

Before the Expert Panel appointed under the Fast-track  
Approvals Act 2024

**FTAA-2604-1207**

|                      |                                                                         |
|----------------------|-------------------------------------------------------------------------|
| <b>Under</b>         | <b>the Fast-track Approvals Act 2024</b>                                |
| <b>In the matter</b> | <b>of the substantive application for the Southern Link Inland Port</b> |
| <b>By</b>            | <b>Southern Link Property Limited</b>                                   |

**LEGAL SUBMISSIONS IN RESPONSE TO SECTION 53 COMMENTS**

**19 August 2026**



**Sarah Scott / Kierra Parker**  
sarah.scott@simpsongrierson.com  
kierra.parker@simpsongrierson.com  
PO Box 874 Christchurch

## MAY IT PLEASE THE PANEL

### 1. INTRODUCTION

**1.1** Southern Link Property Limited (**SLPL**) seeks approvals that would otherwise be applied for under the Resource Management Act 1991 (**RMA**) to authorise the construction, use and operation of the Southern Link Inland Port, an inland port / logistics hub,<sup>1</sup> at 270-292 Dukes Road North, North Taieri, Mosgiel, Dunedin (**the Project** or **SLIP**).

**1.2** These submissions introduce SLPL's response to comments received on the Project, filed with the Expert Panel under s 53 of the Fast-track Approvals Act 2024 (**FTAA**), and addresses certain legal issues arising in comments to the Panel made under s 53 of the FTAA about the SLIP application.

**1.3** An overview of the legislative framework for making decisions under the FTAA on approvals ordinarily sought under the RMA was provided to the Panel as part of the Panel Briefing.<sup>2</sup> Those submissions are relied on and not repeated here. They are however relevant so that the interpretation of the FTAA underpinning SLPL's responses to the legal issues arising in comments to the Panel is clear.

### 2. S 53 COMMENTS RECEIVED

**2.1** Following Minute 3 of the Panel dated 15 July 2026 inviting comments from specified parties, the Applicant received comments from:

- (a) Otago Regional Council (**ORC**);
- (b) Dunedin City Council (**DCC**);
- (c) Te Rūnaka o Ōtākou, supported by Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnanga o Moeraki and Auhaka (1997) Limited;
- (d) New Zealand Transport Agency Waka Kotahi (**NZTA**);

---

1 AEE as updated in June 2026 ([Report with Sections](#)) (AEE) at 22-71 contains a comprehensive description of the Project.

2 Legal submissions dated 7 July 2026: [SLPL-memorandum-of-counsel-7-July.pdf](#).

- (e) The Parliamentary Commissioner for the Environment (**PCE**);
- (f) The Ministers for Infrastructure, the South Island, and Regional Development.
- (g) The Otago Fish and Game Council (**Otago F&G**);
- (h) The Mosgiel-Taieri Community Board (**Community Board**);
- (i) The following neighbours: Craig and Joanne Inch, Jane and Bernie McLeod, and the White Robe Lodge Thoroughbred Stud.

**2.2** SLPL records that a number of s 53 invited comments express support for the application for the Project, or agree that it will (or may) deliver significant regional benefits (achieving the purpose of the FTAA).<sup>3</sup> Those comments are consistent with the submissions set out in the Legal Submissions Overview for the Panel Briefing, dated 7 July 2026.<sup>4</sup>

**2.3** The Applicant's responses to those comments are set out in the following attachments documents:

- (a) Separate summary tables responding to comments from:
  - (i) **Attachment 1** Otago Regional Council
  - (ii) **Attachment 2** Dunedin City Council
  - (iii) **Attachment 3** Te Rūnanga o Ōtākou
  - (iv) **Attachment 4** All other invited parties
- (b) Technical expert reply evidence, from:
  - (i) **Attachment 5 Planning:** John Kyle/Megan Hankey
  - (ii) **Attachment 6 Stormwater:** Andrew Craig
  - (iii) **Attachment 7 Internal Stormwater Engineering:** Nick Keenan
  - (iv) **Attachment 8 Groundwater:** Mark Scaife
  - (v) **Attachment 9 Stormwater quality:** Dr Claire Conwell;
  - (vi) **Attachment 10 Transport:** Chris Rossier
  - (vii) **Attachment 11 Landscape:** Bridget Gilbert

---

3 Comments from: the Minister for Infrastructure; Minister for the South Island & Associate Minister for Transport; Paul and Rochelle Urquhart; Stockdale Farm Ltd; Minister for Regional Development; ORC.

4 [SLPL-memorandum-of-counsel-7-July.pdf](#)

- (viii) **Attachment 12 Landscape:** Mike Moore
- (ix) **Attachment 13 Ecology:** Bryony Miller
- (x) **Attachment 14 Water Quality:** Simon Bloomberg
- (xi) **Attachment 15 Freshwater Ecology - Freshwater Fish:**  
Dr Richard Allibone
- (xii) **Attachment 16 Fleet sustainability:** Matt Horan
- (xiii) **Attachment 17 Site Selection:** Grant Driver
- (xiv) **Attachment 18 Lighting:** Kate Macdonald
- (xv) **Attachment 19 Noise:** Brendan Shanks
- (xvi) **Attachment 20 Equine effects:** Andrew Grierson
- (xvii) **Attachment 21 Wastewater and water supply:** Roger Oakley
- (xviii) **Attachment 22 updated DCC Condition set**
- (xix) **Attachment 23 updated ORC Condition set**
- (xx) **Attachment 24 Lizard Management Plan** lodged with Department of Conservation (outside of FTAA);<sup>5</sup>
- (xxi) **Attachment 25 Plan SH87 right-turn into Dukes Road North** agreed with NZTA.

