

BEFORE THE EXPERT CONSENTING PANEL

CONCERNING AN APPLICATION BY KINGS QUARRY LTD FOR THE EXPANSION OF KINGS QUARRY, AT WAINUI, AUCKLAND

IN THE MATTER:	of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTA) and the deliberations and final decision of the Expert Consenting Panel appointed under clauses (cls.) 2, 3 and 4 of Schedule (Sch.) 5 of the FTA to consider applications for resources consents to expand an existing quarry at Pebble Brook Road, Wainui, Auckland
Expert consenting panel:	Vicki Morrison-Shaw (Chair) Ian Munro (Member) Glenn Wilcox (Member)
Legal representation:	Matthew Allan of Brookfields for the Panel Daniel Minhinnick of Russell McVeagh for the Applicant
Date for comments received under cl.17(6)- (8) of Schedule 6 to the FTA:	16 August 2024 (Initial Invitees) 9 September 2024 (Additional Invitee)
Details of any hearing if held under cl.21 of Sch.6 of the FTA:	No hearing held as per cl.20 Sch.6
Date of hearing if held:	Not applicable
Date of decision:	14 October 2024
Date of issue:	14 October 2024

RECORD OF DECISION OF THE EXPERT CONSENTING PANEL UNDER CLAUSE 37 OF SCHEDULE 6 OF THE FTA

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He Mihi

Koinei te mihi ki ngā Maunga Kōrero o Kaipara

Mai rā noa, ka tū tonu koutou hei whakamaru mō ngā whakaheke, e mihi ana.

Ka tukuna te aroha ki a rātou kua hoki atu ki te whare tūturu o te tangata.

I te peka o te wā nei, ka huria te mahara ki a Waikato awa, ki a Kīngi Tuheitia Pōtatau Te Wherowhero Te Tuawhitu hei uri hoki a Waimirirangi, hei whanaunga ki ngā iwi o Te Tai Tokerau, hei Kīngi hoki mō te motu. E te Kīngi okioki mai rā ki waenga i ngā mātua tūpuna ki te ao wairua.

Rātou ki a rātou

Tātou te hunga ora ki a tātou.

Kāti, ka huri atu te kitenga ki te Arikini hou, ki te Kuīni Ngā Wai Hono i te Pō, kua hāpainga ki te ahurewa tapu o ōna mātua tūpuna, Pai Mārire!

Heoi, e rere tonu ana Te Waitoki tae atu ki Kaukapakapa, puta noa ki Kaipara, ko te moana tapu o Ngāti Whātua.

Nō reira, ka tukuna ngā mihi aroha ki te hau kāinga, i tō koutou kaitiakitanga.

Kia tū tonu mō ake tonu atu

Kia ora mai tātou!

Tihei mauri ora!

PART 1: EXECUTIVE SUMMARY

1. This application is for a referred project (**Project**) listed in Sch.84 to the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020 (**Referral Order**).
2. Kings Quarry Limited (**Applicant**) applied for consents under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**FTA**) to expand the operation of Kings Quarry, in Pebble Brook Road, Wainui, Auckland (**Application**).
3. The Application involves several activities requiring resource consent under the Resource Management Act 1991 (**RMA**) and associated regulations and plans. The Expert Consenting Panel (**Panel**) bundled the Application and applied an overall non-complying activity status.
4. The Panel has considered the Application within the dual-purpose framework of the FTA and the RMA.
5. The Panel sought further information from the Applicant on a range of issues and invited comment on the Application from certain identified organisations and individuals.
6. The Panel undertook a site visit on 23 July 2024.
7. The Panel sought legal advice from Matthew Allan of Brookfields Lawyers Ltd (**Brookfields**) in relation to scope for inclusion of the offset sites and associated consents.
8. The Panel sought planning advice and assistance from Mark Henry of Mitchell Daysh Ltd (**Mitchell Daysh**) in relation to the drafting of this decision report. The Panel also sought ecological advice from Wildland Consultants Ltd (**Wildlands**)¹ in relation to the ecological effects and environmental offsetting proposed.
9. The principal issues in contention for this Application, which are subject to detailed discussion throughout this decision, are summarised as follows:
 - (a) legal scope for offset sites and associated consents;
 - (b) cultural considerations;
 - (c) positive effects;
 - (d) ecological effects;
 - (e) landscape, natural character and visual amenity;
 - (f) transportation;
 - (g) air quality;
 - (h) noise and vibration;
 - (i) hydrology and groundwater;
 - (j) land disturbance;

¹ With contributions being provided by Phoebe Andrews (terrestrial), Brent Henry (bats), Richard Storey (freshwater), Blair Bolsom (lizards) and Nick Goldwater (ecological impact assessment).

(k) archaeology; and

(l) other matters.

10. Our findings on these issues, as discussed in subsequent sections of this decision, are that with the exception of ecological effects and to a lesser extent cultural effects, we are generally satisfied that we have sufficient information to assess and address effects.
11. However, there were a number of key gaps in the ecological information provided to us, which meant we are not able to determine the scale of effects on important flora and fauna, and therefore the appropriateness of the measures proposed to address those effects. This also means that to the extent cultural effects relate to and incorporate ecological effects, we are similarly unable to determine those matters.
12. While we made a number of requests for further information, the responses we received were not sufficient to fill those gaps. Nor, given the nature of the gaps identified (which included a need for further field work), was there sufficient time left in the FTA process to enable that work to occur. This is both because of the compressed timeframes in the FTA process, as well as the Applicant using 48 of its 50 available suspension days prior to the invitation to comments being issued, as a result of the Applicant deciding to change its proposed offset sites.
13. While the Applicant suggested we could simply include conditions to require further monitoring, or recalculations of offsets etc at a later stage, we consider it is not possible or appropriate to impose conditions where there is insufficient baseline information to determine effects, and which leave the determination of the scale of mitigation or offsetting required to a conditions process. Put simply, not enough had been done to enable us to be satisfied we were able to grant consent, and there was not enough time in the FTA process to enable those gaps to be closed.
14. This is not to say however, that a future proposal to extend the quarry could not be consented. As this decision notes, the zoning clearly anticipates and provides for quarry uses on the land, extension to the quarry could have a number of positive benefits, and it is likely that the majority of adverse effects could be appropriately addressed through the measures and conditions proposed by the Applicant.
15. Accordingly, for the reasons set out in the sections that follow, the Panel refuses consent to the Project.
16. A glossary of terms used in this decision is set out in **Appendix 1**.
17. The Panel wishes to thank its advisors, the Applicant and its advisors, all of the parties and their experts and advisors who provided comments as well as the Environmental Protection Authority (**EPA**) staff who assisted in the smooth running of this process.

E pari atu nei ngā tai o mihi ki a koutou katoa.

PART 2: INTRODUCTION AND PROCEDURE

2.1 Introduction to the Project

18. The Applicant seeks consent for the expansion of its quarrying operations at Kings Quarry, in Pebble Brook Road, Wainui, Auckland.
19. The Applicant owns a 152 hectare (**ha**) site, with the boundaries and access points as shown in **red** on Figure 1 below.

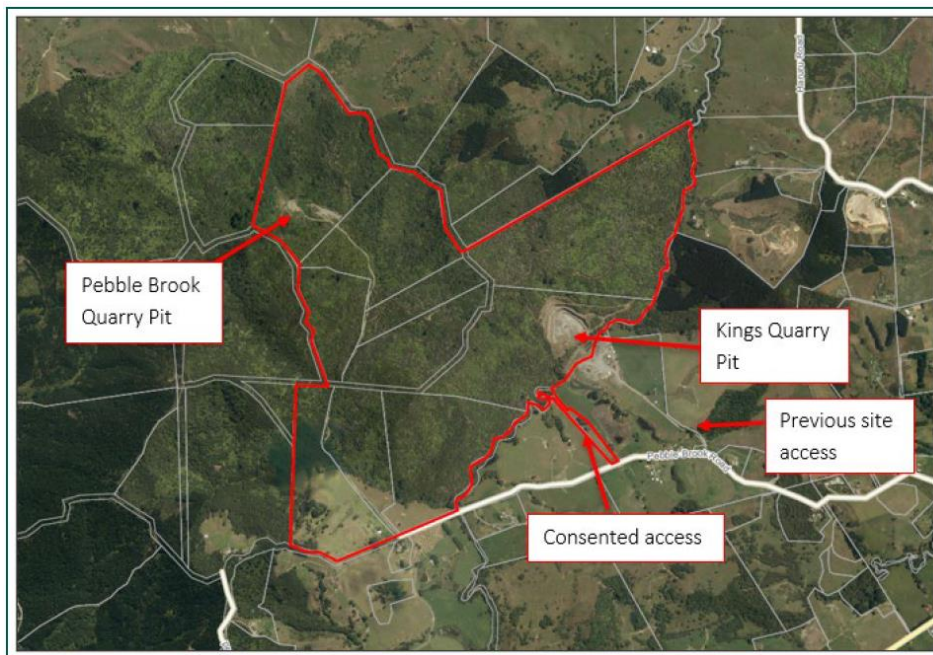


Figure 1: Site location²

20. The land is the site of a former quarry (Kings Quarry) which ceased operations in the mid-1990s, but restarted again recently following receipt by the Applicant of resource consents in 2021 enabling quarrying operations on a portion of its land (**Stage 1**).³ The Stage 1 consent authorises the following activities:⁴

- *Approximately 8,750m² of indigenous vegetation removal at various locations across the site;*
- *The removal of 1,960m² of SEA vegetation within a quarry zone;*
- *New vehicle crossing of 12m;*
- *Mineral extraction activities of between 5-200 tonnes/hour, with approximately 144 tonnes/hour at maximum capacity;*
- *Approximately 30,000m² and 66,300m³ of earthworks including 9,000m² of cut and 57,300m² of fill;*
- *Construction of a new bridge over the Waitoki Stream within a SEA;*
- *Earthworks within 10m setback of a natural wetland; and*
- *Temporary discharge and diversion of water within 100m of a natural wetland.*

² Assessment of Environmental Effects and Statutory Analysis, Kings Quarry Stage 2, 5 July 2024 (**AEE**), section 4.2, Figure 1.

³ Consent BUN60373589.

⁴ AEE, section 4.3, p. 12.

21. This current Application is for Stage 2 of the Project, which seeks consent for the extraction of approximately 500,000 tonnes per year from the Quarry over a period of 45 years from the Stage 2 area (**Site**). Figure 2 below shows the areas covered by Stage 1 (**Green**) and Stage 2 (**Orange**).

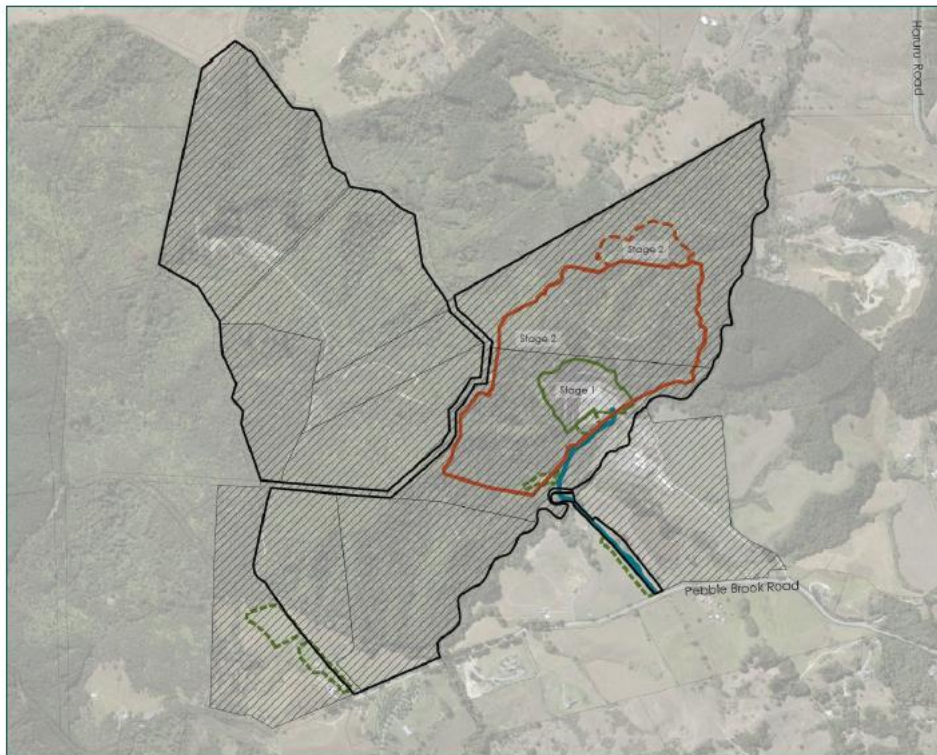


Figure 2: Stages 1 and 2 of the Project⁵

22. To facilitate the quarry activity, the Application includes vegetation removal, earthworks and land disturbance, stream reclamation, diversion/dewatering of groundwater and discharges to air. Offsetting is also proposed to address the adverse effects of indigenous biodiversity and stream removals.⁶ The proposed site access is from Pebble Brook Road, which was consented as part of Stage 1, and has now been constructed.⁷
23. The Site is located approximately 10kms to the west of State Highway 1. It is largely covered in bush, with the exception of an existing quarry face (from the previous quarrying activities), and the areas cleared for the new access way, site office and weigh bridge consented and constructed as part of Stage 1.
24. The AEE records that the Site contains a variety of flora and fauna habitats as well as the presence of certain fauna including invertebrates, herpetofauna, birds and bats. Thirteen streams have been identified (12 intermittent and one permanent), all of which are tributaries of the Waitoki Stream. No wetlands were identified. There is one archaeological site (a pit) identified to the north-east of the Site – outside the area of the proposed works - but within the wider land holding of the Applicant.⁸

⁵ AEE, Figure 3, p.15.

⁶ AEE, Executive Summary.

⁷ AEE, section 5.1, p.17.

⁸ AEE, section 5.1, p. 20.

25. The Site is zoned Special Purpose – Quarry and Rural Production and is subject to overlays that include a quarry buffer, significant ecological areas and outstanding natural landscapes.
26. The surrounding area is characterised by forested hill country to the west, north and east, and largely open rural land to the south. There is a mixture of rural living, pastoral farming and rural and industrial uses – including another operating quarry (Winstone Aggregate) to the immediate north-east of the Site, as well as a clean-fill operation located at 782 Haruru Road.⁹

2.1.1 Overview of Application

27. The Application includes the following key (and associated/related) activities:¹⁰
- (a) aggregate extraction;
 - (b) stockpiling and processing of aggregate;
 - (c) earthworks;
 - (d) vegetation removal;
 - (e) taking and diverting of groundwater and discharge onto land;
 - (f) discharge of stormwater which may contain contaminants onto land;
 - (g) blasting;
 - (h) discharging dust into air;
 - (i) reclaiming stream beds;
 - (j) diverting a modified watercourse;
 - (k) remediating land, including landscaping and planting; and
 - (l) constructing or installing roads, other accessways, and other infrastructure.

2.1.2 Reasons consent is required

28. The proposal requires consent under both the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-FW**) and the Auckland Unitary Plan (**AUP**) as summarised in Table 1 below.¹¹

Plan/standard	Rule / Reg	Reason for consent	Activity status ¹²
NES-FM	57	Reclamation of 2,137m of stream	D

⁹ AEE, section 5.2, p.21.

¹⁰ Referral Order, cl.4.

¹¹ This table uses the information set out in section 7 of the AEE.

¹² Where 'C' means controlled, 'RDA' means restricted discretionary, 'D' means Discretionary, and 'NC' means non-complying activity status.

Plan/standard	Rule / Reg	Reason for consent	Activity status ¹²
AUP	H3.4.1(A49)	Reclamation of 2,137m of waterbody within an SEA ¹³	NC
	E7.4.1(A28)	Groundwater diversion caused by excavation	RDA
	E11.4.3(A8)	Earthworks on a slope greater than 10 degrees	RDA
	E11.4.3(A9)	Earthworks greater than 2,500m ² within the SCPA ¹⁴	RDA
	E11.4.3(A28) and (30)	Earthworks within an SEA exceeding 5m ² and 5m ³	RDA
	C1.9(2)	Earthworks exceeding 5m ² and 5m ³ in riparian yards for Project Site and Offset Sites ¹⁵	RDA
	E14.4.1(A90)	Mineral extraction activities at a rate of between 5 and 200 tonnes/hour in a low air quality dust and odour area	C
	E15.4.1(A10)	Removal of more than 250m ² of contiguous indigenous vegetation outside the RUB ¹⁶	RDA
	E15.4.1(A44)	Removal of 29.16 ha of SEA vegetation within the Quarry zone	D
	H19.8.1(A60)	Mineral extraction within the Rural Production zone	D
	H28.4.1(A7)	Mineral extraction activities associated with expansion in Quarry zone	C
	H28.4.1(A14) and (A15)	Earthworks in a Quarry zone greater than 2,500m ² and 2,500m ³	C

¹³ Where 'SEA' means Significant Environmental Area.

