amendments to the LMP and also on the matter of the alternative stormwater / wetland design referred to in Minutes 21 and 23; indicating we would allow other parties sufficient time to respond.

(f) In Minute 27[283], we asked counsel for the applicant to address some practical issues over the proposed two stage (sequential) lapse period for the subdivision and whether further amendments to the conditions might be required. We also asked the applicant to confirm that the 'temporary diversions' referred to in the regional resource condition set were not 'diversion structures' within scope of the required CFFA. We also asked the relevant experts to consider whether amendments were

[280] Minute 23, issued 20 October 2026
[281] Minute 24, issued 22 October 2026
[282] Minute 26, issued 27 October 2026
[283] Minute 27, issued 29 October 2026

required to either of the two relevant condition sets to facilitate better alignment. Finally, we provided an opportunity for TRoTR to provide feedback on the amended LMP.

[1277] For the purposes of wrapping all potential amendments to the condition sets for all approvals as a result of our directions above, we issued Minute 29 on 12 November 2026, wherein we asked Mr McDonnell to provide the Panel with updated versions of the 'masters' for all those condition sets.

[1278] In Minute 30, issued on 18 November 2026, we took the opportunity to query some issues with interpreting the updated 'master' sets the applicant had by then supplied.

[1279] In Minute 31, issued on 23 November 2026, we noted the fact that the version of the General Conditions supplied by the applicant was incomplete. We requested that the applicant update the attachments to include reference to all relevant documents. We stipulated that the information requested was required to be filed with the EPA by 3pm on Tuesday 24 November 2026.

[1280] Mr McDonnell (on behalf of the Applicant) filed a Memorandum in response to Minute 31. In that Memorandum he advised that he had updated Attachments 1 and 2 to the General Conditions to identify those documents that are relevant to the consented activities and the implementation of consent conditions. We return to this matter again presently.

Principal changes to conditions

[1281] Overall, versions of volunteered conditions that were provided with the substantive application were amended and refined over the course of the process and were a result of addressing the following fundamental aspects of the proposal:

(a) The separation of the spatial footprint for stormwater treatment and wetland function.

(b) Reaffirming the permanent State Highway 59 intersection arrangements (namely a roundabout) and the staging and quantum of residential development that can occur prior to the final form of the intersection being finalised.

(c) Confirmation of internal roading and active mode connections within the Mt Welcome block and the potential ability to implement connections to the adjoining Muri and Skaiffe blocks to the north and south respectively.

(d) The addition of new requirements relating to natural wetland remediation, offsetting, and compensation for inclusion in the EHMP.

(e) Specification of an extension to the lapse period for the district and regional consents to 15 years to recognise the complexity and scale of the project.

[1282] While the details of conditions are canvassed in each of the effect topics in Part E of this decision, it is useful to highlight the key changes that were made to proposed conditions since the application was lodged.

[1283] Of these changes, the most substantive alteration relates to the alternative stormwater strategy and engineering design discussed in Part E of this decision. The alternative strategy is predominantly implemented through General Condition G1, and the associated *Attachment 2: Further Information*. That attachment references the alternative plans and reports provided on 10 and 24 November 2026.

[1284] As discussed on Part E of this decision, the alternative stormwater strategy is a fundamental change to the proposal which essentially involves separating the footprint (and the functions) of the stormwater and wetland areas.

[1285] The other fundamental change touched on above, and also explained in considerable detail in Part E of this decision relates to the addition of a suite

of land use conditions (conditions 32 and condition 70 principally) dealing with detailed engineering design for Three Waters matters. That condition set requires, amongst a range of matters, that prior to commencement of construction, certification of approved designs is issued by Tiaki Wai and engineering plan approval is obtained from PCC and GWRC. Those land use requirements are tied to section 224 RMA requirements in the subdivision conditions.

[1286] Additional changes to the RMA consent conditions (primarily the regional consents) have been implemented.

[1287] Before summarising the principal changes to the condition sets, we wish to make a comment on the General Conditions referenced above. In particular, there are two matters that we wish to record for consideration by the parties.

[1288] Firstly, we acknowledge Mr McDonnell's commentary in his memorandum that Attachment 2 should not attempt to list all information provided during the process since lodgement. We agree with him that "a significant proportion of the material lodged after the application comprises responses to expert evidence, legal submissions, rebuttal evidence, and explanatory memoranda". We note that while those documents have assisted the Panel in its assessment of the application, not all of them contain requirements, methodologies, design parameters, management measures, or monitoring frameworks that will be relied upon in implementing or administering the resource consents.

