

Fast-track project name	Mt Welcome, Pukerua Bay, Porirua
Fast-track application number	FTAA-2603-1181
GW file number	FTA260348

To	The Expert Panel
Date	2 September 2026

Memorandum in response to Minutes 15 and 16

1. This memorandum is filed on behalf of the Wellington Regional Council (Greater Wellington) in response to the directions of the Expert Panel to in Minute 15 dated 24 August 2026 and confirmed in Minute 16 dated 28 August 2026.
2. Minute 15 directs Greater Wellington as follows:
 - (a) At para [3]: in relation to the interpretation of the “pasture exception” in the definition of *natural inland wetland* in the National Policy Statement for Freshwater Management 2020 (NPS-FM), the Panel has asked Greater Wellington to point to materials produced as part of the development of the NPS-FM that could be considered in the implementation of orthodox rules of statutory interpretation and which would support the position set out in the MfE Guideline¹.
 - (b) At para [5]: to provide a position on whether the Panel has jurisdiction to impose conditions either directly or indirectly requiring a redesign of the project over the applicant’s objection, or whether the Panel’s only option is to decline the approvals sought under section 85 of the FTAA.
3. Minute 16 also included a copy Mr Brittliff’s statement of evidence on infrastructure matters, and paragraph [8] invited parties whose experts participated in conferencing to provide comments on the report (if any).
4. This memorandum provides Greater Wellington’s response to these matters.

Interpretation of the “pasture exception” in the definition of *natural inland wetland*

5. The definition of *natural inland wetland* is contained in clause 3.21 of the NPS-FM. The “pasture exception” is set out in clause (e) of the definition:

¹ That “the exclusion is not targeted at pasture being converted for urban development or other land uses”. Ministry for the Environment (December 2022). *Pasture Exclusion Assessment Methodology*, p.9. See: <https://environment.govt.nz/assets/publications/Pasture-exclusion-assessment-methodology.pdf?v=a15554927315ac85748d0a88c5ab9d7bff33d97a>

natural inland wetland means a wetland (as defined in the Act) that is not:

[...]

- (e) 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 the exclusion in (e) does not apply

6. This definition of *natural inland wetland* was incorporated into the NPS-FM through an amendment in December 2022. As described in the Section 32 Evaluation Report (S32 Report)² for the 2022 amendment, the purpose of the amendment was to “provide clearer interpretation and application of wetland definitions and the control of activities where these impact natural inland wetlands, without fundamentally changing the NPS-FM objective and wetland policy intent (Policy 6 of the NPS-FM)”³.

7. The change to the wetland definition is described and evaluated in detail at section 4.3.1 of the S32 Report. The following indications in the S32 report are of relevance to the Panel’s request for information about the intent of the definition:

- (a) The S32 Report notes the following about the intent of the original pasture exception that was replaced by the 2022 amendment (emphasis added)⁴:

The 2020 regulatory response is intentionally strong to stop the continued loss of wetland values and extent. As the regulations were being implemented, the feedback on the natural wetland definition demonstrated that the multiple qualifiers created confusion and variable interpretations.

This was particularly relevant in regard to the pasture exclusion (original part (c)) of the definition. It is intended to exclude highly modified wetland landscapes now utilised for pasture from the regulations, **so they can continue to be used for pastoral purposes.**

- (b) In relation to the intent of the amendment to the pasture exception, the S32 Report notes the following in Table 3 (emphasis added)⁵:

The pasture exclusion acknowledges the importance of the farming sector in providing resources that are essential for the functioning and wellbeing of communities. **The proposed amendments aim to**

² Ministry for the Environment (December 2022). *Amendments to the NES-F and NPS-FM: Section 32 Report*. See: <https://environment.govt.nz/assets/publications/Amendments-to-the-NES-F-and-NPS-FM-Section-32-report.pdf?v=0a4140b8236e5e9f9be5963d7c5dbb96e06c961ba>

³ Ministry for the Environment (December 2022), p.6.

⁴ Ministry for the Environment (December 2022), p.30.