¹⁴ Where 'SCPA' means the Sediment Control Protection Area.

¹⁵ As discussed later in Part 3 below, applications for consents for the Offset Sites in Hellyer and Oldfield Roads did not form part of the application as referred or as originally applied for to the EPA.

¹⁶ 'RUB' meaning the Rural Urban Boundary.

Plan/standard	Rule / Reg	Reason for consent	Activity status ¹²
	H28.4.1(A17)	Earthworks in a Quarry zone greater than 2,500m ² where land has a slope greater than 10 degrees	C
	H28.4.1(A18)	Earthworks in a Quarry zone greater than 2,500m ² within the SCPA	C

Table 1: Reasons for consent

29. Overall, the Application has a non-complying activity status. This requires us to be satisfied that the Application passes one or more of the s.104D 'gateway tests' to enable us to consider its merits under s.104 of the RMA. Our consideration and findings on this issue are set out in Part 8 of this decision.

2.2 Procedure

30. The Panel records the following matters of procedure in this section:
- (a) Panel hui;
 - (b) first information request (**RFI#1**), request for withholding cultural values assessment (**CVA**) and Application suspension;
 - (c) unsolicited comments;
 - (d) second information request (**RFI#2**), request for extension to site visit and amendment of Application;
 - (e) appointment of legal and planning advisors and decision on CVA request;
 - (f) legal advice to the Panel;
 - (g) site visit;
 - (h) invitations to comment;
 - (i) third request for information (**RFI#3**);
 - (j) ecology advisor appointed;
 - (k) comments received and Applicant response;
 - (l) additional invited party;
 - (m) hearing and extension of time for decision;
 - (n) fourth request for information (**RFI#4**);
 - (o) reports from ecological advisor;
 - (p) fifth request for information (**RFI#5**) and response;

- (q) conditions; and
- (r) consideration of information, comments and advice.

31. A list of all the key procedural dates relevant to this Application are included in **Appendix 2**.

2.2.1 Panel hui

32. The Panel held hui on the following dates:

- (a) 20 March 2024;
- (b) 17 June 2024;
- (c) 23 July 2024;
- (d) 29 July 2024;
- (e) 20 August 2024;
- (f) 29 August 2024;
- (g) 9 September 2024;
- (h) 18 September 2024; and
- (i) 24 September 2024.

33. These hui were generally held virtually on Microsoft Teams, with the exception of the 23 July 2024 hui which occurred during the site visit.

2.2.2 RFI#1, request for withholding CVA and Application suspension

34. On 20 March 2024 the Panel issued RFI#1 to assist the Panel to determine who should be invited to comment.

35. This request sought information regarding whether consents were required/held for the offset site works, whether consultation had been undertaken with the relevant councils, tangata whenua and affected parties, as well as details of adjacent property owners and occupiers for those areas. A response was requested within 5 working days (**wd**).

36. Also on 20 March 2024, the Panel received a request from the Applicant that the CVA provided by Whānau of Te Kia Ora Marae, Ngāti Rango, be withheld to avoid causing serious offence to tikanga. As the EPA had not yet made the CVA publicly available, the Panel determined to leave consideration of this issue until after it had received the Applicant's response to RFI#1, so it could deal with all matters at the same time.

37. On 26 March 2024, counsel for the Applicant filed a request seeking that the Application be suspended to enable the Applicant to fully respond to RFI#1 and advising that they would keep the Panel updated as to the likely duration of the suspension.

38. On 27 March 2024, the Panel issued Minute#1 accepting the suspension request.

39. On Friday 7 June 2024, the Applicant provided its response to RFI#1 and requested that processing of its Application resume with immediate effect. The Panel considered that

request and issued Minute#2 later that day confirming processing of the Application would resume on Monday 10 June 2024.

2.2.3 Unsolicited comments

40. On 14 June 2024, the EPA advised the Panel that it had received 15 comments from residents who, while not adjacent to the Project Site, live in the wider area. The EPA did not provide us with a copy of those comments at that time but indicated that if the Panel determined it wanted to extend the invitation to comment to these parties, the comments would be provided at that time.
41. At our hui on 17 June 2024, we determined to leave a decision on who to invite comments from until after we had undertaken our site visit.

2.2.4 RFI#2, request for extension to site visit and amendment of application

42. On 18 June 2024, the Panel issued RFI#2 regarding the following matters:
 - (a) the proposed new offsetting site located in Oldfield Road, Wellsford; and
 - (b) the grounds for withholding the CVA.
43. A response to this request was initially requested by 26 June 2024. However, following a request by the Applicant on 20 June 2024 for additional time, the Panel issued Minute#3 extending the deadline for response to 5 July 2024 and indicating that we intended to undertake a site visit following receipt of that information.
44. On 25 June 2024, the EPA received a request from a neighbour of the Application site requesting that we visit their property as part of our site visit. On our instructions, on 26 June 2024 the EPA sent a response to that neighbour indicating that we would not be visiting individual properties as part of our site visit, but that if following receipt of comments we considered we would be assisted by a further site visit, arrangements could be made at that time.
45. The Applicant provided its response to RFI#2 on 5 July 2024. This response included requested amendments to the Application as follows:
 - (a) replacement of the two previous proposed offset sites with two new offset sites;
 - (b) additional earthwork consents to enable offsetting activities to be carried out on the proposed new offset sites; and
 - (c) replacement of the AEE and some of its appendices with new versions as a result of the proposed change in offset sites.

2.2.5 Appointment of legal and planning advisors and decision re CVA request

46. On 10 July 2024, the Panel issued Minute#4 confirming the engagement of the following advisors:
 - (a) Matthew Allan of Brookfields to provide legal advice to the Panel on the scope for inclusion of the proposed offset sites (and associated consents); and

- (b) Mark Henry of Mitchell Daysh to provide planning advice and assist the Panel with the drafting of the decision report.

47. On 11 July 2024, the Panel issued Minute#5 setting out our decision to withhold publishing the CVA on the EPA website but reserving the ability for any person invited to comment to make an application for a copy of the CVA which we would then consider. As it turned out no such application was subsequently received.

2.2.6 Legal advice re scope

48. On 19 July 2024, the Panel received Mr Allan's legal opinion on scope which:
- (a) concluded that while the proposed Hellyer Road and Oldfield Road offset sites were within scope, the earthwork consent applications required to authorise the offsetting works were not; and
 - (b) suggested three options for addressing, comprising a condition precedent-based framework, suspension and amendment of the referral order, or suspension and securing of consents from Auckland Council (**Council**).
49. As noted in our Minute#6, we provided a copy of this opinion to the Applicant and invited any response by 26 July 2024.
50. On 26 July 2024, the Applicant provided a response from its legal advisors, Russell McVeagh, which:
- (a) did not comment further on the issue of scope for the earthworks consents;
 - (b) indicated that in the time available the only feasible option was for a condition precedent to address the need for earthworks consents; and
 - (c) provided some proposed wording for such a condition.
51. The Panel thanks Mr Allan and the Applicant's legal advisor for their advice on this matter. Our analysis of this advice and conclusions in relation to the issues addressed in the advice are set out in Part 3.

2.2.7 Site visit

52. The Panel conducted a site visit on 23 July 2024. We were accompanied by Mr Mark Henry the Panel's planning advisor, and Mr Alex Mickleson, Advisor – Fast Track Consents from the EPA for this Project.
53. We met representatives of the Applicant, Mr Alex Semenov and an on-site health and safety manager, at the site office who took us through a health and safety induction and indicated what parts of the Site were able to be accessed by vehicle and on foot. They also explained how the Oldfield Road offset site could be accessed. Neither representative accompanied us on our site visit.
54. As noted in our Minute#7 dated 26 July 2024, our site visit included viewing the Project Site as well as the surrounding area and the proposed Oldfield Road offset site.
55. We also noted in that Minute that we did not visit the Hellyer Road proposed offset site due to access not being available on that day.

56. We record our appreciation to the Applicant's representatives in facilitating access to the Site, and to Mr Mickleson for arranging and accompanying us on the Site visit. We confirm no discussion of the merits occurred while the Applicant representatives were present.

2.2.8 *Invitations to comment*

57. Minute#7 also recorded our decision in terms of those parties from whom comment would be invited.
58. By letters dated 26 July 2024 the Panel invited comments on the Project from those parties listed in cl.17(6) of Sch.6 and cl.7 of the Referral Order. The Panel also invited comments from the Rodney Local Board under cl.17(8) of Sch.6. Comments were required by 16 August 2024.
59. For completeness, we note that as the persons who provided unsolicited comments to the EPA (noted at section 2.2.3 above) were not within the list of parties invited to comment, we were not provided with a copy of their comments.

2.2.9 *RFI#3 and response*

60. On 30 July 2024, the Panel issued RFI#3 to the Applicant regarding the following matters:
- (a) the works to be undertaken on the offset sites; and
 - (b) the wording of the Applicant's proposed condition precedent.
61. A response to RFI#3 was received on 12 August 2024. That response indicated that the Applicant did not consider a sunset clause was required for the condition precedent, set out the areas where offset works may require consent, noted that the Applicant was awaiting confirmation from the Council as to whether consent was required, and indicated that if necessary, consent would be sought later this year.

2.2.10 *Ecology advisor appointed*

62. On 6 August 2024 the Panel issued Minute#8 noting that Wildland Consultants had been appointed to provide ecological advice to the Panel regarding the ecological effects of the Project and proposed offset measures.

2.2.11 *Comments received and Applicant response*

63. At the close of the comment period 13 parties had submitted comments including one comment filed by Berry Simons Environmental Law on behalf of multiple adjacent parties.
64. Collectively, the comments received raised matters in relation to:
- (a) discharges to air (primarily dust);
 - (b) generation of noise;
 - (c) traffic safety and roading issues, including the condition of the one-lane bridge on Pebble Brook Road;
 - (d) landscape, visual and rural character issues;
 - (e) groundwater;

- (f) erosion and sediment control;
 - (g) terrestrial and aquatic ecology and offsetting; and
 - (h) the s.104D assessment.
65. A number of the comments were supported by independent expert reports/statements. These comprised:
- (a) dust assessment by Pattle Delamore Partners Ltd (**PDP**);
 - (b) acoustic review by Bladon Bronka Acoustics Ltd;
 - (c) geotechnical review by PDP;
 - (d) bridge inspection report by Chris W Howell & Associates Ltd;
 - (e) groundwater gaps assessment by PDP;
 - (f) bore test report by Kiwi Welldrillers N.Z. Ltd;
 - (g) analysis certificate by Analytica Laboratories;
 - (h) landscape assessment by Brown NZ Ltd;
 - (i) ecology peer review by Boffa Miskell; and
 - (j) ecology review by Rural Design.
66. Attached as **Appendix 4** is a table which lists the persons from whom comments were received and a summary of their comments.
67. In accordance with cl.18(5), all comments received were sent to the Applicant for consideration with any response required within 5 wd (as per cl.19).
68. On 23 August 2024, the Applicant provided its responses to the comments received which comprised the following:
- (a) memorandum of counsel by Russell McVeagh;
 - (b) planning response from Barker & Associates Ltd;
 - (c) transport response from Commute Transportation Consultants;
 - (d) freshwater ecology response by BioResearches;
 - (e) terrestrial ecology response by BioResearches;
 - (f) greenhouse gas response by Air Matters;
 - (g) landscape and visual response from Helen Mellsop;
 - (h) air quality response by Air Matters;
 - (i) acoustic response by Hegley Acoustic Consultants;
 - (j) remediation response by Barker & Associates;

- (k) economic response by Market Economics Ltd;
- (l) geotechnical response by CMW Geosciences;
- (m) civil engineering response by LDE Engineering Consultants;
- (n) groundwater response by Williamson Water & Land Advisory;
- (o) pavement impact assessment by Hutchinson Consulting Engineers;
- (p) staging plans prepared by Barker & Associates;
- (q) quarry management plan prepared by the Applicant; and
- (r) updated proposed conditions of consent.

69. On 24 August 2024, one party subsequently withdrew their comment.¹⁷

70. On 26 August 2024, the Panel issued Minute#9 confirming that the matters in that comment would no longer be considered by the Panel.

2.2.12 Additional invited party

71. Also in Minute#9, the Panel confirmed it was inviting an additional party to comment on the Application and requiring any comments from that party to be received by 9 September 2024.

72. Later that same day (26 August 2024), and in response to the additional invitation to comment being issued, the Applicant requested that the EPA refrain from publishing its response to comments until after any comment had been received from that additional party.

73. On 30 August 2024, the Panel issued Minute#10 accepting the Applicant's request for natural justice reasons and confirming that the Panel would delay publishing the Applicant's response until after the additional party comment period had closed.

2.2.13 Hearing and extension of time for decision

74. Under cl.20 of Sch.6 there is no requirement for a panel to hold a hearing and no person has a right to be heard. However, a panel can hold a hearing if, in its discretion, it considers a hearing to be appropriate (cl.21).

75. It is noted that while one invited party expressed the wish to appear *if* a hearing was held, no person expressly requested a hearing, and no reasons were given in support of a hearing being held.

76. While the Panel is not required to give reasons,¹⁸ on 30 August 2024 the Panel issued Minute#10 confirming that a hearing would not be held and explaining that it considered it would not be assisted by a hearing, given the detailed comments and responses provided to date and its powers to request further information and comment.

77. Minute#10 also confirmed that the Panel had determined that due to the scale and nature of the proposal it was necessary to extend the timeframe for its decision for a further 25 wd.

¹⁷ The 7 August 2024 comment from Peter Chapman was withdrawn on 26 August 2024.

¹⁸ *Greenpeace Aotearoa Inc v Hiringa Energy Ltd* [2023] NZCA 672, at [211].

In particular, and in order to fully understand the scale and nature of the Application and its effects, the Panel (had at that time) made three further information requests¹⁹ and sought detailed ecological advice. It also provided an additional party with an opportunity to comment. Further time was required to allow the information arising from these processes to be considered by the Panel.

2.2.14 RFI#4

78. On 2 September 2024, the Panel issued RFI#4 requesting Auckland Council provide information regarding whether there is a hierarchy in the AUP and a more detailed assessment of the relevant AUP objectives and policies.
79. This information was provided to the Panel on 5 September 2024.

2.2.15 Reports from ecological advisor

80. On 6 September 2024, the Panel received three finalised reports from Wildlands regarding the ecological effects and offsets proposed for the Project. That advice comprised:²⁰
 - (a) a peer review report entitled “King’s Quarry Fast Track Application Ecology Review” (Report#7313), dated 4 September 2024;
 - (b) a brief report responding to matters raised by invited parties, entitled “King’s Quarry Fast Track Application Review of Additional Ecology Comments”; (Report#7313a), dated 4 September 2024; and
 - (c) a further brief report responding to Biosearches comments, entitled “King’s Quarry Fast Track Application Review of Biosearches’ Response to Ecology Comments”; (Report#7313b), dated 4 September 2024.
81. Those reports concluded that for a number of key areas further information was required before effects could be fully assessed.
82. Later that same day, the Panel issued Minute#11 providing the Applicant with a copy of the reports and inviting any comments on those reports by 13 September 2024.
83. On 13 September 2024, the Applicant provided a response comprising:
 - (a) a memorandum of counsel addressing (amongst other matters) the level of detail required in management plans;
 - (b) a terrestrial ecological response from Biosearches;
 - (c) a freshwater ecology response from Biosearches;
 - (d) a civil engineering response from LDE Engineering Consultants;
 - (e) a groundwater response from Williams Water & Land Advisory; and
 - (f) updated proposed conditions of consent.

¹⁹ Noting that a further two information requests were subsequently issued.

²⁰ Note while the dates within the reports referred to August, the file names confirmed these had been finalised on 4 September 2024.

84. The Panel thanks Wildlands and Biosearches as well as the ecological expert for the invited parties (Boffa Miskell) for their ecological advice on this matter.