**2.4** The updated DCC and ORC condition sets in **Attachments 22 and 23**, reflect SLPL's updated position on the application following consideration of the comments received and the technical input filed as part of this s 55 response to the Expert Panel.

**2.5** Alongside these responses, the following matters are address in this memorandum:

- (a) The NPS-HPL mapping requirements and effect of loss of highly productive land (**HPL**), in respect to comment from the PCE;
- (b) Comment from Te Rūnaka o Ōtākou, in particular relating to s 7 of the FTAA and the comments made about reclamation;

---

<sup>5</sup> Provided for the Expert Panel's information given it is referred to in conditions. The application for a Wildlife Permit has been lodged (separately) with the Department of Conservation.

- (c) Reasonableness and necessity of upgrades and conditions requested by NZTA, the Community Board, and DCC relating to:
  - (i) Widening of Dukes Road North east of Stedman Road;
  - (ii) Pedestrian pathway over Kiwirail land (and over railway); and
  - (iii) SH87 / Dukes Road North intersection.

### **3. COMMENT FROM PCE – HIGHLY PRODUCTIVE LAND (HPL)**

**3.1** In respect of the NPS-HPL, the application works through why the constraints on the use of this land for economically viable productive purposes are significant enough that the proposed development meets the exemption criteria under clause 3.10 of the National Policy Statement for Highly Productive Land (**NPS-HPL**).

**3.2** The PCE comment raises an issue with the Land Use Classification (**LUC**) system relied on by SLPL (as is the LUC system adopted in the NPS-HPL), and that the applicant has not assessed the effects of HPL because the project meets the exemption criteria.

### **Mapping**

**3.3** The PCE comments that the definition of HPL should be based on detailed, high-quality and high-resolution mapping, invites the Panel to request the applicant undertake such mapping, but does acknowledge that the *Bluegrass Limited v Dunedin City Council* [2024] NZEnvC 83 decision complicates things. The Environment Court in *Bluegrass* held that during the NPS-HPL transitional period, which remains live and applicable to the SLIP project, the LUC class of land as mapped in the NZLRI database cannot be challenged, even if more detailed individual site investigations conclude that mapping is not considered LUC 1, 2 or 3.

- 3.4** The applicant has faithfully followed the NPS-HPL transitional approach,<sup>6</sup> the findings of *Bluegrass*, and therefore the LUC classification of the land as shown in the NZLRI database to identify whether it is ‘highly productive’, for the purposes of the NPS-HPL.
- 3.5** It is clear that a site-specific land productivity assessment or soil mapping cannot be used as a method to avoid the identification of land as ‘highly productive land’ in the NPS-HPL. This is because:
- (a) The ‘transitional definition’ in cl 3.5(7) is clear that it is land that is LUC 1, 2 or 3 and zoned general rural or rural production at the commencement date (subject to exemptions that do not apply here); and
  - (b) The Environment Court’s decision in *Blue Grass* held that more detailed mapping cannot be relied on to challenge the classification of land as shown on the NZLRI portal. This position has been endorsed various times by the Environment Court since *Blue Grass* was decided.<sup>7</sup>
- 3.6** As such, while more detailed geospatial mapping could be requested as the PCE suggests, under the NPS-HPL it would only be the NZLRI classification that matters, and any “more detailed mapping” could not be given any weight in this process. It is our submission the request would not assist the Panel in its task and would also not align with the procedural principles in s 10 of the FTAA, especially the need to take consistent and cost-effective processes. SLPL does not consider that there is merit in that approach given the conclusions of its technical experts, in particular in the Land Assessment prepared by Abacus Bio Limited (**Abacus Report**).<sup>8</sup> The conclusions in that Assessment in respect of the clause 3.10 exemption do not appear to be challenged by the PCE, rather referring to the Abacus Report, the PCE acknowledges that the constraints appear to be reasonable constraints.

---

<sup>6</sup> Cl 3.5(7) of the NPS-HPL.

<sup>7</sup> For example, followed by *Save the Maitai Inc v Nelson City Council* [2024] NZEnvC 155, at [42]-[44].

<sup>8</sup> Part B.01 of the substantive application.

## Effect of the loss of HPL

**3.7** Clause 3.10 of the NPS-HPL provides for the subdivision, use and development of land for activities not otherwise enabled under clauses 3.7, 3.8, or 3.9 where there are, in conjunction with other criteria, permanent or long-term constraints on the land that mean the use of the HPL for land-based primary production is not able to be economically viable for at least 30 years. As the PCE identifies, the Abacus Report assesses the application against that clause.

**3.8** The PCE expresses concern that the effect of the loss of HPL has not been addressed. Stating:

The loss of highly productive land cannot be appropriately addressed by conditions (unlike flood hazards or ecological effects) and the panel must be satisfied that the benefits are proportionate to this permanent cost.

**3.9** The Abacus Report finds that the establishment of the SLIP will avoid significant loss of productive capacity HPL.<sup>9</sup>

**3.10** While the reasons for that conclusion are examined through the lens of whether the application meets cl 3.10 policy criteria, it is submitted that those criteria are relevant to the question of effects. This is because:<sup>10</sup>

- (a) an assessment of the permanent and long-term constraints of the site concludes that due to long term constraints, land based primary production uses are economically unviable for 30+ years;
- (b) the establishment of the SLIP will avoid significant loss of productive capacity HPL, fragmentation of large cohesive areas of HPL, and mitigate potential reverse sensitivity effects, including noise and dust, on surrounding land-based primary production; and

---

<sup>9</sup> Part B.01 of the Application, 'Land Assessment' prepared by AbacusBio Limited, Executive Summary.