[1289] Mr McDonnell also made the important point that "the General Conditions say [that] the most recent information in Attachment 2 prevails over the application, [and] listing non-pertinent material would potentially let material that was never meant to set consenting requirements override the application documents in unintended ways." While we agree in principle with the position of excluding further information in documents that has been

superseded, we note that there is an element of risk at this point because if any pertinent material has been excluded, it leaves the application documents as the prevailing reference point which, as Mr McDonnell noted, would be problematic.

[1290] This bring us to the second and related point that due to the timeframe we are operating under, and given the late arrival of the General Condition additions, we have had no realistic ability to undertake a forensic analysis of that condition set in terms of reviewing the relevant documents that Mr McDonnell has listed. Nevertheless, we have manged to identify that the three following document/plans supplied as part of the applicant's Minute 23 and 24 response package appear to have continuing relevance and have not been captured:

(a) Wetland Remediation and Offset Plans dated 23/10/26;
(b) Wetland Ecological Overlay dated 22/10/26;
(c) Updated Landscape and Ecology Plans dated 23/10/26.

We have added them to Attachment 2.

[1291] We request that the applicant, GWRC and PCC check they are satisfied everything relevant is captured in Attachment 2 of the General Conditions and to identify any omissions in their (preferably collective) response to this draft decision package.

[1292] Returning to the other conditions sets, we now summarise the principal changes not related to the stormwater strategy for the RMA consents (i.e. District and Regional consents) as follows:

District Resource Consent Conditions

(a) the insertion of a new Condition D25A providing direction as to terrestrial vegetation offsetting;

(b) the insertion of new Conditions D28A and D28B requiring the supply of commissioning plans relating to erosion and sediment controls and stormwater treatment devices and details regarding the design of overland flow paths;

(c) additional requirements with respect to the content of required cut and fill slope plans in Condition D29;

(d) altering references in Conditions D31, D87 and D96 from 'retention wetlands' to 'stormwater detention ponds';

(e) adding in Condition D31 additional detail regarding the detailed design of stormwater detention pond bunds;

(f) inserting a new Condition D85A related to preservation of a record of the shearers' tags;

(g) altering Condition D117 relating to the contents of a consent notice requiring the provision of rainwater tanks for non-potable uses on residential allotments;

(h) inserting new Conditions D120A and D120B setting out the contents of a consent notice directing that in a situation where Lots 1318 and 3100 are required to form connections between Roads 21 and 25, the function of those lots in terms of raingarden and parks space is able to be transferred to Lot 5003; and

(i) fixing a 15-year lapse period for district land use resource consents in Condition D5A and stipulating a lapse period for the subdivision consent with Stage 1 lapsing after 5 years together with a condition requiring that all subsequent stages must be completed within 15 years after the date that consent is granted in Conditions D68A and 68B, respectively.

Regional Resource Consent Conditions

(a) amending conditions requiring consultation with TRoTR to require that the final document record the reasons why any TRoTR requests have not been accepted;

(b) altering all references in conditions from 'retention wetlands' to 'stormwater detention dams';

(c) the inclusion of a new Condition R10A setting out the circumstances for a section 128 review of consent conditions;

(d) the inclusion of a fuller description in Condition R10D of the required contents of the ECMP;

(e) the inclusion in Conditions R14 and R15 of a fuller description of the objective and required contents of the SSESCP;

(f) amending Condition R20 to specify an NTU limit;

(g) amendments to the stormwater condition subset (Conditions R39 to R42) to reflect the resolution of substantive issues relating to stormwater management (inclusive of stormwater detention ponds);

(h) amendments to Conditions R20 and R49 relating to the measurement of turbidity;

(i) the deletion of the stormwater discharge performance condition subset (Conditions R50B to R50E);

(j) the insertion of new Condition R51A relating to requirements for river and wetland remediation, offsetting, or compensation and consequential amendments to Conditions R56A;

(k) the insertion of new text in Condition R52 relating to the required contents of the LEP;

(l) the insertion of new Condition R52A requiring preparation of a LEMP;

(m) the addition of new requirements relating to stream and natural wetland remediation, offsetting, and compensation for inclusion in the EHMP in Condition R56A including:

a. Reporting monitoring outcomes to the Manager and to TRoTR.