2.2.16 RFI#5 and response

85. On 9 September 2024, the Panel issued RFI#5 requesting the Applicant provide a further response to:
- (a) the matters raised by Auckland Council in their response to RFI#4; and
 - (b) the applicable zone and overlay objectives and policies that refer only to avoiding, remedying or mitigating effects, but not to offsetting or compensating effects.
86. This information was provided to the Panel on 13 September 2024, and confirmed that the Applicant:
- (a) agreed with Auckland Council that there was no hierarchy in the AUP and all relevant objectives and policies must be assessed holistically;
 - (b) disagreed with the Council's assessment of some of the objectives and policies; but
 - (c) agreed with the Council's overall conclusion that the proposal was not contrary to the objectives and policies as a whole.

2.2.17 Conditions

87. We did not circulate or seek views on a draft set of conditions. This is because:
- (a) we reached a decision that there was insufficient information to determine:
 - (i) “what” some of the key ecological effects and related cultural effects were;
 - (ii) the scale of those effects;
 - (b) without that information it was not possible to assess “how” those effects (both in terms of nature and scale) could be appropriately managed (avoided, remedied, mitigated, compensated or offset) through conditions;
 - (c) there was insufficient time remaining in the FTA process to enable those gaps to be filled; and
 - (d) we considered it unnecessary and unreasonable to request the Applicant and other parties to incur further time and cost commenting on conditions when those comments could not fill the information gaps, and therefore could not affect the ultimate outcome – that being a decision to decline consent.

2.2.18 Consideration of information, comments and advice

88. The Panel confirms that in making its decision on this Application it has reviewed and considered all the information and comments provided by the Applicant, the feedback from persons invited to comment, and the advice provided by the Panel's advisors.
89. The Panel thanks Mark Henry for his assistance with the drafting of this decision report.

PART 3: LEGAL FRAMEWORK AND ISSUES

90. The FTA provides a consenting pathway for both listed and referred projects. This is a referred project.
91. The legal framework applying to decisions under the FTA was carefully described in the *Matawii* decision - the first decision issued under the FTA. While that decision was in respect of a listed project, it provides a useful overview of the FTA, and the Panel adopts (and does not repeat) the relevant aspects of that overview.²¹
92. Further, the legal framework applying specifically to referred projects has been described in several decisions. To avoid unnecessary repetition, we adopt the summaries set out in the *Waitohi Picton Ferry Precinct* and *Kōpū Marine Precinct* decisions.²²
93. These matters are addressed further in the subsections below. Following this, we also address the preliminary scope issue that arose regarding whether the proposed new offset sites and associated consents were able to be considered as part of this Application.

3.1 Consideration of consent applications

94. Clauses 31 and 32 of Sch.6 set out the matters to which a panel considering a referred project must or may have regard, and the matters a panel is entitled to disregard. In terms of these matters:
 - (a) cl.31(1) requires that a panel must, subject to the FTA's purpose and Part 2 of the RMA,²³ consider any actual and potential effects on the environment, any measures proposed/agreed to by the Applicant to ensure positive effects eventuate or address negative effects, any relevant provisions of RMA standards, policies, plans, iwi management plans, and any other matter a panel considers relevant. The Panel confirms it has considered all relevant effects (refer Part 5) as well as the provisions of all relevant planning documents (refer Part 6), and Part 2 of the RMA (refer Part 9).
 - (b) cl.31(3) requires a panel to consider any resource management matters in plans prepared by a customary marine title holder if the site is within the coastal marine area. The Site is not located within the coastal marine area and no such plans were drawn to our attention.
 - (c) cl.31(4) enables a panel to disregard an adverse effect of an activity if a national environmental standard or plan permits an activity with that effect. The Panel confirms it has not disregarded any adverse effects in terms of this discretion.
 - (d) cl.31(5)(a) prohibits a panel from considering the effects of trade competition. The Panel confirms that no trade competition effects were raised or considered.
 - (e) cl.31(5)(b) restricts a panel from granting resource consents which are contrary to certain provisions in the RMA, regulations made under the RMA, and provisions and conditions under the Marine and Coastal Area (Takutai Moana) Act 2011 (**MACA Act**). The only matter of relevance to this Application is s.107 of the RMA.

²¹ *Matawii* decision, at [1], [50]-[54], [66]-[70], [74], [108], [378]-[380], and [383].

²² Decision of Expert Consenting Panel concerning the *Waitohi Picton Ferry Precinct*, at [55]-[62]; and Decision of Expert Consenting Panel concerning the *Kōpū Marine Precinct*, Thames, 9 March 2022, at [39]-[49].

²³ A panel must however apply s.6 of the FTA in place of s.8 of the RMA (cl.31(2)).

Our assessment of the Application against the restrictions in s.107 is set out in Part 8 of this decision.

- (f) cl.31(5)(b)(i) prohibits a panel from considering the effects of an activity on any person who has given written approval to that activity provided they have not withdrawn that approval before the application is determined (cl.31(6)). No written approvals were provided as part of this Application, although as discussed in Part 4 below, both Te Kia Ora Marae and Ngāti Manuhiri were generally supportive of the Application provided certain measures were taken.
- (g) cl.31(7) enables a panel to grant consent for an activity regardless of what activity-type (controlled, restricted discretionary, discretionary or non-complying) the application was expressed to be for. Here there was no dispute that the overall activity status for the Application is non-complying. The Panel accepts that categorisation and has assessed the Application as such.
- (h) cl.31(8) provides a panel with a discretion to decline an application if it considers the information provided by an applicant is inadequate to determine it. Notwithstanding the updated AEE and its 36 appendices, and the Applicant's responses to the Panel's RFIs²⁴ and invited party comments; the Panel considers that the Applicant has not met the information requirement in the Referral Order²⁵ and cl.9 of Sch.6 of FTA. As a result, and for the reasons set out in detail in other parts of this decision we have determined we do not have sufficient information to determine the Application.
- (i) cl.31(10) requires a panel, subject to cl.5 of Sch.5, to comply with an obligation imposed on a local authority/other decision maker by a Treaty Settlement when making a decision. None of the four Treaty Settlements noted in Part 4 below impose obligations on decision makers for resource consents.
- (j) cl.31(12) requires a panel to decline an application if it is necessary to comply with s.6 FTA. For the reasons set out in Part 4 below the Panel consider the Application is consistent with the relevant Treaty Settlements and relevant Treaty principles.
- (k) cl.32 states that ss.104A to 104D, 105 to 107 and parts of s.138A of the RMA apply with all necessary modifications. In relation to these matters we note that:
 - (i) as the Application overall is a non-complying activity, both ss.104B and 104D of the RMA apply. Our section 104D assessment is set out in Part 7 below;
 - (ii) ss.105 and 107 are also applicable given the Application includes discharges associated with the quarry extension. Our assessment of these sections is set out in Part 8 below; and
 - (iii) s.138A is not applicable as the Application does not include any coastal permits.

²⁴ As is allowed under cl.37(9).

²⁵ Referral Order, cl.6 which required information about proposed offsetting and compensation measures to address adverse ecological effects (and was addressed in Appendices 16, 17, 31 and 32); and information about any discussions/agreements in relation to those offsetting measures (addressed by way of responses to RFI#1 and RFI#2).

3.2 Conditions

95. Clause 35 of Sch.6 confirms that a panel may grant a resource consent subject to such conditions as it considers appropriate, and that ss.108, 108A to 112, and 220 of the RMA apply (with any necessary modifications).
96. However, and as already noted, given the Panel has determined it has insufficient information to make a decision, issues regarding the appropriateness of conditions do not arise here.

3.3 Scope for inclusion of offset sites (and associated consents)

3.3.1 The issue

97. As noted above, we sought legal advice regarding whether the Applicant's proposed offset sites and associated consent applications were within scope. This is because we were concerned that the Referral Order did not mention the location of offset sites, new sites were now being proposed, and additional consents were required to authorise those works.

3.3.2 Legal advice

98. We initially sought a response from the Applicant on this scope issue as part of our RFI#2. The Applicant included a memorandum from its legal advisor, Russell McVeagh, as part of its response to RFI#2 which concluded that:²⁶

3. *The referral order for Kings Quarry contemplated stream reclamation, removal of vegetation in a significant ecological area, and terrestrial offsetting as potential activities, and required further information to be provided by the Applicant relating to proposed offsetting and compensation measures to address any adverse effects on ecological and freshwater values. Offsetting measures are therefore clearly within scope of the referral order, and were not limited as to location.*
4. *In our submission there is also scope to amend the offset proposal after the lodgement of the Application and to update the Application to include additional earthworks consents to respond to that proposal. In terms of the additional earthworks consents, accepting and assessing further consent applications after lodgement of the Application is consistent with the Panel's power to regulate its own procedures, and its duty to take all practicable steps to use efficient processes.*
5. *It is also in line with the purpose of the FTCA to urgently promote employment and economic recovery. This is consistent with the approach of previous panels, for example that of the Expert Consenting Panel for the Papakura to Pukekōhe (sic) Rail Electrification Project...*
6. *We are also aware that in other fast-track projects, such as the Queenstown Arterials Project and the Brickfields Scott Road development, the applicants introduced updated applications as result of comments received after those applications had been lodged and circulated for comment from invited parties. The updated applications were considered and processed by the relevant expert consenting panel.²*
7. *The Application has also not yet been circulated to invited parties for comment. Accordingly, there is no prejudice against any party as a result of this amendment. Invited parties would be able to comment on all aspects of the Application, including the offset proposal.*

²⁶ Applicant Response to RFI#2, Attachment 1 – Memorandum of Counsel, 5 July 2024.

99. Given the heavy reliance by the Applicant on offsetting to address the ecological effects of the Project, we considered it necessary to obtain independent legal advice on this issue. Brookfields provided the following advice in response to our questions:²⁷

Question 1

- (a) *The Applicant's proposed offsetting measures are a matter that the Panel must "have regard to" under clause 31(1)(b) to Schedule 6 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA). In that context, and for the further reasons given in the Analysis section below, we consider there is scope for the Panel to consider the two new offset sites.*
- (b) *However, while we agree with counsel for the Applicant that offsetting measures are envisaged by the Referral Order and not limited as to location for the purposes of the clause 31(1)(b) assessment, we do not consider there is scope in the referral order for the Panel to grant the consents that would be required for earthworks at the offsetting sites. In this regard, we consider that the Applicant's legal response conflates the process for seeking the resource consents that are required for the project at the project site on the one hand, and the process for seeking any resource consents that are required at the offset sites on the other.*
- (c) *In our opinion, the Panel's jurisdiction to grant resource consents required for the project is fundamentally constrained by clause 3 (scope of the project) and clause 5 (description of the project site). The project site is clearly defined in clause 5 of the Referral Order. The Oldfield Road offset site is located in Wellsford, 26km north of Kings Quarry, and the Hellyer Road offset site is located 1.5km north of Kings Quarry. Neither site is identified in the Referral Order as potentially being the subject of an application for resource consent. We consider the Panel's jurisdiction to grant consents is constrained accordingly.*
- (d) *While we consider the jurisdictional issue identified above arising from the Referral Order makes the position clear, for completeness, we briefly touch on RMA case law below relating to post-lodgement modification of resource consent applications, and the addition of new areas of land to an application. We simply observe that the proposed amendment of the application to seek consents for new sites some distance away from the project site would also be problematic in terms of that case law.*

Question 2

- (e) *In very broad terms, a key issue flowing from our view that the Applicant cannot seek consents for the offset sites as part of the current application relates to the level of certainty around the delivery and effectiveness of the revised offsetting package. When undertaking its assessment of the proposed offsets under clause 31(1)(b) of Schedule 6 of the FTCA, the Panel would need to consider these issues carefully.*
- (f) *While offsetting measures are within the scope of the Referral Order and are not limited as to location for the purposes of the clause 31(1)(b) assessment, the onus is on the Applicant to satisfy the Panel on these matters (including e.g. that the necessary consents and agreements / covenants are in place, or could be secured, to enable the Applicant to deliver the offsetting measures).*
- (g) *We have set out some broad options in paragraph 24 below to address any concerns around delivery / implementation of the proposed offsetting package.*

100. In terms of the options available to address concerns regarding the proposed offsetting package, Brookfields advised that:²⁸

- (a) *The Applicant could amend the application and the draft consent conditions to incorporate a condition precedent-based framework to ensure that the physical project*

²⁷ Brookfields, Kings Quarry Fast-Track Proposal – Advice on Jurisdiction/Scope, 19 July 2024, at [3].

²⁸ Brookfields, Kings Quarry Fast-Track Proposal – Advice on Jurisdiction/Scope, 19 July 2024, at [24].

works (or certain elements) do not commence until such time as the consents and any third-party agreements / covenants are in place for the offset sites. Under this option, the Applicant would need to be comfortable that it would be able to secure the required consents and third-party agreements / covenants before the lapse date. We do not comment on the detailed drafting of any potential conditions for the purposes of this advice, but note that offset conditions could address a range of matters such as:

- *finalisation of offset and compensation plans;*
- *completion of planting / works at the offset sites prior to the initiation of defined work at the project site; and*
- *registration of appropriate covenants on the records of title for the offset sites prior to the initiation of defined work at the project site.*

(b) The ability to amend a referral order is contemplated by section 27 of the FTCA. The Applicant could request a suspension of the processing of the application by the Panel pursuant to clause 23, Schedule 6 to the FTCA, and submit an application for an amendment to the Referral Order pursuant to section 27(4) of the FTCA to enable further resource consents to be sought for the offset sites.

(c) The Applicant could request a suspension of the processing of the application by the Panel pursuant to clause 23, Schedule 6 to the FTCA to give the Applicant time to secure the necessary consents and third-party agreements / covenants before the Panel makes its decision on the Kings Quarry application.

101. We provided the Applicant with an opportunity to respond to the conclusions reached by Brookfields. Russell McVeagh did not provide any direct response to the conclusion reached by Brookfields that the additional resource consents were out of scope. However, they did comment on the options as follows:²⁹

Given the time available under the fast-track process, the Applicant considers options (b) and (c) proposed in the Legal Opinion are not practicable. However, the Applicant considers the option to incorporate a condition precedent to address the need for earthworks consents on the offset sites (option (a)) provides a pragmatic and reasonable option that gives the Panel certainty the necessary consents would be in place before works commence.

102. Russell McVeagh also suggested some wording of a condition precedent for our consideration:³⁰

Prior to any stream reclamation associated with the quarry expansion, the consent holder must obtain the necessary earthworks consents and landowner approvals required to facilitate the required stream enhancement planting at the offset site(s).

3.3.3 Finding

103. We accept that the offset sites are within the scope of the Application as the Referral Order did not limit the application as to sites.

104. In terms of the additional consents required to authorise earthworks on the offset sites, and while the Applicant argued (at least initially) that the additional consents were also within scope, we are not persuaded that is the case. Instead, we agree with Brookfields that such consents are outside the scope of the Application for the reasons they gave (and which we reproduced above).

²⁹ Russell McVeagh, Memorandum of Counsel, 26 July 2024, at [4].

³⁰ Russell McVeagh, Memorandum of Counsel, 26 July 2024, at [10].

105. In terms of the options proposed by Brookfields, we accept the Applicant's assessment that the only practicable option to address this issue if we were minded to grant consent (which for reasons we explain later we are not), is a condition precedent. In particular we are cognisant that at the time this issue arose the Applicant had already used all but two days of its maximum suspension period, and had not prepared or lodged an application for consent with the Council. This meant that the timing of any decision on those separate consents was likely to come after we were required to release our decision (even if, as subsequently occurred the decision deadline was extended by the maximum amount).
106. In summary, and based on the above, we have concluded that while the Applicant's proposed offset sites are included in our assessment of this Application, any associated earthwork (or other) consents required for those sites are not. We discuss the offset sites further in Part 5 below where we undertake an evaluation of the effects.

PART 4: CULTURAL CONSIDERATIONS

4.1 Statutory framework

107. Section 6 of the FTA requires all persons performing functions and exercising powers to act in a manner that is consistent with the principles of the Treaty and Treaty settlements.
108. Every consent application is required to include:³¹
- (a) information about any Treaty settlements that apply in the project area (cl.9(1)(i)) including identification of any relevant provisions and a summary of any redress that affects the natural and physical resources relevant to the project area;
 - (b) an assessment against any relevant provisions of a planning document recognised by a relevant iwi authority and lodged with a local authority (cls.9(1)(h) and 9(2)(g));
 - (c) a cultural impact assessment or a statement of reasons by the relevant iwi authority for not providing an assessment (cl.9(5));
 - (d) an assessment against any resource management matters set out in a planning document prepared by a customary marine title group (cl.9(6)(b));
 - (e) an assessment of any effects of the activity on the exercise of a protected customary right (cl.10(1)(h));
 - (f) any cultural effects on the people in the neighbourhood and if relevant the wider community (cl.11(a)); and
 - (g) an assessment of the activity's effect on natural and physical resources having cultural value for present or future generations (cl.11(d)).
109. We assess each of these requirements in turn in the next section, starting with the principles of the Treaty.