<sup>10</sup> Part B.01 of the Application, 'Land Assessment' prepared by AbacusBio Limited, Executive Summary.

- (c) the existing value of the site for use as HPL and any alternative land-based primary production use is assessed as being low.

**3.11** In summary, what the Abacus Report finds is the site is not economically viable for use for land-based primary production. As explained in the Planning Statement of Evidence (Attachment 5):

In particular we note that the site is too small for a viable stand alone productive use, including pastoral farming, and is currently leased to an adjacent farmer as a run off block. Further, any LUC 1 soil on site will either be re-used on site to assist as a growing medium for landscape planting or reutilised at another location with the relevant approvals in place. This will ensure the productive re-use of soil. As such, we consider the loss of highly productive land associate with the Project is insignificant.

**3.12** Using the lens of cl 3.10 of the NPS-HPL it becomes evident that this is not a case where the conversion of HPL should be avoided, but rather it is a case where it is appropriate to allow the development of it.

**3.13** Even if the Panel were minded to weigh the impact of the loss of HPL as an adverse effect given the findings in the Abacus Report, the loss of HPL is one potential impact to 'take into account' under s 81 of the FTAA.<sup>11</sup> Further, the effect of the loss of HPL associated with the Project is submitted to be minor.<sup>12</sup> Importantly, and although the NPS-HPL must be taken into account, when the Panel considers the Proposal, greatest weight must be given to the purpose of the FTAA.<sup>13</sup>

**3.14** The Panel must apply s 85 of the FTAA and may only decline an approval where the impacts are 'sufficiently significant to be out of proportion to the project's regional or national benefits'. The purpose of the FTAA is to be given the greatest weight.

**3.15** The Abacus Report reaches a conclusion that the environmental, social, cultural and economic benefits of developing the SLIP are likely to outweigh

---

11 Under clause 17(1) of Schedule 5 the NPS-HPL is a matter that the Panel must take into account when considering the Proposal, including any conditions that the Panel may impose.

12 Planning Statement of Evidence (Attachment 5): "In light of this assessment, in our view, the effect of the loss of highly productive land associated with the Project is minor."

13 FTAA, Schedule 5 clause 17(1)(a).

the long-term environmental, social, cultural and economic costs associated with the loss of the site for primary production purposes (being the reason the NPS-HPL has an objective of protecting HPL). When considered alongside the findings in the Economic Assessment by Savvy Consulting as to the project's benefits, it is submitted that any residual effects (that are not significant) on the loss of HPL are not out of proportion with the project's regional or national benefits. The DCC comment agrees with this, stating at [337] 'The council accepts that there are long term constraints in relation to the productive use of the soils on the site and the value of the site for primary production is low. The council also accepts that the benefits of developing the SLIP are likely to outweigh the long-term costs associated with the loss of the site for primary production purposes.'

- 3.16** In the *Sunfield* Panel decision,<sup>14</sup> where the Panel had concluded that the Application was inconsistent with (to the point of being contrary to) the NPS-HPL, the Panel went on to hold that the adverse impacts of the loss of HPL were not sufficiently significant to be out of proportion to the project's regional and national benefits, such that consent should be declined.<sup>15</sup>
- 3.17** In this case (in contrast to *Sunfield*), cl 3.10 of the NPS-HPL is met and thus the application is consistent with national policy direction aimed at guiding when HPL loss should be avoided, and when is appropriate.
- 3.18** In addition, excluding some of the site from the SLIP footprint, as suggested by the PCE, would significantly impact the functionality of the SLIP which is designed comprehensively and requires all components to be able to operate functionally. It would also appear to be a futile exercise, as areas of the square site excluded from the SLIP footprint, are not going to be able to be used for land-based primary production for the same reasons that the entire site has been assessed in the Abacus Report as having permanent and long-term constraints on economic viability.<sup>16</sup>

---

14 [FTAA-2503-1039-Decision-Report.pdf](#) – under appeal by Auckland Council.

15 *Sunfield* Panel decision ([FTAA-2503-1039-Decision-Report.pdf](#)), [631] and [779]-[787].

16 Part B.01 of the Application, 'Land Assessment' prepared by AbacusBio Limited.

#### **4. COMMENT FROM TE RŪNAKA O ŌTĀKOU**

- 4.1** A comment from Te Rūnaka o Ōtākou has been received by way of a submission from Holm Majurey. It is recorded as being lodged with support by Kāti Huirapa Rūnaka Ki Puketeraki, Te Rūnanga o Moeraki, and Aukaka (1997) Limited. The comment from Te Rūnaka o Ōtākou is stated as addressing “whether the Fast-track Application to construct an Inland Port at North Taieri is a result of constraints in the Otago Harbour which make future reclamation impractical or unfeasible”.<sup>17</sup> The key concern appears to be that Port Otago Limited (**POL**) (one of the two joint ventures partners in SLPL, not the applicant for the SLIP) has not entered into a binding commitment with Te Rūnaka o Ōtākou that there will be no further reclamation by the Port in the Otago Harbour.
- 4.2** Te Rūnaka o Ōtākou has correctly identified a number of statements in the application about further reclamation of the harbour not being considered feasible as a result of the environmental effects that would arise from such reclamation. However, a “binding commitment” is clearly a matter that is outside the scope of the FTAA application for the SLIP and its decision making, and a separate matter that is one for the two parties that make up the applicant company, not the Panel.
- 4.3** It is submitted that there is no need for the Panel to make a finding on the proposed question of whether impracticability or unfeasibility of future reclamation in the harbour has led to the SLIP application. That has no relevance to the Panel’s task in respect of making a decision on the approvals sought for the SLIP. Reclamation of the harbour is not subject to application here, and because there is no application for reclamation within the scope of this project, there is no assessment of effects of that activity. The key decision-making provisions under the FTAA are found in ss 81 to 85 of the FTAA and are outlined in the Panel Briefing legal memorandum, from [13].<sup>18</sup> There is nothing in those sections which capture a need to make a