⁵ Ministry for the Environment (December 2022), p.31.

ensure the pasture exclusion in the natural wetland definition is applied as was intended, and enables the continued use of highly modified wetland landscapes for pastoral purposes.

- (c) In assessing the effectiveness of the amendment, the S32 Report notes the following (emphasis added)⁶:

Together, these changes will better achieve the original intent of part (c) of the definition, which is **to enable existing pastoral land use to continue** and not be subject to the strong rules (and cumulative effect of the setbacks) in the NES-F.

- (d) In assessing the economic efficiency of the amendment, the S32 Report notes the following (emphasis added)⁷:

The proposed amendments ensure the pasture exclusion only applies where it was intended, thereby enabling existing pastoral land use to continue and not be subject to the strong rules (and cumulative effect of the setbacks) in the NES-F.

- (e) Finally, in assessing the opportunities for economic growth and employment associated with the amendment to the definition, the S32 Report notes the following (emphasis added)⁸:

The proposed amendments clarify that existing pastoral land use can continue and not be subject to the strong rules (and cumulative effect of the setbacks) in the NES-F on land used for the purposes of grazing. This will lessen a potential impact on the primary industries.

8. As described above, the S32 Report records that the intent of the pasture exception is to provide for existing pastoral land use to continue on land where the pasture exception applies. There is no indication that the pasture exception is intended to provide for any other type of land use.
9. Greater Wellington considers that the intent set out in the S32 Report is consistent with an orthodox statutory interpretation of the definition as it has been drafted. The key provision of the pasture exception in this case is clause (e)(i), which applies to “a wetland that... **is within** an area of pasture used for grazing” (emphasis added). This clause is written in the continuous present tense. Greater Wellington considers that this means that the clause must be read and applied contemporaneously with the occurrence of the activities that are regulated in relation to natural inland wetlands.
10. In this case, the applicant is seeking consent to undertake a range of activities (including vegetation clearance, earthworks, damming, diversion, and discharges of water) within and adjacent to natural inland wetlands for the purpose of constructing urban development under

⁶ Ministry for the Environment (December 2022), p.32.

⁷ Ministry for the Environment (December 2022), p.33.

⁸ Ministry for the Environment (December 2022), p.35.

regulation 45C of the National Environmental Standards for Freshwater (NES-F)⁹. It is evident that when the activities regulated under regulation 45C occur, the wetlands that the applicant has identified are subject to the pasture exception¹⁰ will not be within an area of pasture used for grazing. Rather, they will be within an area where a range of activities regulated under regulation 45C are being undertaken to construct urban development. It is also evident that after those activities have occurred, the wetlands will not be within an area of pasture used for grazing. They will either be reclaimed for urban development or be located within land identified as a reserve (principally drainage reserves).

11. Greater Wellington therefore considers that clause (e)(i) of the definition of *natural inland wetlands* cannot apply to the activities for which the applicant has sought consent, because the wetlands will not be within an area of pasture used for grazing at the time (or indeed after) those activities are undertaken. Consequently, those wetlands must be considered as natural inland wetlands when applying regulation 45C of the NES-F (including the application of the effects management hierarchy under regulation 45C(6)(c)).
12. Greater Wellington considers that this interpretation of the pasture exception can be ascertained from the text of the definition in light of its application to the activities regulated under Regulation 45C of the NES-F, and in light of Policy 6 of the NPS-FM, which directs that “there is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted”. Greater Wellington also considers that this interpretation is consistent with the intent of the definition as described in the S32 Report.