³¹ Clause references are to clauses in Schedule 6 of the FTA.

4.2 Assessment of cultural considerations

4.2.1 Principles of the Treaty

110. We are mindful that there is no set or statutorily defined list of Treaty principles that are applicable to applications under the FTA. However, and as noted in the *Matawii* decision:

[109] While the FTCA contains no list of principles of the Treaty of Waitangi, case law indicates that these may include principles of active protection, good faith consultation and communication, and a spirit of partnership...

111. The AEE did not include a detailed assessment of the Project's consistency with the principles of the Treaty. However, it stated in section 12.2:

With regard to the Treaty of Waitangi (Section 8 of the RMA, acknowledging the requirement under section 6 of the FTCA to act in a manner consistent with the principles of the Treaty of Waitangi), the Proposal would not generate any adverse effects on any sites of cultural significance or importance. The Site is not subject to any Treaty Settlement, Treaty claims or any customary title, and there are no wahi tapu on the Site. The relevant iwi authorities have been consulted on the Project as outlined in Section 9.0 above and consultation would continue on an ongoing basis, providing their participation and opportunities for input outside the resource consent process. Conditions of consent are recommended which provide for cultural monitoring and accidental discovery protocols. Overall, no objection to the proposal has been advised, and the appropriate methods set out in this AEE, and subject to ongoing consultation with iwi, there would be no adverse effects which might impact resources of value of iwi.

4.2.1.1 Evaluation and findings

112. We note that neither Ngāti Manuhiri's letter of support,³² nor Te Kia Ora Marae's CVA³³ which were provided with the Application, commented on the consistency of the proposal with Treaty principles.
113. An invitation to comment was issued to several tangata whenua groups, including Ngāti Manuhiri and Te Rūnanga o Ngāti Whātua.³⁴ No comments were subsequently received.
114. No other invited party directly commented on this issue.
115. In terms of Treaty principles, we note that:
- (a) prior to the Application being lodged the Applicant engaged with tangata whenua, incorporated measures intended to address effects on waterways and important species, and proposed cultural monitoring so effects on cultural values could be managed.
 - (b) following the change to the offset sites, and the issue of our RFI#2, the Applicant confirmed it had had further discussions with Ngāti Manuhiri and Te Kia Ora Marae who had raised no concerns regarding the proposed replanting and stream restoration works.³⁵
116. Therefore we find that in principle at least there is no inconsistency with Treaty of Waitangi principles of good faith consultation and communication and partnership.

³² AEE, Appendix 30.

³³ AEE, Appendix 25.

³⁴ The full list of groups comprised those identified in the Referral Order and the MfE s.17 Report.

³⁵ Applicant Response to RFI#2, Barker & Associates Letter of 5 July 2024, p.2.

117. In terms of the principle of active protection, while the cultural monitoring is positive, given the gaps in the ecological information, we are unable to reach a concluded view on whether the Project is consistent with the principle of active protection.

4.2.2 Treaty settlements

118. The Section 17 Report prepared by the Ministry for the Environment (**MfE**) identified the four Treaty Settlement Acts relating to the Site as:³⁶
- (a) Ngāti Whātua o Kaipara Claims Settlement Act 2013;
 - (b) Te Kawerau ā Maki Claims Settlement Act 2015;
 - (c) Ngāi Tai ki Tāmaki Claims Settlement Act 2018; and
 - (d) Te Ākitai Waiohū Deed of Settlement 2021.
119. The AEE notes that there are no Treaty Settlement Statutory Acknowledgement Areas identified on Auckland Council's GeoMaps for the Site or any adjacent properties. The AEE also notes that all other iwi settlement Acts and Deeds have been reviewed and there are no other statutory acknowledgement areas, cultural redress properties or deeds of recognition that affect the Site.
120. The CVA from Te Kia Ora Marae notes the statutory acknowledgement in favour of Te Rite o Kawharu me Atuanui Maunga and puts it into the wider context of the broader Kaipara rohe, especially that of Ngāti Rango, the principal hapū of the marae.

4.2.2.1 Evaluation and findings

121. While the information contained within the AEE is brief, it aligns with the Treaty Settlement information set out in the Section 17 Report provided by MfE.
122. Given there are no statutory acknowledgement areas, cultural redress properties or deeds of recognition that affect the Site, and given the absence of any contrary view being put forward by the Treaty Settlement entities, we accept that the information is sufficient for our purposes.

4.2.3 Planning document recognised by a relevant iwi authority

123. The *Matawii* decision helpfully explained that a planning document could include both iwi and hapū planning documents, provided they have been recognised by the relevant Iwi Authority:

[99] An iwi/hapū management plan is any planning document recognised by an Iwi Authority (the authority that represents an iwi and that is recognised by that iwi as having authority to do so). Iwi/hapū management plans may be formal planning documents similar to council policy documents, or they may be a statement of iwi policies in a less formal and detailed memo or report. Plans may be developed by iwi, hapū or whānau and provide a statement on the position of the tangata whenua on a range of issues so that these could be heard and considered by councils and other stakeholders.

³⁶ Ministry for the Environment, Application 2023.148 Kings Quarry Project, Report Prepared in Accordance with Section 17 Covid-19 (Fast-track Consenting) Act 2020, 15 May 2023 (**Section 17 Report**).

124. The AEE identifies Te Kawerau ā Maki Resource Management Statement (1995) as the only relevant Iwi Management Plan lodged with Council. Regarding that Resource Management Statement, the AEE:
- (a) notes Te Kawerau ā Maki's role as kaitiaki;
 - (b) sets out the policy provisions within that Resource Management Statement considered relevant to the proposal;
 - (c) indicates a commitment to ongoing engagement; and
 - (d) concludes that through a commitment to an Accidental Discovery Protocol and undertaking of cultural monitoring and cultural awareness training, the proposal could be carried out in a manner that is consistent with the outcomes sought by Te Kawerau ā Maki Resource Management Statement.
125. There was no comment received from other invited submitters regarding the Resource Management Statement, and no other relevant Iwi Management Plan was brought to our attention.

4.2.3.1 Evaluation and findings

126. We are satisfied that the Applicant has assessed the provisions of Te Kawerau ā Maki's Resource Management Statement, and that the conditions it proposed (which include an Accidental Discovery Protocol and cultural monitoring) are consistent with the outcomes sought in that document.
127. For completeness we also note that Te Kia Ora Marae's CVA similarly sought and were supportive of accidental discovery protocols and cultural monitoring.³⁷

4.2.4 Cultural values assessment

128. As already noted, the Applicant provided a CVA prepared by Te Kia Ora Marae on behalf of Ngāti Rango, a hapū of Ngāti Whātua o Kaipara, as well as a letter of support from Ngāti Manuhiri (refer Appendices 25 and 30 respectively).
129. Te Kia Ora Marae's CVA, which we agreed to withhold from publishing publicly, summarises cultural values and key impacts and provides recommendations in terms of impacts. It recognises the tension between important cultural values such as manaakitanga and environmental protection, and the effects of the proposal both positive and negative.
130. The Applicant provided its response to the matters raised in the CVA in Appendix 26 of the Application. In summary, the Applicant agreed to:
- (a) include a condition requiring cultural induction prior to activities commencing onsite;
 - (b) enable cultural monitoring on the Site;
 - (c) provide for the involvement of Marae Kaitiaki in the relevant ecological management plans;

³⁷ AEE, Appendix 25.

- (d) commit to the efficient use of resources on site;
- (e) provide for an ongoing relationship with Ngāti Whātua Whānau;
- (f) eco-sourcing of plants;
- (g) protect Kauri through development of a Kauri Dieback Management Plan; and
- (h) weed and pest animal management at the offset sites.

131. The only other party who provided comment on (Māori) cultural effects was Dr Katharine Jones. Dr Jones, who has whakapapa to Ngā Wairiki in Whanganui but is a near neighbour of the Site, expressed concern about the scope of consultation with local iwi (particularly given the modifications that had occurred since local iwi were first approached), and the impact of the proposal on the Waitoki stream and waterbodies.

4.2.4.1 Evaluation and findings

132. We acknowledge that Te Ao Māori takes a contextual and holistic approach to a landscape and the environment. This considers not only a place but may also include kōrero tuku iho, the spiritual associations, whakapapa and relationships.
133. When evaluating the cultural effects, we are cognisant of the importance of applying a Māori worldview/lens. What is taken must be replaced so that balance can be achieved. The gaps in the ecological information has meant that we are not able to fully evaluate ecological effects, and therefore the flow-on related cultural effects.
134. While the positions originally advised by the two tangata whenua groups were generally supportive, we are conscious that the proposal evolved and further material was provided by invited parties and the Panel's ecological advisors following those comments being received. While it may be that the cultural effects, or at least the majority of them could have been addressed by conditions, due to our findings in relation to the ecological information gaps, we are not able to reach a final view on those matters.
135. In summary, while the proposed conditions would go some way to addressing cultural effects, we are unable to finally determine that issue, given the interconnection with the ecological effects, for which we have found an information deficit.

4.2.5 Customary marine title

136. The Site is a considerable distance inland from the coastal marine area and there are no customary marine titles which affect the Site. Accordingly, an assessment of planning documents prepared by a customary marine title group under s.85 of MACA is not required.

4.2.6 Protected customary rights

137. Given the Site's location and the absence of any protected customary rights applying to or near the Site, an assessment of the effects of the Project on the exercise of a protected customary right is not required.

4.2.7 Cultural effects on people in neighbourhood / wider community

138. Any relevant cultural effects on tangata whenua have already been addressed in the sections above.
139. Effects on people in the neighbourhood are addressed in the next section where we evaluate the different effects raised in the Application and submissions.

4.2.8 Effects on natural and physical resources with cultural value

140. The CVA identified the natural and physical resources deemed to be of cultural value to tangata whenua and the effects the Project would have on them. We have addressed those matters above and rely on that assessment for this criterion.

4.3 Summary of findings

141. In summary, while we consider that the proposal is consistent with most of the relevant Treaty and cultural considerations, we are not able to finally determine the consistency (or otherwise) with the principal of active protection, the cultural effects or the measures appropriate to address those effects given the inter-relationship with ecological effects.

PART 5: EVALUATION OF EFFECTS

142. This section contains our evaluation of the effects of the Project (other than cultural impacts which were addressed in Part 4 above).
143. At the outset we note that the Panel has taken an 'exceptions approach' to its evaluation of effects and where matters are not specifically expressed, there is a deemed acceptance of what is in the Application, AEE and supporting documents. This evaluation of effects focuses on contested matters where comments have been identified and responses provided by the Applicant to comments.
144. The effects of the Application are evaluated in the following order:
- (a) positive effects;
 - (b) ecological effects;
 - (c) landscape, natural character and visual amenity;
 - (d) transportation;
 - (e) air quality;
 - (f) noise and vibration;
 - (g) hydrology and groundwater
 - (h) land disturbance;
 - (i) archaeology; and
 - (j) other matters.

5.1 Positive effects

145. In support of the positive effects that would arise from the proposal, the Application includes:
- (a) an Economic Impact Report prepared by Market Economics Consulting;³⁸ and
 - (b) a Greenhouse Gas Emissions Report prepared by Air Matters.³⁹

146. We address these in turn below.

Economic benefits

147. The Economic Impact Report outlines positive effects arising from the proposal that include:
- (a) advanced access to aggregate materials within the Auckland Region, reducing the reliance on the importation of aggregate;
 - (b) the contribution that a local supply of aggregate would make to a more stable aggregate price, assisting in the economic viability and feasibility of future projects;
 - (c) increasing the local supply of decorative pebble to the Auckland market (100,000 t/year or 40% of the Auckland market), and reducing the need to import from other regions;
 - (d) the delivery of additional aggregate capacity approximately three years earlier to the Auckland market (than a standard consenting pathway would provide);
 - (e) a contribution to Auckland's economy of an estimated \$214.2 million (undiscounted) with \$84.6 million of this from direct impacts; and
 - (f) expected (annual) savings in transport-related costs of \$19.8m to \$23.3m as compared to sourcing aggregate from elsewhere.
148. In turn, the AEE places the Application in the context of the FTA and describes the proposal as an enabler for construction and development activities across the Auckland region by increasing access to a local source of aggregate. The AEE also describes the generation of local employment benefits (21.5 direct employees) throughout the lifetime of the quarry.

Greenhouse gas emissions

149. The Greenhouse Gas Emissions Report notes the savings in bulk transport that would occur through increased supply of locally sourced aggregate, and the implications of that on reducing New Zealand's transport-related greenhouse gas emissions.
150. Based on the emissions savings associated with displacement of transport from more distant supplies, the Greenhouse Gas Emissions Report estimates a reduction of 12,551 tonnes of CO₂ equivalent greenhouse gases could be achieved annually, representing about 0.35% of New Zealand's total heavy vehicle CO₂ equivalent greenhouse gas emissions.

³⁸ AEE, Appendix 18.

³⁹ AEE, Appendix 20.

5.1.1 Comments received

151. Comments on economic matters were received from:
- (a) K Jones & C Wedd; and
 - (b) Berry Simons on behalf of neighbours.
152. General matters raised in the comments included:
- (a) the quantification of ‘savings’ in transport-related greenhouse gas emissions relative to the carbon released by destroying 10 ha of Significant Ecological Area (**SEA**);
 - (b) whether emissions ‘savings’ would accrue from the displacement of 100,000 tonnes of aggregate (decorative pebble) from other sources; and
 - (c) the lack of consideration of the market contribution from the nearby Flat Top Quarry.

5.1.2 Applicant response

Economics

153. A memorandum dated 21 August 2024 was prepared on behalf of the Applicant by Market Economics in response to comments received on economic matters. That memorandum:
- (a) confirmed the estimation that Kings Quarry would produce 100,000 tonnes of decorative pebble for the Auckland market;
 - (b) noted production from Kings quarry would displace pebble from the Manawatū as a supply point, being a round trip of 930km; and
 - (c) acknowledged that Flat Top Quarry was omitted from the relevant appendix to the original report, but nonetheless was fully considered in the original assessment of the scale of the Auckland aggregate market.
154. Market Economics concluded that nothing raised in submissions altered their opinion that further development of Kings Quarry would result in economic benefits for the Auckland Region.

Greenhouse gas emissions

155. A further memorandum dated 22 August 2024 was prepared on behalf of the Applicant by Air Matters in response to comments received relating to air quality matters. That memorandum noted:
- (a) greenhouse gas emission savings arising from the quarry being able to supply the Auckland decorative pebble market remained correct;
 - (b) the exclusion of carbon released during the removal of vegetation from their assessment of transport-related greenhouse gas emissions remained appropriate as that carbon would be offset by the ecological mitigation planting within a 10-year period; and

- (c) notwithstanding that exclusion, they had however calculated and provided information about the release and sequestration of greenhouse gas emissions from the vegetation removal and ecological mitigation using the emission factors provided by MfE.

5.1.3 Evaluation and findings

- 156. We accept that had the proposal obtained consent it would have resulted in positive economic effects and made a positive contribution to the reduction of greenhouse gas emissions. While submitters questioned the scale and accuracy of these benefits, no expert evidence was called in support of their concerns. Moreover, we are satisfied that the concerns raised by submitters were adequately responded to by the Applicant in their responses (as summarised above).
- 157. Accordingly, we accept the Applicant's evidence regarding the nature and scale of the positive effects associated with the proposal.

5.2 Ecological effects

- 158. The Application included an Ecological Impact Assessment (**EIA**) prepared by Bioresearches⁴⁰ that identifies the ecological effects associated with the proposed quarry development as comprising:

- (a) effects on terrestrial ecological values; and
- (b) effects on freshwater ecological values.

- 159. We address these in turn below.

Terrestrial ecological values

- 160. Almost all of the indigenous vegetation within the Project area is subject to an SEA overlay⁴¹ with the vegetation described as a mixture of regenerating broadleaved species scrub/forest and kānuka scrub/forest. These habitats were identified as generally of high ecological value and were identified as supporting a range of Threatened or At Risk (**TAR**) plant species and an assemblage of native fauna that includes:
 - (a) a wide range of Not Threatened invertebrate species (low ecological value);
 - (b) the confirmed presence of two At Risk lizard species, and the potential presence of an additional three TAR species (moderate ecological value);
 - (c) the confirmed presence of Threatened - Nationally Critical long-tailed bats (high ecological value); and
 - (d) 17 Not Threatened bird species, and the potential for additional TAR species to be present (moderate ecological value).
- 161. No native frogs were identified within the Site and the Applicant's ecology advisor Bioresearches considered they were unlikely to be present.