---

17 Para 1.  
18 [SLPL-memorandum-of-counsel-7-July.pdf](#)

finding on reclamation in the harbour. Further, any condition around reclamation, if that is what Te Rūnaka o Ōtākou might be wanting from their comment would certainly be unlawful, unnecessary, and not related to the effects of the SLIP being consented.

- 4.4** The suggestion that the effects of the SLIP need to be revisited or reassessed is not accepted. The advice given in the TIA is not expressed as being subject to an assumption, or requirement, that there will be no further reclamation in the harbour. Indeed, the TIA describes the proposal that is assessed (on its merits) as:<sup>19</sup>

The development involves converting rural land adjacent to the Taiari (Taieri) Branch railway and Whakaehu (Silverstream) into a major logistics hub. Key components include approximately 80,000 m<sup>2</sup> of warehousing, a rail siding connecting to Port Chalmers, up to 5-hectares of container terminal, road exchange areas, a 5-hectare container depot, and 24/7 operations with associated lighting, acoustic barriers, and flood mitigation infrastructure. Construction is anticipated in three stages. The development would discharge treated stormwater to Whakaehu.

- 4.5** Te Rūnaka o Ōtākou have had their statutory opportunity to lodge comments, and it was as part of the s 53 invitation for comment. SLPL has made extensive efforts to consult with, and assist experts engaged by Te Rūnaka o Ōtākou (at SLPL cost) for example by providing information when requested, workshopping, and inviting experts to relevant meetings with the councils, including inviting comments on the ORC and DCC consents.

- 4.6** Reclamation is mentioned in the TIA as a benefit. At 5.5.1, the TIA states:

Te Runanga o Otakou acknowledges that the development of the inland port and the growth around the North Taieri site will enable Port Otago to continue to honour its commitment that there will be no more reclamation in Otago Harbour.

- 4.7** No binding commitment is needed from POL in respect of the Otago Harbour. As set out above, that is well outside the scope of the FTAA decision making for the Panel on the SLIP. At best, in respect to the Te Rūnaka o Ōtākou comment, the Panel could give less weight to this stated

---

19 On page 5.

benefit. For completeness, SLPL submit that giving less weight to that listed benefit (or indeed even no weight) will not have any impact on the overall finding on regional or national benefits of the SLIP.

**4.8** While no cultural or technical evidence has been filed with the Te Rūnaka o Ōtākou comment, it does refer to and rely on the TIA. A comprehensive response to the TIA is therefore included in **Attachment 3** and it is also responded to in various statements of evidence. In addition to Attachment 3, these submissions respond to the Holm Majurey submission under the heading 'Ngāi Tahu Treaty Settlement', and the TIA suggestion that the conditions of consent do not ensure the protection of the Fisheries Settlement Act 1992.

**4.9** While SLPL has reached out to Te Rūnaka o Ōtākou a number of times seeking feedback on conditions, and has funded a planner engaged by Te Rūnaka o Ōtākou, no changes have been suggested to the conditions that give light to this comment in the TIA.

#### **What is the nature and extent of the obligations relating to Treaty settlements and recognised customary rights under the FTAA?**

**4.10** Under FTAA, Treaty-related obligations are addressed primarily through two mechanisms:

- (a) ensuring consistency with relevant Treaty settlement legislation; and
- (b) requiring engagement with iwi in accordance with statutory process.

**4.11** Section 7 of the FTAA requires all persons performing and exercising functions, powers and duties to act in a manner that is consistent with obligations arising out of existing Treaty settlements as well as customary rights recognised under the marine and coastal area legislation.<sup>20</sup> However,

---

20 Fast-track Approvals Act 2024, s 7(1).

this obligation is limited. It does not impose broad duties on applicants, such as recognising rangatiratanga or kaitiakitanga, beyond what is expressly provided in settlement legislation.

**4.12** Notably, the principles of Treaty are not referred to in the FTAA and therefore are not a relevant consideration.<sup>21</sup>

**4.13** The FTAA then gives effect to s 7 through:

- (a) prescribing that decision-makers must comply with the procedural requirements of the FTAA and give any document the same or equivalent effect as set out in the Treaty Settlement;<sup>22</sup>
- (b) providing reports under s 18 on Treaty settlements and other matters, and the review of draft conditions;<sup>23</sup>
- (c) requiring consultation to consider Treaty Settlements;<sup>24</sup> and
- (d) permitting the Panel to decline an application if it would lead to a breach of s 7 or set conditions “to recognise or protect” a relevant Treaty Settlement or obligations under marine and coastal area legislation.<sup>25</sup>

**4.14** As a result, as it relates to Treaty settlements, an application must only be declined where conditions cannot ensure the protection of any relevant Treaty settlement. In this respect, the TIA suggests that the conditions of consent do not ensure the protection of the Fisheries Settlement Act 1992.

---

21 As confirmed by the High Court in *Ngāti Kuku Hapū Trust v Environmental Protection Agency* [2025] NZHC 2046, at [46].