“Redesign” conditions

13. The Panel has asked whether it has jurisdiction to impose conditions either directly or indirectly requiring a “redesign” of the project over the applicant’s objection.
14. If “redesign”¹¹ is understood to mean altering the proposal in a manner that would change the character, intensity, or scale of the activities for which the Panel has granted consent, or changing the way in which the effects of those activities are mitigated, then Greater Wellington considers that the Panel should not impose such conditions, even if the applicant supported them or offered them on an *Augier* basis. Greater Wellington considers that

⁹ As described by the applicant in Appendix 6: NES-F Assessment of the Substantive Application. See: https://www.fasttrack.govt.nz/_data/assets/pdf_file/0018/24444/Appendix-06-NES-F-analysis.pdf

¹⁰ Substantive Application Appendix 30-41 Ecological Overlay. See:

https://www.fasttrack.govt.nz/_data/assets/pdf_file/0014/24521/Appendix-30-41-1753-02-SK9250-R1-Ecological-Overlay.pdf

¹¹ “Redesign” should be distinguished from “detailed design”. Detailed design conditions are a condition type that provide for the detailed design of a particular matter to be submitted for certification, typically with a requirement that the detailed design is in accordance (or in general accordance, as the case may be) with the design that has been included with the application (or provided through further information during the course of the consideration of the application). Detailed design conditions provide for details of the consented design to be certified after consent is granted, but do not provide for the consented design to be changed.

conditions providing for “redesign” after the consents have been granted are inappropriate for several reasons, including:

- (a) They would create significant uncertainty about the scope and extent of activities that the Panel has granted consent for, and the mitigation of effects that has been accepted by the Panel.
- (b) They may have unintended or unanticipated consequences for the consent holder’s ability to comply with other consent conditions. For example, conditions that purport to require the redesign of the stormwater management system may result in circumstances where, after the redesign, conditions related to the offsetting of wetland reclamation cannot be met. In addition to this, where a redesign results in additional or new consents being required, then the project or parts of the project would be unable to progress without those consents. Both outcomes would frustrate the ability for the consent holder to exercise the consents in accordance with their conditions.
- (c) They may have the effect of inappropriately delegating the Panel’s function to decide on the approvals to other parties (local authorities or administering agencies, as the case may be), for those parts of the approvals that are subject to a redesign condition.
- (d) They would have the effect of subverting the statutory process for amending a proposal after it has been approved, through seeking a change of consent conditions under section 127 of the RMA or new consents under section 88 of the RMA (or the equivalent provisions for changes of conditions or new applications under section 42 of the FTAA).
- (e) Because this is a listed project, they may cut across the need for the application before the Panel to be within the scope of its listing in Schedule 2 of the FTAA (where conditions provided for redesign of the project beyond the scope of its listing).

15. In its section 53 comments on the application, Greater Wellington identified several aspects of the proposal that it considered required redesign or reconsideration, including:

- (a) The entire approach to stormwater management, including the proposed “retention wetlands”;
- (b) The design of the intersection with State Highway 59;
- (c) The proposed compensation for the reclamation of the Taupō Stream;

- (d) Remediation and/or compensation for the adverse effects of development on streams within the site;
 - (e) The proposed offsetting for the loss of natural inland wetland extent and values;
 - (f) The conceptual design of several proposed culverts.
16. For each of these matters, Greater Wellington also stated in its section 53 comments that, in its view, the redesign or reconsideration of these matters needed to occur in advance of the Panel making its decision (for example, through the applicant proffering modifications to the design in its response to section 53 comments, or in response to requests for information from the Panel).
17. When it reaches the time for the Panel to make its decision on the application, Greater Wellington considers that the Panel must decide on the proposal that is before it at that time. It may impose conditions to manage the adverse effects of the proposal or for any of the other reasons provided for under sections 108 and 108AA of the RMA¹², so long as those conditions are not more onerous than is necessary¹³. Greater Wellington does not consider that these provisions empower the Panel to impose conditions that allow for the proposal to be redesigned after it is approved.
18. Greater Wellington notes that section 84A of the FTAA allows the Panel to set conditions to ensure that the infrastructure that the project will rely on is or can be made adequate to support the project. Greater Wellington does not have a position on whether this provision enables the Panel to impose a redesign condition in relation to infrastructure, however if the Panel considered that it may, then Greater Wellington considers that the matters set out at paragraph 14 above should be considered when imposing such a condition.
19. Notwithstanding this, Greater Wellington has reviewed the decisions and conditions for the 13 housing and land development projects approved under the FTAA¹⁴. This includes several

¹² As provided for by clause 18 of Schedule 5 of the FTAA.