⁴⁰ AEE, Appendix 15

⁴¹ AUP SEA_T_6545.

162. As described in the AEE, the potential effects on terrestrial ecological values include the removal of habitats for terrestrial fauna. In this case, the Project would include the complete loss of approximately 29.16 ha of habitat,⁴² equating to approximately 13.8% of the habitat within the SEA. There would also be a reduction in the connectivity across the SEA resulting in edge effects for the remaining vegetation around the perimeter of the Site.
163. In terms of habitat loss, the AEE considers the level of effect as high given the loss of foraging, roosting and community habitats that may be used by bats or localised high densities of native lizards resulting in either direct mortality, injury and/or displacement of fauna. Further, populations or large portions of populations of TAR species present within the Site would be lost.
164. As described in the EIA and in accordance with EIANZ⁴³ Guidelines, any level of effect of moderate or above requires effects management. Accordingly, the EIA sets out how the effects management hierarchy⁴⁴ is to be applied in order to ensure a net gain in terrestrial ecological values could be achieved. In particular, the EIA describes:
- (a) the development and implementation of a series of management protocols such as capture and relocation, propagation, translocation, habitat enhancement and pre-vegetation removal surveys to avoid nesting birds and roosting bats;
 - (b) the proposed development and implementation of a series of management plans including:
 - (i) Ecological Management Plan;
 - (ii) Biodiversity Offset and Compensation Plan;
 - (iii) Biodiversity Offset Planting Plan;
 - (iv) Biodiversity Offset Enhancement Plan;
 - (c) modelling that determines that a total of 101.8 ha of revegetation and a total of 116.67 hectares of habitat enhancement through pest control is required to achieve net gain of biodiversity outcomes;⁴⁵
 - (d) pest and weed control across all restoration and enhancement areas (quarry and offset site); and
 - (e) protection in perpetuity of all restoration and enhancement areas by way of legal covenant.

Freshwater ecological values

165. In terms of freshwater environments, the EIA identified 13 streams within the Site, comprising 12 un-named intermittent streams and one un-named permanent stream, all tributaries of the Waitoki Stream. The intermittent streams were assessed as having low to moderate ecological value and the permanent stream was assessed as having high ecological value.

⁴² AEE, Section 6.2.3, p.26.

⁴³ EIANZ meaning the Environmental Institute of Australia and New Zealand.

⁴⁴ As per the National Policy Statement for Indigenous Biodiversity Effects Management Hierarchy.

⁴⁵ Biodiversity Compensation Model (Baber et al, 2021a, 2021b).

166. No wetlands were identified within the Site.
167. The AEE confirms that the Project would remove 1,609m of natural intermittent stream, 238m of modified intermittent stream and 280m of permanent stream, resulting in the loss of 2,127 linear metres of stream length and 962m² of reclaimed aquatic habitat.⁴⁶
168. The AEE proposes:
- (a) the development of a Native Freshwater Fish Relocation Plan to minimise adverse effects on freshwater fauna;
 - (b) the preparation of an Erosion and Sediment Control Plan to minimise the potential release of sediments into the receiving environment; and
 - (c) the removal of a weir within the Waitoki Stream to restore the connectivity of approximately 3.4 km of stream extent.
169. However, the AEE also records that the loss of 2,127 linear metres of moderate to high ecological value streams is considered to have a 'moderate' to 'very high' level of effect due to the permanent and irreversible loss of freshwater habitat, with significant residual adverse effects requiring biodiversity offset or compensation.
170. The EIA describes a biodiversity offset plan to assess the level of offset actions required to ensure a no net loss, and preferably a net gain of freshwater habitat and stream extent. The proposed offset involves a total of 2,893 linear metres of stream restoration through riparian planting.

5.2.1 Comments received

Comments on terrestrial ecology

171. Comments on the Application in relation to terrestrial ecology were received from:
- (a) Auckland Council;
 - (b) Environmental Defence Society;
 - (c) Forest & Bird;
 - (d) the Rodney Local Board;
 - (e) K Jones & C Wedd;
 - (f) the Auckland Swiss Club;
 - (g) M&M Coombridge;
 - (h) T&E Keane; and
 - (i) Berry Simons on behalf of neighbours.
172. Comments by Auckland Council included:

⁴⁶ AEE Section 10.2.2 p.45.

- (a) an expectation that sensitivity and uncertainty analyses be provided with offset modelling; and
- (b) advice from Mr Simon Chapman (Consultant Ecologist) that:
 - (i) an overall net gain in biodiversity would be achieved through mitigation, remediation, and offsetting, subject to ongoing management and conditions of consent;
 - (ii) the Applicant's proposed measures have been formulated according to the correct methodology; and
 - (iii) the location of offsetting is within the same ecological district as the Application site and is considered to be appropriate.

173. General matters raised in the other comments included:

- (a) impacts on the ecology of the SEA and edge effects;
- (b) the requirement to achieve biodiversity net gain rather than no net loss;⁴⁷
- (c) adequacy or otherwise of information to properly assess all ecological values;
- (d) adequacy or otherwise of the management plans; and
- (e) conditions.

174. Technical evidence prepared by Boffa Miskell was presented by Berry Simons on behalf of neighbours. This evidence expressed:

- (a) a level of general agreement with the description of ecological values and assessment methodologies in the EIA and supporting documents prepared in support of the Application;
- (b) concern about the magnitude and level of effects assessed;
- (c) concern about the adequacy or otherwise of the mitigation and offset plans; and
- (d) uncertainty regarding consistency with the National Policy Statement for Indigenous Biodiversity 2023 (**NPS-IB**) (particularly section 1.7).

175. Technical evidence was also prepared by Rural Design on behalf of K Jones & C Wedd. This evidence expressed:

- (a) a level of general agreement with the assessment methodologies in the EIA and supporting documents prepared in support of the Application; and
- (b) disagreement with the forest ecosystem classification for 'Area A'.

Comments on aquatic ecology

176. Comments on the Application in relation to aquatic ecology were received from:

- (a) Environmental Defence Society;

⁴⁷ NPS-IB Clause 3.10(3)&(4), Appendix 3.

- (b) the Rodney Local Board;
- (c) the Auckland Swiss Club;
- (d) M&M Coombridge;
- (e) T&E Keane; and
- (f) Berry Simons on behalf of neighbours.

177. General matters raised in the comments included:

- (a) loss of aquatic habitat and adequacy of the proposed offset relative to the loss of stream extent;
- (b) effects of sedimentation; and
- (c) water quality monitoring.

178. Technical evidence prepared by Boffa Miskell was presented by Berry Simons on behalf of neighbours. This evidence raised the following matters:

- (a) a lack of assessment of the ecological effects of the loss of streams on downstream sections from reduced flows and potential for increased concentration of contaminants with less dilution;
- (b) the lack of mitigation or offsetting proposed for those matters;
- (c) a need to take into account the double 'loss' of stream extent when considering modified waterways and assessment of values against the original stream values;
- (d) the principle of 'additionality' in relation to offsetting and compensation as opposed to no net loss; and
- (e) uncertainty regarding consistency with the National Policy Statement for Freshwater Management 2020 (**NPS-FM**).

5.2.2 Applicant's response to comments

Terrestrial ecology

179. A memorandum dated 23 August 2024 was prepared on behalf of the Applicant by Bioresearches in response to comments received on matters of terrestrial ecology.

180. In response to comments from Auckland Council, the memorandum noted that a dedicated sensitivity analysis separate of the Biodiversity Offset Accounting Model (**BOAM**) was not undertaken but noted that the BOAM itself adjusts for uncertainty of success regarding the proposed offset actions.

181. In response to comments from the Rodney Local Board, the memorandum noted:

- (a) the intended biodiversity offsetting would act to provide an overall biodiversity gain within the Rodney Ecological District and Rodney Local Board Area;

- (b) as shown by the offset and compensation modelling, along with additional planting and enhancement actions, a net biodiversity gain would be achieved at 20 years; and
- (c) management of bats would be achieved by way of a Bat Management Plan.

182. In response to comments from the Environmental Defence Society, the memorandum noted:

- (a) that in Bioresarches view, sufficient survey effort had been undertaken to understand herpetofauna values and potential frog habitat;
- (b) that the bat monitoring undertaken was sufficiently representative of habitat types;
- (c) that a Kauri Dieback Management Plan is identified as a condition of consent;
- (d) that edge effects and fragmentation associated with the proposed quarry pit and fill area have been assessed;
- (e) agreement that a net gain outcome must be demonstrated, as per the NPS-IB;
- (f) that enhancement of an area at 360 Pebble Brook Road is still proposed;
- (g) that potential effects from blasting on avifauna, bats and other fauna would be intermittent and temporary;
- (h) that specific management plans for threatened plants, vegetation management, riparian restoration planting, and weed management Plan are not required as these are incorporated into other documents;
- (i) the early stages of natural succession occurring within the areas to be enhanced at the Oldfield Road offset site;
- (j) the need for pest management at the Oldfield Road offset site in order to achieve adequate environmental gains;
- (k) a condition requiring monitoring and management, including the management of pests, at the Oldfield Road offset site for the life of the consent; and
- (l) further detail in relation to the proposed management of edge effects and edge management, including pest control.

183. In response to comments from the Boffa Miskell, the memorandum provided the following additional comments:

- (a) that indigenous biodiversity would be maintained in accordance with the NPS-IB through:

strategic restoration of indigenous forest habitats within the Ecological District (hectarage increase in ecosystem type and habitat availability) where those environments are contiguous with the Project area (306 Pebble Brook Road) or the habitats of like-for-like fauna.

provid[ing a] buffer to existing indigenous habitats where they are physically or functionally absent.

- (b) the time of day that 5-minute bird counts were undertaken;

- (c) that sufficient SEA habitat would be retained to support the North-West Wildlink corridor;
- (d) a response to concerns about assessments of the magnitude and level of effects and offset calculations; and
- (e) consistency with the AUP and NPS-IB.

184. In response to comments from the Auckland Swiss Club, the memorandum noted:

- (a) potential impacts on terrestrial and freshwater ecology and measures to mitigate, remediate and offset them have been addressed; and
- (b) the lack of kiwi within the Kings Quarry property.

185. In response to separate comments from Rural Design and Forest & Bird, the memorandum noted:

- (a) that considering the scale of the Project area, the forest type was mapped as a whole as 'late stage early successional forest' rather than as a mosaic of early stage and late stage vegetation;
- (b) the classification applied to the habitats adequately captures the ecological values present, the habitats are accurately described, and the decision to map these habitats at a broader scale does not impact the overall ecological value assigned to the habitat; and
- (c) if a future survey of the Pit A area confirmed habitat values not captured in the initial assessments of the site, then updated offsetting calculations could be applied to account for the loss of any such habitat or values.

Freshwater ecology

186. A memorandum dated 23 August 2024 was prepared on behalf of the Applicant by Bioresearches in response to comments received on matters of freshwater ecology.

187. In response to comments from the Environmental Defence Society, the memorandum reiterated Bioresearches opinion that:

- (a) the Stream Ecological Valuation (**SEV**) and Environmental Compensation Ratio methodologies, as recommended by Auckland Council, appropriately account for both values and extent (length) of a stream; and
- (b) the proposed freshwater offset plan appropriately offsets the loss of stream value and extent as a result of the Stage 2 expansion.

188. In response to comments from Boffa Miskell, the memorandum:

- (a) noted the assessment of streams and the SEV scores are considered to be applicable in the absence of slips, as no lengths of stream directly impacted by slips were used in the SEV assessment reaches;
- (b) updated the effects on the loss of streams on the following:
 - (i) downstream sections of the stream;

- (ii) the reduction in stream flows and volume downstream;
 - (iii) potential for concentration of contaminants with less dilution downstream;
and
 - (iv) effects of climate change.
- (c) reassessed the potential value of the streams following best practice guidelines, resulting in a minor uplift in SEV values from 0.5 to 0.52, which have been implemented within the Environmental Compensation Ratio calculations;
 - (d) considered that the concept of 'additionality' was not relevant to the proposal;
 - (e) noted that with 200 Hawking Road no longer being utilised for freshwater stream offset, the Oldfield Road and Hellyer Road sites contain sufficient stream length to offset stream loss per the revised Environmental Compensation Ratio calculations. This new length is available and achievable between the two sites; and
 - (f) the offset package proposed from stream loss for Kings Quarry Stage 2 expansion is appropriate and correctly applies the principles of aquatic offsetting.

189. In response to comments from M&M Coombridge, the memorandum notes:

- (a) the loss of stream habitat would be offset through the restoration of 3km of stream extent; and
- (b) to minimise the potential for excess fine sediment entering the catchment, an Erosion and Sediment Control Plan has been prepared and would be implemented by an appropriately qualified professional using the industry best practice.

190. In response to comments from the Rodney Local Board, the memorandum notes:

- (a) excess fine sediment entering the catchment, would be minimised by the Erosion and Sediment Control Plan, prepared to the industry best practice standards and
- (b) agreement that testing of the Waitoki Stream should be carried out regularly to ensure good water quality is maintained during the life of the quarry.

5.2.3 Wildlands review of the application

191. As noted in Minute#8, the Panel appointed Wildland Consultants to provide ecological advice regarding the ecological effects of the Project and proposed offset measures.

192. In a report dated 22 August 2024,⁴⁸ Wildlands provided a review of the ecological aspects of the Application and relevant supporting information. That review responded to:

- (a) the approach and methodology applied to the EIA;
- (b) the proposed biodiversity offset and compensation plan for terrestrial ecology values;
- (c) the proposed biodiversity offset and compensation plan for aquatic ecology values;

⁴⁸ Kings Quarry Fast Track Application Ecology Review, Contract Report No.7313, August 2024.

- (d) the planting and enhancement plan for residual effects;
- (e) the management plan for edge effects;
- (f) the fauna management plans; and
- (g) conditions.

193. We summarise Wildlands review of these matters in turn below.

Ecological Impact Assessment

194. In relation to the EIA, Wildlands observed:

- (a) the EIA generally followed the Ecological Impact Assessment Guidelines for use in New Zealand, and considered this an appropriate framework;
- (b) that mana whenua were consulted during the development of the EIA, consistent with the expectations of the NPS-IB;
- (c) that clarification should be provided regarding the nature and extent of surveys undertaken in relation to both aquatic and terrestrial flora and fauna habitat and species;
- (d) some differences in opinion with the ecological values assessed for some of the species considered, suggesting the values were understated for invertebrates, bats, native fish and (some of the) freshwater streams; and
- (e) differences in opinion with the assessments of ecological effects, suggesting the effects were understated for the terrestrial ecology and fauna and for freshwater ecology.

195. In relation to the proposed management and mitigation plans for terrestrial biodiversity, Wildlands observed:

- (a) the EIA generally follows the effects management hierarchy;
- (b) the various management plans that have been identified were generally appropriate to mitigate effects of the quarry expansion;
- (c) additional managements plans should have been included, notably for birds, invertebrates and frogs; and
- (d) options for offsetting and compensation should have been included within the lizard management plan.

196. In relation to the proposed management, mitigation and offset plan for aquatic biodiversity, Wildlands observed:

- (a) the EIA generally follows the effects management hierarchy; and
- (b) measures to mitigate and compensate relate to:
 - (i) loss of stream extent;
 - (ii) mortality or injury to indigenous fish; and

- (iii) erosion and sedimentation.

Biodiversity offset and compensation plan for terrestrial ecology values

197. In relation to the biodiversity offset and compensation plan for terrestrial ecology values, Wildlands observed:
- (a) the BOAM used is considered appropriate;
 - (b) a number of issues with some of the biodiversity attributes selected (notably plant species richness and relative abundance of indigenous birds) and their associated 'benchmark' and 'measure after offset' values have been identified;
 - (c) the Biodiversity Compensation Model (**BCM**) has generally been applied correctly with reasonable and largely conservative impact risk and uncertainty scores and habitat valuations; and
 - (d) the BCM assumes that feral browsers (deer, goats, pigs) would be removed to ensure permanent benefits are achieved, yet the relevant management plans only provide for pest control to occur over the first 20 years.