22 Fast-track Approvals Act 2024, ss 16, 53, and 82.

23 Fast-track Approvals Act 2024, ss 18, and 72.

24 Fast-track Approvals Act 2024, ss 11(1), 13,

25 Fast-track Approvals Act 2024, ss 84 and 85.

## **What does s 7 of the FTAA mean for the substantive application?**

**4.15** For SLPL's application, the s 7 obligations are engaged by two instruments:

- (a) the Ngāi Tahu Claims Settlement Act 1998 (**NTCSA**) and its associated Deed of Settlement; and
- (b) as raised by Te Rūnaka o Ōtākou — the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (**Fisheries Settlement Act**).

**4.16** The Marine and Coastal Area (Takutai Moana) Act 2011 (**MACA Act**) is not engaged given the project area does not include the common marine and coastal area.

**4.17** Of particular relevance to the NTCSA, the Deed of Settlement or Fisheries Settlement Act:

- (a) there are no statutory acknowledgements over or adjacent to the SLIP site;
- (b) there are no nohoanga areas over or adjacent to the SLIP site;
- (c) the NTCSA obligation in respect of taonga species is an obligation on the Crown — not on SLPL — to provide for regulation through the Conservation Act 1987 and Fisheries Act 1996; and
- (d) the SLIP site will not impact on customary fishing and is not within the area of any mātaihai or other specific fishing area under the Conservation Act 1987 or Fisheries Act 1996.

**4.18** We address the specific statutory obligations under the NTCSA, and the key arguments raised by Ōtākou in the TIA under each sub-heading below.

## NTCSA - Statutory acknowledgements

**4.19** The TIA relies on two statutory acknowledgements in the NTCSA, asserting both are relevant to the Inland Port:

- (a) the Waipōuri Waiholā Wetland (Schedule 70); and
- (b) the tōpuni for Mauka Atua/Saddle Hill (Schedule 84).

**4.20** Ngāi Tahu connect the Whakaehu stream / Silverstream, which runs adjacent to the Inland Port, to those two statutory acknowledgements and to the Taieri area. Their position is:

Whakaehu, though modest in scale, functions as a critical connection within the broader Lower Taieri system. Its significance to Ngāi Tahu encompasses its role as a contributor to the mauri of the receiving environment of the Lower Taieri, which includes the Waipouri-Waiholā wetlands – a waterbody that the Crown has acknowledged in the NTCSA 1998 is significant to Kai Tahu.

Small tributaries such as Whakaehu serve a vital function within a catchment, and their cumulative health determines the vitality of the larger system. From a mātauraka Kai Tahu perspective, the condition of any single waterway cannot be isolated from te mauka ki te moana — the interconnected flow from mountains to sea. The waters of Whakaehu carry volume alongside quality, temperature, sediment load, and ecological connectivity that directly influence the Lower Taieri's capacity to sustain its life-supporting functions which are essential for mahika kai and other cultural practices.

...

Whakaehu is a tributary of the Taieri-Waipouri River system, and its waters flow directly into the lower catchment that includes the Waipouri-Waiholā wetland complex - a waterbody the Crown has formally recognised as significant to Kāi Tahu through Schedule 70 of the NTCSA 1998. The TIA must assess the inland port's impacts in the context of this downstream statutory recognition. Any degradation of water quality, flow regimes, or contaminant loads in Whakaehu will manifest downstream.

**4.21** A statutory acknowledgement under the NTCSA is the Crown's recognition of a 'statement of association' between Ngāi Tahu and a defined area (**statutory area**).<sup>26</sup>

---

26 NTCSA, s 206.

**4.22** The Inland Port site is not within or adjacent to the Waipōuri Waihola Wetland (Schedule 70) nor the tōpuni for Mauka Atua/Saddle Hill (Schedule 84).

**4.23** There is a theme in feedback from Ōtākou that the SLPL will cause adverse effects on the Waihola Wetland – downstream of the site. In response to this:

- (a) the SLPL evidence is that the SLIP will be neutral on water quality (on the Silver Stream);
- (b) it is located approximately 24km from the SLIP site with many other activities affecting the quality of the Silver Stream and wider Taiari catchment; and
- (c) more specifically, the NTCSA states that a 'wetland' does not include any river or watercourse, artificial or otherwise, draining into or out of a wetland (see NTCSA, s 205). This in our submission means the legislation itself makes clear that the statutory acknowledged wetland, does not include the water catchment feeding into the wetland, such as, Silver Stream and other tributaries to the Waihola Wetland.

**4.24** Overall, it is submitted that the procedural rights associated with those acknowledgements therefore do not arise.

#### **NTCSA - Nohoaka sites**

**4.25** The NTCSA provides for nohoaka entitlements, which allow Ngāi Tahu members to camp temporarily on Crown land close to waterways to gather mahika kai and other natural resources.

**4.26** Under s 260(5)(b) of the NTCSA, the landholding agent for nohoaka entitlement land must notify TRoNT of any activity that may affect the holder of a nohoaka entitlement. Schedule 95 of the NTCSA confirms that no nohoaka entitlements are granted over or close to the SLIP site. It is submitted that this mechanism is not engaged.