¹³ Section 83 of the FTAA.

¹⁴ Arataki (approved 24 February 2026): <https://www.fasttrack.govt.nz/projects/arataki/the-decision>
 Ashbourne (approved 21 April 2026): <https://www.fasttrack.govt.nz/projects/ashbourne/the-decision>
 Delmore (approved 10 August 2026): <https://www.fasttrack.govt.nz/projects/delmore/2026-reapplication/the-decision>
 Drury Metropolitan Centre – Consolidated Stages 1 and 2 (approved 7 November 2025): see <https://www.fasttrack.govt.nz/projects/drury-metropolitan-centre-consolidated-stages-1-and-2/the-decision>
 Homestead Bay (approved 18 February 2026): <https://www.fasttrack.govt.nz/projects/homestead-bay/the-decision>
 Maitahi Village (approved 18 September 2025): <https://www.fasttrack.govt.nz/projects/maitahi-village/the-decision>
 Milldale – Stages 4C and 10 to 13 (approved 3 October 2025): <https://www.fasttrack.govt.nz/projects/milldale-stages-4c-and-10-to-13/decision>
 Pound Road Industrial Development (approved 1 May 2026): <https://www.fasttrack.govt.nz/projects/pound-road-industrial-development/the-decision>
 Rangitootuni (approved 27 November 2025): <https://www.fasttrack.govt.nz/projects/rangitootuni/the-decision>
 Ryans Road Industrial Development (approved 7 May 2026): <https://www.fasttrack.govt.nz/projects/ryans-road-industrial-development/the-decision>
 Sunfield (approved 10 March 2026): <https://www.fasttrack.govt.nz/projects/sunfield/the-decision>

decisions that were made after section 84A of the FTAA came into force on 17 December 2025. We have not identified any conditions that explicitly enable or require redesign of the project to occur after the approvals were granted.

20. If, when the Panel is deciding on the application, the Panel considers that the adverse effects of the proposal cannot be adequately managed through the conditions it may impose, then Greater Wellington considers that the Panel's only recourse is to determine whether it has grounds to decline some or all of the approvals under section 85 of the FTAA. However, if the Panel proposes this, then section 69 of the FTAA provides that the Panel invite the applicant to modify its proposal to address the reasons for which the Panel is proposing to decline the approvals, so long as any modified proposal is within the scope of the substantive application. If the Panel considers that redesign of the proposal is necessary, then Greater Wellington considers that section 69 provides a mechanism by which the Panel could invite the applicant to do this before it makes its decision.

Mr Brittliff's infrastructure report

21. Greater Wellington and its technical experts (Mr Roa, Mr McLean, and Mr Blyth) have reviewed Mr Brittliff's statement of evidence dated 25 August 2026 (the infrastructure report)¹⁵. Greater Wellington's technical experts have advised that they have no comments on the report. However, Greater Wellington considers if there were directions to provide for any of the matters set out in Mr Brittliff's report through consent conditions, further information may be necessary to determine the drafting of those conditions (for example, to determine the objectives, specific requirements, and triggers for a "Commissioning Plan" described at paragraph 13 of Mr Brittliff's report).

Memorandum prepared by:	Andrew Banks	Senior Resource Advisor, Environmental Regulation	
Memorandum approved by:	Richard Percy	Team Leader, Environmental Regulation	

The Downtown Carpark Redevelopment – Te Pūmanawa o Tāmaki (approved 5 August 2026): <https://www.fasttrack.govt.nz/projects/the-downtown-carpark-redevelopment-te-pumanawa-o-tamaki>

The Point Mission Bay (approved 12 June 2026): <https://www.fasttrack.govt.nz/projects/the-point-mission-bay/the-decision>

¹⁵ See: https://www.fasttrack.govt.nz/_data/assets/pdf_file/0031/33997/FTAA-2603-1181-Engineering-Statement-of-Evidence-Darcy-Brittliff.pdf