Biodiversity offset and compensation plan for freshwater ecology values

198. In relation to the biodiversity offset and compensation plan for freshwater ecology values, Wildlands observed:
- (a) the principles of aquatic offsetting as described in the NPS-FM have been followed appropriately;
 - (b) the chosen offset streams are appropriate for offsetting the loss of ecological functions at the impact streams;
 - (c) some differences in opinion with the application of the SEV methodology, suggesting the starting scores for the ecological values of the impacted streams are too low;
 - (d) if accepted that the SEV scores are low, then the environmental compensation ratio would need to be recalculated; and
 - (e) the removal of the weir on the Waitoki Stream to compensate for the loss of stream extent would have positive benefits but is not seen as adequate for the complete loss of 2,137m of headwater stream.

Residual Effects Planting and Enhancement Plan

199. In relation to the Residual Effects Planting and Enhancement Plan, Wildlands observed:
- (a) some confusion and inconsistency across multiple documents regarding exactly where and how much offset planting is proposed, and how this is divided up between the terrestrial offsetting and freshwater offsetting (riparian planting) requirements;
 - (b) some impracticality with the proposed weed control and planting lists;

- (c) the consideration that needed to be given to fencing for the exclusion of feral browsers; and
- (d) pest animal monitoring methods should be clearly presented in the Residual Effects Planting and Enhancement Plan.

Edge Effect Management Plan

200. In relation to the Edge Effect Management Plan, Wildlands observed:

- (a) some impracticality with the proposed weed control and planting lists;
- (b) consideration should be given to fencing for the exclusion of feral browsers; and
- (c) pest animal monitoring methods should be clearly presented in the Edge Effect Management Plan.

Fauna Management Plans

201. In relation to the various Fauna Management Plans, Wildlands observed:

- (a) the Lizard Management Plan addresses lizard salvage, and for this it generally follows best practice. The Plan does not address offsetting or compensation for the loss of lizard habitat and this remains a significant residual effect;
- (b) the Bat Management Plan includes tree assessment and removal protocols and provisions for the use of artificial roosts that are inconsistent with the relevant Department of Conservation guidelines and should be amended; and
- (c) the fish trapping and relocation methodologies in the Fish Management Plan are considered appropriate.

Conditions

202. In relation to the draft Conditions, Wildlands observed:

- (a) the draft Conditions do not include many of the details contained within the offset and compensation plans and the fauna management plans, with potential for these details to get lost or changed; and
- (b) outcomes intended in the offset and compensation plans and the fauna management plans should be specified in consent conditions to ensure that the ecological effects of the quarry expansion are effectively mitigated or offset, and the ecological outcomes are achieved.

5.2.4 Wildlands review of comments

203. In a memorandum dated August 2024, Wildlands provided a review of the comments received on ecological aspects from the following parties:

- (a) Boffa Miskell, on behalf of neighbours;
- (b) Environmental Defence Society;
- (c) Rural Design, on behalf of K Jones & C Wedd; and

(d) Forest & Bird.

204. Wildlands noted that these comments had been read prior to submitting their previous report⁴⁹ and therefore some issues raised in the comments (including those of Rural Design and Forest & Bird) had already been addressed in that report.
205. In relation to remaining comments on terrestrial ecology from Boffa Miskell, Wildlands:
- (a) agreed that a further survey for frogs should be undertaken in areas less affected by siltation in order to fully describe and assess the existing environment;
 - (b) agreed that clarity around the time of day of bird counts should be provided;
 - (c) did not consider that the proposal would have a significant effect on connectivity within the North-West Wildlink ecological corridor; and
 - (d) agreed that the magnitude and level of effects needs to be clear and realistic, and that the consequent response (mitigation, offset and/or compensation) needs to be appropriate for the effect.
206. In relation to remaining comments on freshwater ecology from Boffa Miskell, Wildlands:
- (a) agreed that downstream effects from the loss of headwater streams in the Project area have not been fully addressed in the EIA or the Biodiversity Offsetting and Compensation Plan for Freshwater.
207. In relation to remaining comments on terrestrial ecology from the Environmental Defence Society, Wildlands noted:
- (a) that maps of the surveyed reaches or the level of effort applied in the search for frogs and lizards would help to assess whether the surveys were adequate;
 - (b) monitoring of potential bat roosts is required prior to felling of vegetation, in accordance with the Department of Conservation's Bat Roost Protocols;
 - (c) it is not yet clear if a net gain in ecological values has been achieved due to issues with the BOAM;
 - (d) that an assessment of potential effects of blasting on indigenous fauna should be provided; and
 - (e) the possible presence of Pacific gecko has been adequately accounted for in the ecological value assessment.
208. In relation to remaining comments on freshwater ecology from the Environmental Defence Society, Wildlands:
- (a) noted that the stream enhancement calculations have been correctly applied and are based on streambed areas rather than stream length, noting that the offset streams are wider than the impact streams; and
 - (b) agreed that consent conditions do not currently mention the requirement for a freshwater offset and compensation plan.

⁴⁹ Kings Quarry fast Track Application Ecology Review, Contract Report No.7313, August 2024.

5.2.5 **Wildlands review of Applicant's response to comments**

209. In a memorandum dated September 2024,⁵⁰ Wildlands provided a review of the Applicant's response to comments on ecological matters.

Freshwater ecology

210. In relation to the Applicant's response to comments on freshwater ecology by the Environmental Defence Society, the memorandum:

- (a) confirmed Wildlands' view that the relevant offsetting calculations were done correctly by the Applicant; and
- (b) reiterated that the extent of offset would need to be recalculated if changes that Wildlands has recommended in relation to the SEV scores are accepted.

211. In relation to the Applicant's response to comments on freshwater ecology by Boffa Miskell, the memorandum noted:

- (a) the further information that had been provided in response to matters raised by Boffa Miskell regarding potential reductions in stream flows;
- (b) the identified loss of approximately 3.5% of the contributing catchment to the Waitoki Stream and corresponding loss of approximately 3.5% of the flows. These losses in stream flow were considered minor but more than negligible and potentially requiring mitigation;
- (c) with added reference to the Erosion and Sediment Control Report prepared by Land and Development Engineering (discussed later in this Decision), the on-going uncertainty being expressed in relation to the efficacy of the erosion and sediment controls to manage the effects of sediment discharges on downstream reaches;
- (d) that the extent of offset still needs to be recalculated based on recommended changes to the SEV scores; and
- (e) that the Panel should satisfy itself that the requirements of the NPS-FM have been met in relation to the loss of river extent and values.

212. In relation to the Applicant's response to comments on freshwater ecology by the Rodney Local Board and M&M Coombridge, the memorandum noted that the Panel should still satisfy itself that:

- (a) the proposed erosion and sediment controls would adequately reduce the amount of sediment entering the Waitoki Stream such that residual effects are less than minor; and
- (b) the conditions of consent adequately provide for the prevention of contamination of the Waitoki Stream.

Terrestrial ecology

213. In relation to the Applicant's response to comments on terrestrial ecology by the Rodney Local Board and in particular the management of bats, the memorandum referenced

⁵⁰ King's Quarry Fast Track Application: Review of Bioreserches' Response to Ecology Comments, Report 7131b, September 2024.

limitations with the draft Bat Management Plan proffered by the Applicant as had been noted in earlier reviews by Wildlands.

214. In relation to the Applicant response to comments on terrestrial ecology by the Environmental Defence Society, the memorandum noted:
- (a) the limitations that remained with the draft Bat Management Plan proffered by the Applicant as had been noted in earlier reviews by Wildlands;
 - (b) the inadequacy of the response to concerns about blasting and noise on avifauna;
 - (c) some remaining uncertainty whether the various ecological responses (e.g. planting, pest control) are appropriately or specifically captured across the different management plans; and
 - (d) some remaining uncertainty surrounding the delivery and outcomes of the enhancement actions proposed in relation to pest animal and plant control.
215. In relation to the Applicant's response to comments on terrestrial ecology by Boffa Miskell, the memorandum reiterated Wildlands difference in opinion with the ecological values assessed for some of the species considered.
216. In relation to the Applicant's response to comments on terrestrial ecology by Rural Design, the memorandum further questioned the adequacy of the mapping of forest in the Stage 2 development area and potential implications for the proposed offsetting and compensation.

5.2.6 Applicant's response to Wildlands review

217. The Applicant provided a response to the matters raised in the reviews by Wildlands of:
- (a) the ecological aspects of the application documents;⁵¹ and
 - (b) the Applicant's responses to ecological matters raised in comments.⁵²
218. The Applicant's response comprised the following memoranda:
- (a) *"Response to Wildlands review of Kings Quarry – Stage 2 fast track consent application (terrestrial ecology)"* dated 13 September 2024 prepared by Bioresearches;
 - (b) *"Kings Quarry Stage 2 fast track – response to comments: Wildlands"* dated 13 September 2024 prepared by Bioresearches;
 - (c) *"Kings Quarry Wildlands review of Bioresearches response to comments for quarry expansion"* dated 13 September 2024 prepared by Land Development Engineering; and
 - (d) *"Kings Quarry – response to Wildlands review comments regarding stream mitigation"* dated 13 September 2024 prepared by Williamson Water and Land Advisory.
219. We address these in turn below.

⁵¹ Kings Quarry Fast Track Application Ecology Review, Contract Report No.7313, August 2024.

⁵² King's Quarry Fast Track Application: Review of Bioresearches' Response to Ecology Comments, Report 7131b, September 2024.

Terrestrial ecology

220. In response to matters raised in relation in Wildlands' review of terrestrial ecology matters in the application documents, the Bioreserches memorandum:
- (a) recorded the general agreement reached regarding the appropriateness of the databases relied on for desk top reviews of terrestrial ecology;
 - (b) clarified the extent of the bird surveys undertaken and disagreed with Wildlands' findings that the wider surveys of terrestrial fauna were inadequate;
 - (c) maintained that the classification applied to terrestrial habitats adequately captured the ecological values present and provided an accurate description of the habitats;
 - (d) maintained that the ecological value of the Stage 2 area for invertebrates is low and agreed with the need for further surveys for frogs;
 - (e) noted Wildlands' agreement with the ecological values assessed for lizards and birds, and provided clarification on the ecological value assessed for bats;
 - (f) disagreed that the northeastern sector of the SEA would become disconnected from the southeastern portion;
 - (g) stated a preference for their own assessments of the magnitude of effects on frogs and invertebrates, and provided clarification of the level of effects on bats and bat habitat;
 - (h) considered the impacts as temporary rather than permanent as advanced by Wildlands;
 - (i) disagreed with Wildlands' view that the magnitude and level of effects have not been adequately assessed for the loss proposed to indigenous fauna;
 - (j) indicated that effects on nesting birds would be addressed in an updated ecological management plan which would be required to be provided to Council for certification;
 - (k) disagreed with the need for specific management plans for invertebrates and frogs, or that residual adverse effects on lizards had not been sufficiently addressed;
 - (l) responded to queries regarding two of the biodiversity attributes used in the BOAM models and the appropriateness of one of the selected benchmark sites;
 - (m) noted Wildlands' conclusions on review of the BCM that it had been applied *"correctly with reasonable and largely conservative impact risk and uncertainty scores and habitat valuations"*;
 - (n) concluded that the BCM demonstrated an overall net gain outcome;
 - (o) identified that the level of detail would be increased in the following plans as they are finalised and submitted to Council for certification:
 - (i) the Residual Effects Planting and Enhancement Plan, particularly in relation to pest animal management, targets and monitoring;

- (ii) the Edge Effects Management Plan; and
- (iii) the Fauna Management Plans.

221. In response to matters raised in Wildlands' review of the Applicant's responses to terrestrial ecological matters raised in comments, the Bioresarches memorandum noted:

- (a) Auckland Council's certification of management plans would improve the level of detail within the Bat Management Plan;
- (b) there is a level of uncertainty in determining the effects of blasting and noise on avifauna and other fauna, but any such disturbance is considered temporary;
- (c) Auckland Council's certification of management plans would improve the level of detail where necessary within the various flora and fauna enhancement and management plans;
- (d) management plan outcomes were tagged to the life of the consent;
- (e) they preferred their own assessments of the magnitude of effects on frogs which were considered temporary (as opposed to permanent as advanced by Wildlands);
- (f) the scale utilised to map the Project area (particularly Pit A) was considered appropriate, and did not result in habitat values being discounted; and
- (g) the results of a further survey of the vegetation types within the proposed Pit A location would be used to adjust the offsetting calculations, if necessary.

Aquatic ecology

222. In response to matters raised in relation in Wildlands' review of aquatic ecology matters in the application documents, the Bioresarches memorandum:

- (a) restated their opinion that streams 1-12 were to be assessed as "intermittent", and that the streams used in the SEV calculations were sufficiently representative to be used for that purpose;
- (b) disagreed with Wildlands' assessment of aquatic ecological values and noted that regardless, accepting an alternate level of ecological value would not impact determination of the overall level of effects or the application of the effects management hierarchy proposed in the stream loss assessments;
- (c) considered that the implementation of appropriate erosion and sediment controls would sufficiently mitigate the effects of sedimentation;
- (d) disagreed that there was insufficient detail in relation to riparian planting at the enhancement sites;
- (e) disagreed with adjusted SEV scores provided by Wildlands, but have accepted them on the basis that using the altered SEV scores and values did not significantly change the quantum of stream offset required;
- (f) noted Wildlands agreement that the principles of the NPS-FM offset have been appropriately followed, and there is adequate offset for the loss of 2,137 metres of headwater stream; and

- (g) noted that the removal of the weir on Waitoki Stream was not intended to offset the loss of stream extent, rather is to be viewed as an additional ecological benefit.

223. In response to matters raised in Wildlands' review of the Applicant's responses to aquatic ecological matters raised in comments, the Bioresarches memorandum noted:

- (a) that revised SEV scores have been accepted to expedite the Application;
- (b) in relation to Wildlands' response to comments by Boffa Miskell that:
- (c) reductions in stream flow and volume and responses to climate change effects are addressed elsewhere (see below response to the memorandum of Williamson Water and Land Advisory);
- (d) the overall character and ecological integrity of the Waitoki Stream would not be altered in regard to minor contaminant loading;
- (e) the environmental compensation ratio calculations were reviewed and are considered accurate; and
- (f) the streams have been appropriately offset at the proposed restoration sites and the requirements of the NPS-FM have been met.

224. In response to matters raised in Wildlands' review of the Applicant's responses to aquatic ecological matters raised in comments, the Land Development Engineering memorandum noted that:

- (a) it is intended to minimise the adverse effects of sedimentation on the Waitoki Stream by implementing the controls in line with GD05 guidelines;
- (b) runoff would be collected in the sediment ponds and monitored for traces of any contaminants; and
- (c) if contaminants were found in quantities "*larger than allowable*" they would be managed "*via appropriate methods*" prior to discharge.

225. In response to matters raised in Wildlands' review of the Applicant's responses to aquatic ecological matters raised in comments, the Williamson Water and Land Advisory memorandum noted that:

- (a) matters of stream diversions were outside of the scope of their report;
- (b) the dewatering from the quarry is within the allocation limits set by the AUP, therefore the minor reductions in recharge do not need to be compensated for; and
- (c) any stream flow depletion effect that may occur on the Waitoki Stream due to reduced baseflow (i.e. groundwater discharge into the stream) is accounted for in the groundwater take consent.

5.2.7 Evaluation and findings

226. As will be clear from the above detailed summary, ecological effects were a key area of concern for the Panel and for persons providing comment on the Application. As the revised AEE noted, if consented the Project would result in "*permanent, complete loss of all existing*

*freshwater and terrestrial habitat within the Site.*⁵³ This comprised some 29.16 ha of SEA terrestrial habitat and 2,127 lineal metres of stream. Given the scale of the proposed loss, the conflicting expert evidence we received on ecological matters, and the time limitations (both inherent in the FTA and arising due to the Applicant having used all but two of its suspension days), reaching a resolution on ecological matters has not been easy.

227. In the end, the Panel asked itself the following questions:

- (a) have the affected ecological values and habitat been adequately described;
- (b) have the ecological effects been adequately assessed; and
- (c) is there sufficient certainty that the effects could be appropriately avoided, remedied, mitigated, offset or compensated.

228. We address and make specific findings in relation to each of these questions in turn below.

Description of ecological values and habitat

229. In relation to the description of ecological values and habitat, we note that while there was agreement amongst the ecological experts that the descriptive elements in the EIA had generally followed the EIANZ Guidelines differences remained in relation to:

- (a) the adequacy of surveys to fully understand herpetofauna values and potential frog and bat habitat;
- (b) the forest ecosystem classification for 'Area A';
- (c) the adequacy of surveys to understand fish species present; and
- (d) whether there was sufficient evidence to support the designation of stream sites as intermittent as opposed to permanent.