## NTCSA - Taonga Species

**4.27** The NTCSA contains several provisions relating to taonga species (being bird, plants, and marine mammals) and taonga fish species listed in the NTCSA.<sup>27</sup> Only one of the species listed in the Freshwater Assessment Report<sup>28</sup> that could potentially be in the Silver Stream is included in the NTCSA definition of taonga species or taonga fish species – the giant kōkopu.<sup>29</sup>

**4.28** SLPL's evidence on the impact of the Project on the giant kōkopu from Dr Allibone is that:<sup>30</sup>

I undertook a fish survey on the Invermay Agricultural Research Station in 2021 (Allibone, 2021) and this survey located giant kokopu in a tributary of the Silver Stream. This observation together with others in the New Zealand Freshwater Fish Database (NZFFD) all report giant kokopu in tributaries of the Silver Stream rather than in the Silver Stream itself. Franklin et al (2015) provide the only report of giant kokopu spawning and this occurred amongst riparian vegetation where the giant kokopu live. There was no downstream migration involved in their spawning. Therefore, based on my knowledge of the catchment, kokopu spawning habits, the lack of giant kokopu records in the NZFFD at the SLIP location and the published spawning information, I do not expect giant kokopu to be spawning in the vicinity of the discharge.

**4.29** Based on Dr Allibone's evidence, it is submitted that there is no risk or effect on giant kōkopu.

**4.30** Under the NTCSA, the Crown's obligations in respect of taonga species are to keep TRoNT informed and involved in decisions, plans, and policies affecting those species, to give advance notice and genuinely consider TRoNT's views before acting, and to include Ngāi Tahu in species recovery work. These are Crown-to-iwi obligations; they do not fall on applicants.<sup>31</sup>

---

27 NTCSA, ss 287 to 311.

28 [Part-B.04-E3-Scientific-Limited-Freshwater-Ecological-Impact-Assessment-April Redacted.pdf](#)

29 See Part A of Schedule 98 of the NTCSA: Kāeo- Sea tulip, Koeke - Common shrimp, Kōkopu/Hawai - Giant bully, Kōwaro - Canterbury mudfish, Paraki/Ngaiore - Common smelt, Piripiripōhatu-Torrentfish, Taiwharu - Giant kōkopu.

30 SOE Dr Allibone dated 19 August at 2.3.

31 Ngāi Tahu Claims Settlement Act 1998, ss 293 and 294.

**4.31** The Crown's obligation for regulating taonga fish is implemented through:

- (a) Section 26ZG of the Conservation Act 1987, and any regulations made under s 48B of the Conservation Act 1987. Any regulation must be consistent with the provisions of the Fisheries Settlement Act and the Conservation Act 1987, and provide for input by Ngāi Tahu and other South Island iwi into the integrated management (including control) by the Minister of Conservation of the freshwater fisheries to which the regulations apply;<sup>32</sup>
- (b) The Fisheries Act 1996, and any regulations made under s 186 of that Act, including, Fisheries (South Island Customary Fishing) Regulations 1999.

**4.32** The recognition of taonga species under the NTCSA does not impose obligations on third parties or on the FTAA Panel as decision-maker.<sup>33</sup> The NTCSA expressly provides that the Crown's acknowledgement of the Ngāi Tahu association with taonga species is not to be taken into account in the exercise of any power, duty, or function under any statute, regulation, or bylaw,<sup>34</sup> and that no greater or lesser weight may be given to that association than would be given in its absence.<sup>35</sup>

#### **Fisheries Settlement Act**

**4.33** The TIA considers that the Fisheries Settlement Act recognises the rangatiratanga of Ōtakou over their fishing rights. The TIA considers that, as the SLIP affects waterways where tuna and kanakana are present, the Fisheries Settlement Act is engaged.

**4.34** This is, in our view, a misunderstanding of the Fisheries Settlement Act and its context within the FTAA.

---

32 Conservation Act 1987, s 48B(2).

33 Ngāi Tahu Claims Settlement Act 1998, ss 289 and 290, 298 and 300.

34 Ngāi Tahu Claims Settlement Act 1998, s 290(a), and 300(a).

35 Ngāi Tahu Claims Settlement Act 1998, s 290(b), and 300(b).

**4.35** The Fisheries Settlement Act provides a full and final settlement of all Māori claims to commercial fishing rights under the Fisheries Act 1983 upon introduction of the Quota Management System.<sup>36</sup> The Fisheries Settlement also acknowledges that non-commercial customary fishing and food gathering are separately recognised and protected, with processes for their use and management introduced through regulations under the Fisheries Act 1996 (**Fisheries Act**).

**4.36** The Fisheries Settlement Act records that the Crown confirmed and guaranteed Māori full, exclusive, and undisturbed possession and te tino rangatiratanga of their fisheries under the Treaty of Waitangi. It is focused on the rights of Māori (including Ngāi Tahu) to fish, rather than general rangatiratanga and kaitiakitanga obligations of Māori over fish species, including, the wider ecological and environmental impacts of fishing.

**4.37** The Fisheries Settlement Act and Fisheries Act operates as follows:

- (a) Māori commercial fishing rights are fully settled and provided for under the Fisheries Act;<sup>37</sup> and
- (b) non-commercial customary fishing rights continue to be exercised. They give rise to Treaty obligations on the Crown to consult with tangata whenua and develop policies recognising Māori use and management practices under the Fisheries Act. However, those rights are not enforceable in civil proceedings and do not provide a defence to any criminal, regulatory, or other proceeding, except to the extent provided for in regulations made under the Fisheries Act 1996.<sup>38</sup>

**4.38** The Fisheries Settlement Act, therefore, does not impose general obligations on fishing rights and the environmental impacts of those fishing

---

36 Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 and Deed of Settlement dated 23 September 1992 (Found here: <https://www.govt.nz/assets/Documents/OTS/Fisheries-settlement/Fisheries-Deed-of-Settlement-23-Sept-1992.pdf>).