b. Requiring consultation with TRoTR prior to culverting of Taupō Stream as to whether circumstances have changed to permit an alternative to the proposed roundabout, or a revised roundabout design, thereby reducing the extent of culverting required; and

c. Confirmation of the performance targets and timing for offsetting or compensation works;

(n) amendments to Conditions R57, R57A, R58A and insertion of new Condition R58B with respect to freshwater fish;

(o) the insertion of new required content for the SCMP in Condition R59 including a requirement for a Fish Management Plan to prevent adverse effects on fish and fish passage during the works, including during dewatering and stream diversions; and

(p) the insertion of more detailed requirements in Condition R59A relating to the demonstration that structures in river beds meet specified standards; and

(q) fixing on 10-year (as opposed to five-year) duration and lapse periods for regional resource consents (with the exception of a 35 year duration for specific water permits and discharge consents associated operational activities).

[1293] Also, a common change for both district and regional consents, is that for management plans required to be prepared and certified, the volunteered draft condition allowing the Consent Holder to request that the Council appoint an independent SQEP where a plan has not been certified has been deleted. The Panel considers that such direction is not necessary, and there is scope within the certification process for the Consent Holder and the relevant council to resolve this without an independent arbitrator, and in the event that the council considers such arbitration is necessary, then there is nothing in the condition framework preventing it from happening.

[1294] Turning to the **non-RMA consents** (the Wildlife Approval, the Complex Freshwater Fisheries Approval and the Archaeological Authority), the principal changes to those condition sets are as follows (noting that the changes to the Archaeological Authority were minimal and are not summarised below.

Wildlife Approval Conditions

(a) an amended Condition 1 directing preparation of a LMP based on the version provided by the applicant as part of its response to Minute 25, and its certification by DoC based on specified criteria;

(b) amendments to Condition 2 to clarify what DoC is certifying; and

(c) the insertion of a new Condition 4 setting out the circumstances in which minor updates and variations to the LMP can be made;

Complex Freshwater Fisheries Approval Conditions

(a) mechanical improvements to Condition FF1 and fixing on a 10-year lapse period for the approval;

(b) the addition of a requirement to ensure structures provide fish passage for species currently present or which would naturally have been present but for artificial barriers downstream (Condition FF3);

(c) ensuring that ensuring that a SQEP judgment as to fish species potentially present informs inform when works in the bed of the river can be undertaken (Condition FF4); and

(d) requiring additional fish surveys be undertaken (Condition FF5).

Conclusion on conditions

[351] The applicant's revised conditions largely resolved the technical matters identified by the Panel. We have made some additional amendments to the conditions, and the Panel is now satisfied that the conditions are appropriate and fit-for-purpose in their addressing of the effects traversed in Part E of our Decision.

[352] The Panel's assessment of specific conditions, insofar as they address the appropriateness of managing effects and the need for additional condition changes, is set out in detail in Part E, particularly in relation to stormwater effects, freshwater and terrestrial ecology and engineering design. The attached conditions include additional amendments to aid readability and clarity as well as to assist implementation by the consent holder and enforcement by the councils.

[353] In each revision of the conditions, the Panel has taken into account Comments received from invited parties and, where relevant, the advice of technical experts retained by the invited parties, the councils and the

applicant. Having addressed those Comments and their attendant concerns, the Panel now considers that the conditions are fit-for-purpose and provide greater specificity and certainty. In particular:

(a) There are now clear links to mitigation commitments in the Application.
(b) The conditions apply SMART principles to ensure clarity for the consent holder, and are capable of implementation, monitoring, and enforcement by the respective authorities.
(c) There is a clear process for certification, including defined timing for staging and implementation requirements.

[354] The Panel is satisfied that the condition framework is appropriate and capable of managing the effects of the project, particularly those relating to the most prominently traversed issues. Moreover, we are satisfied that the final set of conditions is the most appropriate to avoid, remedy, or mitigate adverse effects, is workable from a SMART perspective, and is no more onerous than necessary as per section 83 of the FTAA.

Trevor Robinson (Chair)

Juliane Chetham

DRAFT

Ray O'Callaghan

David McMahon

Attachments:

(a) General Conditions
(b) Regional Consents and Conditions
(c) District Consents and Conditions
(d) Wildlife Authority
(e) Complex Freshwater Fisheries Authority
(f) Archaeological Authority

DRAFT