230. Given these differences and the lack of time available to resolve these differences (such as through surveys being repeated or further surveys being undertaken), we were not satisfied that we had a sufficient evidential basis to support the Applicant's categorisation of the ecological values and habitat in disputed areas.

231. Accordingly, where there is a difference in opinion as to the categorisation, we have taken a conservative approach, and adopted the (higher) categorisation proposed by Wildlands. This has meant in summary that we have found as follows:

- (a) the VS2 and VS5 terrestrial habitats across the Site have high ecological value;
- (b) further assessment is required to determine the ecological value of the terrestrial habitat in Area A;
- (c) the overall ecological value for terrestrial invertebrates is moderate;
- (d) further surveys are required to confirm whether Hochstetters frogs are present on the Site;
- (e) the Site has high ecological value for lizards;

⁵³ Revised AEE, 6 July 2024, Section 10.2, p.41.

- (f) the Site has moderate ecological value for birds;
- (g) the ecological value of the Site for long-tailed bats is very high and further information/surveys complying with recommended guidelines would be required to better understand their use of the Site;
- (h) the ecological value of the fish community is high, and further surveys complying with recommended guidelines would be required to ensure that all relevant fish species are identified;
- (i) streams in the southern and northern system have high ecological value;
- (j) streams within the central system are of low ecological value;
- (k) permanent stream 13 is of high ecological value;
- (l) there is insufficient evidence to finally determine the classification of other streams as intermittent; and
- (m) there are no natural wetlands present.

232. We note that the deficiencies in the surveys also had implications in terms of our ability to assess effects and measures to address those effects which we discuss in the following sections.

Assessment of effects

233. In relation to the assessment of effects on terrestrial and aquatic ecology, we note that while there was agreement amongst the ecological experts that, in general, the Applicant had followed the EIANZ Guidelines, differences remained in relation to the potential scale of certain ecological effects (largely as a result of differing views of ecological values), and whether these could be appropriately addressed.
234. As above, given these differences and the lack of time available to resolve these differences, we were not satisfied that we had a sufficient evidential basis to support the Applicant's classification of the scale of ecological effects in disputed areas.
235. Accordingly, where there is a difference in opinion as to the scale of effects, we have taken a conservative approach, and adopted the (higher) classification as assessed by Wildlands. In particular, we have found that:
- (a) the proposal will result in very significant adverse edge/connectivity effects in the north-eastern portion of the SEA as it would effectively result in an almost complete disconnection of that sector of the SEA;
 - (b) the magnitude of effects for terrestrial fauna have not been adequately assessed as the habitat and species losses do not adequately account for maturity of habitat, or the timescale and duration of effect, and no assessment had been undertaken of the effects of blasting on indigenous fauna. The magnitude of effects should therefore be considered high to very high;
 - (c) the level of effect on freshwater ecology will be high due to the presence of long-fin eels and because the quarry effectively results in a permanent loss of habitat for this species;

- (d) effects of sedimentation will be high given the ecological value of onsite streams and downstream waters (is low to high) and the magnitude of effects of these streams is high;

Ability to address effects

236. While there was a measure of agreement between the ecological experts that overall the proposal would result in some significant ecological effects, there remained uncertainty and/or disagreement as to the availability or effectiveness of measures intended to address those effects. In particular:

- (a) the information gaps meant there was uncertainty as to the scale of effects and therefore the scale of mitigation or offset required to address those effects both aquatically and terrestrially, and including:
 - (i) fresh water ecological issues:
 1. disagreement as to resultant Waitoki Stream flow characteristics and volumes;
 2. extent and effects of suspended sediment and downstream sedimentation;
 3. the extent of adverse effects resulting from the permanent removal of 2,137m of headwater stream length in light of removal of an existing weir, and the sufficiency of the weir's removal in this regard;
 4. the overall quantum of offset calculated;
 - (ii) terrestrial ecological issues:
 1. sufficiency of bat monitoring and associated management;
 2. uncertainty as to what revegetation will occur by way of natural regeneration versus planted species;
 3. sufficiency of pest and weed management across the life of the consent and whether all options are realistically workable (notably a suggestion that using 1080 may be a plausible option); and
 4. sufficiency of overall habitat surveys.
- (b) there was a heavy reliance by the Applicant on management plans to address ecological effects, however:
 - (i) we were only provided with drafts of some (7 out of 13) of the management plans proposed to address ecological effects;⁵⁴
 - (ii) of the management plans we were provided with, some lacked details (such as the relevant offset, enhancement and planting plan) and had clear gaps (such as the omission of offsetting or compensation for the loss

⁵⁴ We received copies of draft management plans for biodiversity offset planting, biodiversity offset enhancement, lizard, bat, fish, edge effects and residual effects planting and enhancement plan. We were not provided with a copy of the draft Kauri Dieback Management Plan, Ecological Management Plan, Streamworks Management Plan, Chemical Treatment Management Plan, or the Pest and Weed Control Management Plans.

of lizard habitat), some were not in line with recommended best practice guidelines (such as DOC's Bat roost protocol), and some were based on ecological values which required revision;

- (c) there were a number of areas where management plans were not proposed, but were recommended by Wildlands, in order to better address effects including birds, invertebrates and frogs;
- (d) there was a mismatch between conditions of consent and the proposed management plans in some cases;
- (e) there were instances where management plans were proposed to address effects when the scale of those effects had not yet been adequately quantified. An example of this was Pit A, where the Applicant suggested that further survey work could be undertaken post the grant of consent to determine the ecological value of that area, and the offset model updated to address the effect;⁵⁵ and
- (f) for areas where further work/monitoring was required to establish baseline effects, and therefore the amount of offset required, it was also not clear whether the existing offset sites would be able to cater for any increase required.

237. While we acknowledge that management plans can be an appropriate tool to manage the effects of large scale infrastructure projects, we are also mindful of the limits of such plans and recognise that:⁵⁶

- (a) parameters and objectives must be set in conditions (not left to a future date to be set by the plans);
- (b) there must be evidence that the parameters and objectives are attainable;
- (c) certification is not a panacea for unlawful delegation of environmental decision-making; and
- (d) ultimately a management plan is not an appropriate means to continue undertaking the fundamental assessment of what magnitude of adverse effects will result and what magnitude of offsetting or compensation is appropriate or acceptable. This would leave the decision maker with an inappropriate level of uncertainty as to exactly what outcomes and effects they were consenting.

238. We are satisfied that in addressing the above concerns at [236(a)], additional field work would be required and that this analysis was necessary as part of our first-instance decision, not via subordinate delegation via management plan conditions. This proved pivotal in the ultimate decision we have reached, because once the realistic time and process to address that was understood it became starkly apparent that the remaining time available to determine the application was plainly insufficient to accommodate that.

239. Here, given the critical nature of the ecological effects to the consentability of this proposal, we were surprised that more work had not been done to properly establish the ecological values, so that the effectiveness of management measures in addressing effects (including an appropriate type and extent of offsetting or compensation) could be fully assessed,

⁵⁵ Bioresearches Memorandum from Chris Wedding, Response to Wildlands Review, 13 September 2024, section 3.4, p.6.

⁵⁶ *Remediation (NZ) Ltd v Taranaki Regional Council* [2024] NZEnvC 213.

appropriate parameters included in conditions, and more fulsome clear management plans provided.

240. As noted above, while we requested and received some further information, there simply was not enough time available for the remaining necessary field work and surveys (which we record would also likely need to be provided to commenters for further input where it resulted in materially new information) to be undertaken/repeated. This is a result of both the statutory timeframes in the FTA process and the Applicant having used up all but two of its suspension days early in the process changing its offset sites.
241. Further, and while it is not determinative of our findings on ecological matters, we note some discomfort with the approach to offset sites, given consents for those sites did not form part of this proposal. While, as noted earlier, we accept that a condition-precedent approach could potentially provide a remedy, in that the Applicant would not be able to exercise the consent until any consents required for the offset sites had been obtained, we are mindful of the purpose of the FTA and the need for projects to be 'shovel-ready'. Accordingly, while we see some inconsistency between such a condition and the purpose of the FTA, we have no need to make a specific finding on that, given our findings on ecological matters.
242. In summary, after carefully reviewing all of the evidence and information, we have concluded that there were a number of key gaps in the ecological information provided to us which meant we were not able to determine the scale of effects on certain important flora and fauna, the parameters and management plans were not sufficiently clear, and therefore we were unable to have confidence that the measures proposed would be appropriate to address those effects. This also meant that to the extent that cultural effects related to and incorporated ecological effects, we were similarly unable to determine those matters.

5.3 Landscape, natural character and visual amenity

243. The AEE places the proposal in the context of the planning framework provided by the AUP with particular reference to the underlying zoning as Special Purpose – Quarry and suggests that mineral extraction activities are therefore “*clearly contemplated*” at the Site. The AEE also notes that the existing environment is already in a process of change and transition with the commencement of the Stage 1 consented works at the quarry.
244. The AEE records that:
- (a) the Site is not located within any of the Outstanding Natural Feature or Character overlays of the AUP, and it is not identified as a High Natural Character site either;
 - (b) the recently formed accessway to the Site is subject to the Outstanding Natural Landscape (**ONL**) overlay but notes that no further works are proposed in this area as part of this Project;
 - (c) almost the entire Kings Property landholding is subject to an SEA overlay; and
 - (d) the landscape comprises forested hill country with a mixture of rural living, rural industrial uses and an operating quarry.

245. The Application included a Landscape and Visual Assessment (**LVA**) prepared by Helen Mellsop Landscape Architects (**Mellsop**).⁵⁷ The Mellsop LVA provides the following conclusions:⁵⁸

The Proposal would substantially and permanently alter the project area in a way that is anticipated by the AUP Quarry zoning. The mineral extraction works would have a relatively confined visual catchment, with closer views being limited to Pebble Brook and Haruru roads and adjoining properties. Adverse visual effects would be moderate in extent from part of Haruru Road and an adjoining property for the first 15 years, but would otherwise be very low to low-moderate in extent from other vantage points and in other time periods. Remediation planting of overburden fill and quarry benches would effectively mitigate adverse visual effects as it matures.

Expansion of quarrying over a 45-year period would inevitably have adverse effects on the valued physical, associative and perceptual attributes of the wider landscape, but these would be low-moderate in extent. The naturalness of the landscape would be largely restored by proposed remediation planting and off-setting, and rural character and amenity would not be affected outside the Pebble Brook Road Quarry Buffer Area and a confined area on Haruru Road. While the landform of the distinctive ridge within the site would be modified, a lower vegetated ridgeline would be created and the summit of Te Rite-a-Kawharu would be unaffected.

Overall there would be no significant adverse effects on visual and landscape values.

5.3.1 Comments received

246. Comments on landscape and visual effects were received from:

- (a) K Jones & C Wedd;
- (b) M&M Coombridge;
- (c) the Rodney Local Board; and
- (d) Berry Simons, on behalf of neighbours.

247. General matters raised in the comments included:

- (a) lack of assessment of effects of the proposal on an ONL;⁵⁹
- (b) adequacy or otherwise of the assessment of effects arising from the overburden dump site;
- (c) the evaluation of effects described in the Applicant's LVA;
- (d) effects on views of the SEA; and
- (e) adequacy of the mitigation proposed.

248. Technical evidence prepared by Brown NZ was presented by K Jones & C Wedd and by Berry Simons on behalf of neighbours. Reviewing the Applicant's LVA, Brown NZ noted general agreement with the descriptions of:

- (a) the existing environment;

⁵⁷ AEE, Appendix 10.

⁵⁸ AEE, Appendix 10, section 5.1.

⁵⁹ AUP Schedule 7 ONL9 (Kaukapakapa).

- (b) the local landscape's character and values; and
- (c) the receiving environment.

249. Brown NZ then made further comments in relation to:

- (a) the statutory context for the site;
- (b) the nature of landscape and amenity effects arising from the proposed development;
- (c) his own assessment and evaluation of effects; and
- (d) the limited opportunity for effective mitigation.

250. Brown NZ concluded that the proposed expansion of Kings Quarry would have a significant and, for some catchments around it, a highly negative impact on:

- (a) the character, attributes, and values of ONL 9 – beyond the limits of the Special Purpose Quarry Zone;
- (b) the biophysical and visual integrity of ONL 9;
- (c) the visual amenity associated with views towards ONL 9 from part of Haruru Road; and
- (d) the visual amenity currently enjoyed by residents of both Pebble Brook Road and Haruru Road.

251. In closing, Brown NZ also observed:

.. the location, extent, and height of both proposed pits, together with the destructive nature of vegetation clearance across them, and heavy vehicle movements on Pebble Brook Road, would make effective mitigation and / or 'containment' of the Stage 2 proposal an unrealistic proposition.

5.3.2 Applicant response

252. A memorandum dated 23 August 2024 was prepared on behalf of the Applicant by Helen Mellsop in response to comments received. The memorandum noted:

- (a) In relation to comments from K Jones & C Wedd::
 - (i) their dwelling is located at a low point close to the Waitoki Stream and is enclosed on all sides by mature vegetation;
 - (ii) moderate adverse visual effects would be experienced from other parts of the property during years 1-15 of the quarry operations, reducing from year 16 onwards as the result of revegetation; and
 - (iii) the lowering of the ridgeline over time, coupled with progressive replanting of lower areas would reduce the extent of visible earthworks.
- (b) In relation to comments from M&M Coombridge:
 - (i) a moderate level of adverse visual effects on the Coombridges during years 1-15 of the quarry operations;

- (ii) the retention of bush in the foreground of their view towards the overburden area; and
 - (iii) progressive remediation of the overburden area that would reduce the visible area of exposed earthworks.
- (c) In relation to comments from the Rodney Local Board:
- (i) adverse effects on visual amenity values from Haruru Road and adjoining properties would be low-moderate in extent, with effects being greatest during years 1-15 of the quarry operations;
 - (ii) the level of effects would reduce as revegetation of the overburden area progresses; and
 - (iii) in terms of effects on rural character, activities such as quarrying are anticipated in the Rural Production Zone.
- (d) In relation to the technical evidence prepared by Brown NZ:⁶⁰

[12] Many of the conclusions in [Brown's] assessment are predicated on an assumption that the quarry expansion site and areas of the wider Special Purpose - Quarry Zone are part of ONL9 (Kaukapakapa). He refers to the unified nature of ONL9, but the ONL is actually disjointed, with the Quarry Zone forming a 'cut-out' from the ONL. While I agree that at present the site is perceived as part of the ONL, and contributes to people's perceptions of its values, it does not have an ONL overlay and the provisions of B4 and D10 [of the AUP] do not apply to it.

[19] I disagree with Mr Brown's conclusions on the magnitude of adverse visual effects from Pebble Brook Road, Whitehills Road and Haruru Road, and adjacent private properties. I consider his assumptions that the site is part of an ONL, and that development outside an ONL is relevant to B4 and D10, have coloured his assessment.

[23] While I agree with Mr Brown that the quarry expansion would adversely affect the physical, associative and perceptual attributes of the wider landscape, I remain of the view that these effects would be low-moderate in extent.

5.3.3 Evaluation and findings

253. The Panel finds that the proposal would have more than minor adverse visual and landscape effects on the environment. We accept that as perceived by some of the parties that have commented on the Application the adverse effects of the proposal as they see it may rise to the level of significant or severe.
254. However, we consider that had we granted consent for this Project those adverse effects would have been acceptable or could have been acceptably avoided, remedied or mitigated. Our principal reasons for reaching this conclusion are that:
- (a) the Site forms part of a quarry zone and although only a matter of context, it is relevant that when assessing effects on an environment the outcomes sought on land by the relevant planning document be kept in mind;
 - (b) rural environments themselves are not static or functionally purposed to be visual idylls; they are working environments and could experience substantial change across the course of decades. An example could be expansive open pasture

⁶⁰ Mellsop Response Memo, at [12], [19], and [23].

converting to intensive forestry or vice versa. It is not the case that large-scale change is of itself contrary to rural landscape values or amenity;

- (c) the proposal would be undertaken over several decades to out to 35 years.⁶¹ The proposal's landscape and visual effects would occur and accumulate incrementally across that period such that what would ultimately be a substantial change from the 2024 environment would not be perceptible as such;
- (d) extensive avoidance and mitigation has been proposed through staging of the works and their extents, and through revegetation. Of particular note, each stage of quarrying anticipates having its revegetation in place prior to commencement of the next stage. This would allow mitigation from earlier stages to grow and mature over time and avoid the situation of future mitigation being relied on at some unknown time. This has been a critical factor in the Panel's consideration of the visual and landscape effects; and
- (e) the Panel generally accepts Ms Mellsop's assessment of the proposal's extent of visibility and severity. The proposal would have a limited visual catchment.