37 Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, s 9.

38 Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, s 10.

rights. It is focused on the rights of Māori (including Ngāi Tahu) to fish in light of the Fisheries Act.

**4.39** Applied to the SLPL site, the SLIP site is not within a taiāpure-local fisheries area, mātaihai reserve, or area subject to a bylaw or regulations made under Part 9 of the Fisheries Act 1996.<sup>39</sup>

**4.40** Therefore, neither the Fisheries Settlement Act nor the Fisheries Act impose any obligations on SLPL and in our submission do not affect the Panel's assessment of this application.

## **S 18 Report**

**4.41** This submission is consistent with the s 18 Report prepared for SLPL's referral application (**s 18 Report**) which concludes that the SLPL is not acting inconsistently with the NTCSA and Deed of Settlement.<sup>40</sup> The s 18 Report must also be considered by the Panel when it is making its decision to grant and set conditions, or decline.<sup>41</sup>

## **5. COMMENT FROM DCC, NZTA AND COMMUNITY BOARD – TRANSPORT RELATED CONDITIONS**

**5.1** The legal submissions, filed on behalf of SLPL for the Panel Briefing address the legal tests under the FTAA in more detail (on a general basis), and conditions at [19]-[23].<sup>42</sup> Those submissions are relevant and not repeated here, except to emphasise where relevant in the context of SLPL's response to comments by invited parties under s 53 of the FTAA.

---

39 See here for a map of Mātaihai Reserves: <https://ngaitahu.iwi.nz/te-runanga-o-ngai-tahu/our-work-pou/strategy-and-environment/customary-fishing/> We note we have seen s 18 reports for other FTAA projects that specifically state that the project area does not include a taiāpure-local fishery, mātaihai reserve, or area subject to bylaws or regulations made under Part 9 of the Fisheries Act 1996.

40 [https://www.fasttrack.govt.nz/\\_data/assets/pdf\\_file/0014/11462/20-FTAA-2505-1059-Southern-Link-Inland-Port-Section-18-report.pdf](https://www.fasttrack.govt.nz/_data/assets/pdf_file/0014/11462/20-FTAA-2505-1059-Southern-Link-Inland-Port-Section-18-report.pdf)

41 Fast-track Approvals Act 2024, s 81(2)(a).

42 Legal submissions dated 7 July 2026: [SLPL-memorandum-of-counsel-7-July.pdf](#).

## **SH87/Dukes Road North upgrade**

- 5.2** NZTA states SLPL should extend the existing right turn bay at the intersection of SH87 and Dukes Road North because it is not sufficient to accommodate an articulated vehicle.
- 5.3** Following a meeting with NZTA on 18 August 2026 to discuss the scope of the works being sought by NZTA, SLPL has agreed to fund the alterations to line markings that would be necessary to create a 20 m long, 3.5m wide, right turn bay. The agreed works being largely ‘cosmetic’ in terms of rearranging the current use of the road with road markings to accommodate the right turn bay pocket as described. It has been agreed with NZTA that the existing right turn bay taper is acceptable and all that is required in respect of intersection upgrade. This is shown in the plan that is **Attachment 25** to the s55 response to comments.
- 5.4** On the basis of these improvement works, SLPL has agreed to a condition that the right turn bay pocket extension will be funded by SLPL prior to Stage 1 becoming operational.
- 5.5** SLPL do not agree to fund or facilitate any more extensive upgrade to the intersection.

## **Dukes Road North formation upgrade**

- 6.** DCC is seeking an upgrade to Dukes Road North along the SLIP site frontage but does not specify what level of ‘upgrade’ is being sought.<sup>43</sup> The evidence of Mr Rossiter for SLIP (**Attachment 10**) sets out clearly the existing context for Dukes Road North (beyond the SLIP boundary). No widening of the rural sections of Dukes Road North either east of Stedman Road or west of Carncross Road has been undertaken to align the road formation with the DCC design standards for new roads which are set out in the Dunedin Code

---

43 Paragraph 63 – bullet point 2: “The upgrading of the full length of Dukes Road from the Sedman Road intersection to the end of the sites frontage on Dukes Road North is appropriate”.

of Subdivision and Development 2010.<sup>44</sup> This goes to the reasonableness and necessity of DCC's request.

- 6.1** Mr Rossiter's evidence is that "the Dukes Road North carriageway between Stedman Road and the site entrance to align with Council standards is not required to accommodate the movement requirements of the SLIP as the lane widths already exceed the DCC requirements for a rural industrial road".<sup>45</sup> There is no justification from a technical perspective for this 'upgrade'.
- 6.1** The exception this is the right turn bay at the entrance to the site with sufficient stacking space for two High Productivity Motor Vehicles (HPMV). SLPL agree and it is part of their application, for SLPL to widen Dukes Road North at this juncture, which represents appropriate mitigation of the effects on safety.
- 6.2** While a condition requiring the widening along the full juncture of the SLIP boundary would relate to the development authorised by the application (as required by RMA principles), it is submitted that it is not required. This is for the reasons set out by Mr Rossiter and therefore it would not be a reasonable condition to impose. The legality of a proposed widening beyond the boundary of the SLPL site, and over land within Kiwirail's control, is considered under the issue below.
- 6.3** Further, it is submitted that s 83(a) of the FTAA is intended to ensure that conditions of an approved proposal do not extend beyond what is truly needed and as a result the conditions will not be unduly onerous.<sup>46</sup> This is

---

44 Statement of Evidence of Mr Rossiter, at [2.6].

45 Statement of Evidence of Mr Rossiter, at [2.8].

46 See *Foxton Solar Farm* Panel Decision ([Foxton-Solar-Farm-Final-Decision-14-August-2026 Redacted.pdf](#)) [68] Section 83 provides that: Conditions must be no more onerous than necessary. When exercising a discretion to set a condition under this Act, the panel must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of this Act that confers the discretion.

[69] This section introduces an express statutory constraint on the Panel's powers to impose conditions. The provision requires scrutiny not only of whether a condition addresses an identified matter, but also whether the condition is more onerous than is necessary to address that matter.

particularly the case when SLPL's site does not extend completely to Stedman Road.

**Pedestrian pathway along the length of the SLPL site is agreed to, but not across the Kiwirail land / designation**

- 6.4** SLPL have agreed to the construction of a pedestrian pathway along Dukes Road North (but only along the length of the SLPL site boundary). This is accepted as being reasonably related to the SLIP project and importantly within SLPL control.<sup>47</sup>
- 6.5** DCC request that SLPL take the pedestrian pathway further, essentially requiring a pedestrian footpath and railway crossing safety improvements.<sup>48</sup> As DCC says, this will require third party approval from KiwiRail. This would require access to land that is not in SLPL ownership, and it has no legal mechanism to secure rights to the land.
- 6.6** The RMA caselaw principles on conditions<sup>49</sup> equally apply to a fast-track resource consent application, as the FTAA applies sections 108/108A of the RMA when setting conditions<sup>50</sup> – coloured by s 83 and 84A of the FTAA. It is submitted that it would be ultra vires to impose a condition requiring work to be undertaken on a third parties land, requiring the consent of that third party, where the applicant had not obtained those consents.<sup>51</sup>
- 6.7** Imposing a condition that would apply on land subject to the Kiwirail designation (and in their ownership) as sought by DCC would have the effect of frustrating the consent, as SLPL has no legal access to the Kiwirail land. SLPL also does not volunteer a condition in respect of this part of the

---

47 DCC Comment at [51].

48 DCC Comment at [69].

49 Ie, under the RMA, conditions must be certain, enforceable, not frustrate the grant of consent, nor place obligations on third parties (*Bitumix Ltd v Mt Wellington Borough Council* [1979] 2 NZLR 57; *Turner v Allison* (1970) 4 NZTPA 104; *Mount Field Ltd v Queenstown Lakes DC* [2012] NZEnvC 262; *Lytelton Port Co Ltd v Canterbury RC* EnvC C008/01) and meet the *Newbury* tests. Schedule 5, cl 18 FTAA.

51 [\*Dart River Safaris Ltd v Kemp\* \[2000\] NZRMA 440 \(HC\)](#); See also *Lysaght v Whakatāne District Council* [2022] NZCA 423 on when a condition can be a 'conditions precedent' which is not the case here.

pedestrian link. Putting a footpath over the rail line would add risk to rail operators with no benefit to KiwiRail.

- 6.8** In this respect, Mr Rossiter’s evidence is that the existing pedestrian network within the Dukes Road Industrial Zone is fragmented and largely incomplete.<sup>52</sup> His evidence is also that pedestrian movement demands are very low. Given a wider need unrelated to the SLIP to further develop the pedestrian network, DCC can complete the Kiwirail component, at the relevant time.

#### **Relevance of s 84A**

- 6.9** For completeness, s 84A was inserted into the FTAA in late 2024, allowing the Panel to set conditions to ensure that the infrastructure in the project area or other infrastructure the project **will rely on** is or can be made adequate to support the project. This section was closely analysed in the *Sunfield* Panel Decision (under appeal by Auckland Council), and the recent Second *Delmore* Panel Decision. Both those Panel’s referred to the Departmental Report for the Fast-Track Approvals Amendment Bill which suggests that the policy intent of this new section was to allow the Panel to approve the Project as long as infrastructure provision is both realistic and deliverable in principle, even if the timing, funding or mechanisms remain to be finalised post-approval.<sup>53</sup>

- 6.10** The section is not referred to in any comments lodged with the EPA, and in SLPL’s submission, it does not appear to be of direct relevance to the Project. It is SLPL’s evidence that neither the ‘upgrade’ of Dukes Road North, and the extension of a pedestrian link over the railway, are “relied on” for the purposes of decisions on the project. SLPL submits that they are not required by the Project. For completeness it is also SLPL’s evidence (supported by the Integrated Transport Assessment, the Transport Addendum, and Mr Rossiter’s evidence) that no other transport upgrades

---

52 Statement of Evidence of Mr Rossiter, at [2.13].  
53 [FTAA-2503-1039-Delcision-Report.pdf](#), at [792]-[799] and [809]-[833]; [Delmore FTAA](#), at [306]-[318].

are triggered by the SLIP application. Other than set out above, this is consistent with the DCC comment.

## **7. CONCLUSION**

**7.1** SLPL has made a number of changes to the proposed conditions of consent in response to the comments received under s 53, which it has carefully considered and responded to. The 25 attachments to this s 55 response provide SLPL's response to the comments and further information that might assist the Panel. It is submitted that in light of this additional information, it remains the case that there are no adverse impacts significant enough to come close to outweighing the Project's benefits. The technical evidence demonstrates that the adverse impacts of the Project can be appropriately managed and that the economic benefits of the Project clearly outweigh any potential adverse impacts.

**Dated:** 19 August 2026

A handwritten signature in black ink that reads "Sarah Scott". The signature is written in a cursive, flowing style.

---

**S J Scott / K Parker**  
Counsel for Southern Link Property Limited