255. We were not persuaded by Mr Brown's evidence that the proposal would adversely affect the values or overall integrity of the adjacent ONL 9, or existing un-sealed public roads.

256. In conclusion, the proposal would have overall visual and landscape effects that would be more than minor, but the characteristics of these effects is such that they could be avoided, remedied or mitigated to an appropriate extent so that overall they would be acceptable. Visual and landscape effects would not form a basis to refuse consent.

5.4 Transportation

257. The AEE records that a new site access from Pebble Brook Road was consented (and recently formed) as part of the Stage 1 development. The widening of Pebble Brook Road and various improvements to the Pebble Brook Road / Waitoki Road intersection are expected to occur prior to the commencement of further quarrying activities associated with the Application. The AEE considers that the improvements undertaken as part of the development of Stage 1 would be sufficient to service the Project.

258. A Traffic Impact Assessment Report (**TIA**) was prepared by Commute Transportation Consultants for the Application.⁶² The TIA describes the increase in the anticipated traffic movements above what was consented under the Stage 1 consent as being minor, with up to 18 truck movements per hour being proposed (up from 10) and up to 188 truck movements per day (up from 100).

259. We note that in the conditions as proffered by the Applicant, a truck is considered a vehicle of 8m or longer.

260. The TIA concludes:

- (a) the quarry activity is not expected to exacerbate the safety record within the area;

⁶¹ Although the proposal originally contemplated a 50 year time frame, in response to comments, a condition was proposed which would have limited the term of any consents to 35 years.

⁶² AEE, Appendix 23.

- (b) the minor increase in traffic generation as a result of the Stage 2 quarry (over that considered for Stage 1) would have a minimal effect on the surrounding road network;
- (c) the proposed access point satisfies relevant sight distance requirements;
- (d) the Waitoki Road / Pebble Brook Road intersection satisfies safe intersection sight distance (**SISD**) requirements for trucks at a 70km/h speed limit; and
- (e) the surrounding road network is designed to accommodate trucks and has sufficient capacity to accommodate the additional truck movements.

5.4.1 Comments received

261. Comments in relation to traffic and transportation issues were received from:

- (a) Auckland Transport, which has responsibility for managing and controlling the Auckland transport system;⁶³
- (b) the Rodney Local Board;
- (c) T&E Keane; and
- (d) Berry Simons on behalf of neighbours.

262. Matters raised by Auckland Transport included:

- (a) the level of compliance with the roading requirements of the existing Kings Quarry 'Stage 1' consent;
- (b) the baseline for the current assessments including the SISD requirements if actions anticipated under Stage 1 have not or cannot be implemented;
- (c) that Pebble Brook Road is not prioritised as part of Auckland Transport's 2024/25 to 2026/27 Unsealed Road Improvement Programme;
- (d) reference to a significant increase in truck movements beyond the currently consented operation and potential for significant adverse effects on the road network and safety of road users; and
- (e) reference to the Austroads Guide to Traffic Management and a requirement therein for a Pavement Impact Assessment due to an increase in movements of heavy commercial vehicles and generation of dust (which also aligns with AUP Policy H28(6)).⁶⁴

263. General matters raised in the comments of others included:

- (a) the current condition of Pebble Brook Road and traffic safety;
- (b) truck volumes and hours of operation;

⁶³ Local Government (Auckland Council) Act 2009, ss.45-46.

⁶⁴ Policy H28(6) of the Special Purpose – Quarry Zone explicitly states that effects of traffic generation on the safety of road users must be avoided or mitigated, in particular for heavy vehicles entering and exiting the site.

- (c) the structural integrity and capacity of the one-lane bridge on Pebble Brook Road; and
- (d) safety concerns in relation to visibility at the intersection of Pebble Brook Road and Waitoki Road.

264. Technical evidence was prepared by PDP in relation to the condition of Pebble Brook Road and traffic-related matters on behalf of neighbours. This evidence noted:

- (a) the existing damage observed on the road surface is typical of rural roads in New Zealand;
- (b) the proposed annual traffic increase and the influence this would have on the design and performance of Pebble Brook Road would be minor; and
- (c) the road would require on-going maintenance, and it is not clear where this responsibility lies.

265. Further technical evidence prepared by Chris W Howell and Associates in relation to the one-lane bridge on Pebble Brook Road was presented by Berry Simons on behalf of neighbours. This evidence described:

- (a) the general structural engineering components of the bridge;
- (b) that the bridge is in reasonably good condition; and
- (c) a recommendation for a two-lane bridge to maintain access in the event a truck breaks down on the bridge.

5.4.2 Applicant response

266. Commute Transportation Consultants prepared a memorandum dated 23 August 2024 in response to traffic comments received. That memorandum confirmed:

- (a) the road upgrades identified in the Stage 1 consent would be implemented prior to the commencement of Stage 2;
- (b) in terms of visibility at the intersection of Pebble Brook Road and Waitoki Road, the speed limit signage on Waitoki Road needs to be shifted 150m to the west of the Pebble Brook Road intersection as per the Stage1 consent conditions;
- (c) the speed limit on Pebble Brook Road is 100km/h but the actual operating speed on Pebble Brook Road is much lower at approximately 30-40km/h. A reduction in the speed limit would be supported, however the actual lower speed limit is self-regulating; and
- (d) the truck times are generally spread evenly throughout the workday as they travel to and from other sites. Saturday is proposed to operate as a half day⁶⁵ and the quarry does not operate on Sunday.

267. A further memorandum dated 22 August 2024 was also prepared by Hutchinson Consulting Engineers in response to comments relating to pavement design. It noted that:

⁶⁵ It is noted that the proposal for a half day on Saturday was not reflected in the conditions proposed by the Applicant.

- (a) the existing unsealed pavement would need to be stabilised in accordance with the criteria set out in that memorandum; and
- (b) a thorough pavement design check would be required to confirm the detailed design of any works required under Stage 2 of the quarry development.

5.4.3 Evaluation and findings

268. We acknowledge the transport and road safety concerns raised by those invited to comment on the Application. Ultimately we have found that any relevant transport and safety issues would have been acceptably managed through the measures proposed by the Applicant and the imposition of appropriate conditions. This is because:

- (a) a number of the concerns raised relate to matters that are required to be carried out as part of the Stage 1 consent such as carriageway widening (and would have therefore been in place prior to Stage 2 commencing);⁶⁶
- (b) both the expert evidence for the Applicant and for the neighbours assessed the increase in traffic and effects it would have on the design and performance of Pebble Brook Road as minor;
- (c) truck movements were proposed to be spread evenly throughout the day to mitigate congestion and restrictions were proposed in terms of hours of operation for truck movements;⁶⁷
- (d) while there was an inconsistency in the hours proposed in the traffic and noise assessments with those proposed in the conditions for works on Saturday's (half day, 4pm and 7pm), that is something that could have been addressed through adopting the most conservative hours (i.e., half day) in conditions;
- (e) in terms of pavement impacts:
 - (i) there were existing requirements for pavement monitoring and remediation in the Stage 1 consent;⁶⁸
 - (ii) for Stage 2, there were methods available to stabilise/upgrade the pavement and similar requirements for pavement monitoring and a pavement design report in the conditions would have ensured that the pavement structure was adequate to accommodate the increase in truck movements;
- (f) visibility and sight line distance requirements could be met;
- (g) the absence of footpaths is a feature of most rural roads - particularly unsealed roads – as is the case here;
- (h) the one-lane bridge was assessed as part of the Stage 1 consent (and by the neighbours expert in this process) as being structurally sound and capable of bearing the weight of the trucks;

⁶⁶ Noting that the Applicant proposed a condition requiring those measures be in place before the Stage 2 quarry operations could commence.

⁶⁷ With the proposal being to limit truck movements to between 6:30am and 5:30pm.

⁶⁸ BUN60373589, conditions 71 and 72.

- (i) a number of the concerns raised (such as speed limits and sealing of the road) were matters that went beyond what the Applicant was able to control, since they related to matters for which Auckland Transport had control; and
- (j) had unanticipated traffic effects arisen during the operation of the consent, the consent conditions could have been reviewed to address this.⁶⁹

269. Accordingly, transport matters did not form a basis for our refusal of consent.

5.5 Air quality

270. The AEE recognises that the extraction, processing, cartage and stockpiling of aggregate would result in the generation of dust. An Air Quality Assessment (**AQA**) prepared by Air Matters Limited formed part of the Application.⁷⁰ The assessment identifies that most of the dust that would be generated would be larger than PM10⁷¹ with the potential to create nuisance rather than chronic adverse health effects associated with smaller particulate sizes.
271. The AQA also identifies sensitive receivers, being those dwellings close to the Site. Various receivers are identified as being anywhere from 200m to 900m from the Site. The existence of a Quarry Buffer Zone⁷² overlay that includes some of the rural properties to the south of the Site is also noted. The buffer zone is described as having the objective of avoiding reverse sensitivity effects as a result of subdivision, use or development occurring in close proximity to mineral extraction activities.
272. In order to qualitatively assess the effects of dust generated from the Site, the AQA provides an assessment of FIDOL factors, namely:
- (a) Frequency – how often an individual is exposed to dust;
 - (b) Intensity – the concentration of dust;
 - (c) Duration – the length of exposure;
 - (d) Offensiveness/character – the type of dust; and
 - (e) Location – the type of land use and activity in the vicinity.
273. Based on the FIDOL assessment, the AQA notes significant environmental effects are not anticipated, assuming the adoption of mitigation controls which include:
- (a) operating the Site under the auspices of a Dust Management Plan;
 - (b) the use of water carts on roads and stockpiles;
 - (c) limiting vehicle speeds onsite;
 - (d) water suppression on the crusher; and
 - (e) meteorological monitoring and limits on operations when wind speeds are elevated.

⁶⁹ Noting that the Applicant proposed a s.128 review condition which expressly referenced traffic effects.

⁷⁰ AEE, Appendix 8.

⁷¹ Particulate matter of 10 microns in diameter.

⁷² Section D27 of the AUP.

274. The assessment concluded that the effect from dust emissions arising from quarry operations would be less than minor due to the separation distances, low sensitivity receiving environment and implementation of recommended best practice mitigation options to control emissions at source.
275. In relation to dust generated by traffic on Pebble Brook Road, the AQA provided that:
- (a) the discharge of contaminants (dust) to air from unsealed roads is a permitted activity subject to standards under the AUP;⁷³
 - (b) road safety issues were raised by Auckland Transport and Auckland Council if Pebble Brook Road was to be sealed; and
 - (c) a review condition would allow for the assessment of future unanticipated issues associated with dust emissions.

5.5.1 Comments received

276. Comments on the Application in relation to air quality issues (primarily dust) were received from:
- (a) Auckland Council;
 - (b) K Jones & C Wedd;
 - (c) the Rodney Local Board;
 - (d) the Auckland Swiss Club;
 - (e) T&E Keane; and
 - (f) Berry Simons, on behalf of neighbours.
277. General matters raised in the comments included:
- (a) the adequacy or otherwise of the AQA with particular reference to dust arising from operations within the overburden site;
 - (b) the effects of dust on the amenity of the surrounding rural zone;
 - (c) reliance on the Quarry Buffer Area to manage reverse sensitivity effects;
 - (d) the effects of dust generated from unsealed roads, including on health;
 - (e) a need for dust monitoring; and
 - (f) the lack of mitigation of effects.
278. Technical evidence prepared by PDP was presented by Berry Simons on behalf of neighbours. This evidence commented on:
- (a) the low likelihood that nuisance effects from dust would arise for neighbours resulting from the removal of overburden, material extraction and material processing;

⁷³ AUP Table E14.4.1(A95).

- (b) the adequacy or otherwise of the measures proposed for managing dust from unsealed roads; and
- (c) the need for dust monitoring.

279. In relation to dust from unsealed roads, PDP also provided comments on the Applicant's reliance on the permitted activity rule relating to dust from unsealed roads in the AUP, with observations that the permitted activity rule is subject to standards that must be met in relation to dust from Pebble Brook Road.⁷⁴ In turn, PDP offered:

- (a) various mitigations that may be considered to achieve the permitted activity standards; and
- (b) consideration of further conditions of consent.

5.5.2 Applicant response

280. Air Matters provided a response memorandum dated 23 August 2024 which:

- (a) agreed with Auckland Council's finding that dust nuisance on amenity could be mitigated through management and control of dust generating processes on site;
- (b) confirmed that dust monitoring is proposed for the Site with the method of monitoring able to communicate data in real time so that the Quarry could immediately respond if issues arise;
- (c) noted that more detail regarding dust monitoring and management would be provided through the final Dust Management Plan that would be submitted for certification by Council;
- (d) noted that the Applicant would be required to confirm that it has access to sufficient water for the purpose of satisfying proposed dust mitigation requirements;
- (e) agreed with most of the practical controls suggested by PDP to mitigate effects from road dust, including:
 - (i) the application of additional aggregate to Pebble Brook Road and ongoing maintenance, reducing the amount of fine silty dust available for entrainment;
 - (ii) the reduction of speeds of vehicles along Pebble Brook Road to reduce the amount of dust entrainment; and
 - (iii) the sealing of Pebble Brook Road to eliminate road dust; and
- (f) noted that some of the practical controls above (particularly items (ii) and (iii)) are matters for Auckland Transport.

⁷⁴ AUP E14.6.1.

5.5.3 Evaluation and findings

281. The Panel generally prefers the Applicant's and the Council's advice, noting that the Applicant's final position includes techniques proposed by the neighbours' expert, PDP, to mitigate effects of the proposal.

On-site air quality and dust generation

282. It is recognised that the activity would generate dust and that this may at times be a nuisance for people in the environment. However, we are mindful that in rural environments there are ordinarily sources of dust, emissions, sprays, smells and other nuisances across sites, and therefore agree that in the context of this proposal, the scale and magnitude of dust likely from the quarry should be categorised as minor. This also reflects the way that quarrying is proposed to be carried out over several decades, the mitigation measures volunteered or agreed to by the Applicant, and the existence of the quarry buffer are which is intended to help create a spatial barrier.
283. Following on from the above, the Panel was not persuaded that potential air quality or dust emissions on the Site would be so unmanageable or excessive that related adverse effects could reasonably rise to a more than minor level or provide a basis to refuse consent.
284. However, noting the reliance that has been placed by the Applicant on the sufficiency of a management plan and the adoption of regular good-practice measures including watering, the Panel notes that had it granted consent it would have ensured that these techniques included appropriate certification, monitoring and reporting mechanisms. That would have allowed the Council to routinely confirm that dust emissions were consistent with the level we have otherwise found would be acceptable.

Off-site air quality and dust generation

285. The Panel finds that the Applicant has incorporated reasonable steps to maintain air-quality and minimise dust generation on unsealed roads. However, the Panel notes that these methods could only apply:
- (a) to the extent that Auckland Transport also agreed to any works within or management of the roads themselves; and
 - (b) to vehicles under the direct control of the Applicant, but not third parties.
286. The Panel finds that it would not be reasonable or appropriate to refuse consent, or significantly reduce the extent of quarrying activity that might have been consented, based on concerns related to the use of public roads. Auckland Transport is empowered and funded (via rates) to properly manage and maintain roads and this includes the sealing of unsealed roads where periodically required.
287. The Panel observes that the parties which have commented on the application and raised concerns with dust (or other) nuisances arising from the existing state of local roads may elect to take those concerns to Auckland Transport directly, appealing to its own decision-making powers.
288. On the basis of all of the above and in conclusion, the Panel finds the dust and air-quality related effects of the proposal would have been acceptable, subject to appropriate conditions of consent being imposed.

5.6 Noise and vibration

289. Potential noise issues associated with quarrying activities were considered in the Assessment of Acoustic Effects, prepared by Hegley Acoustics.⁷⁵ Broadly, the assessment relies on modelling of the ground contours, the nature of the noise generating equipment onsite and the distances to potential receivers to predict noise levels. A range of scenarios are used to represent the progressive development of the Site.
290. The assessment predicted that noise to all but one receiver would comply with the proposed noise limits without specific mitigation. For that one receiver, a limit is proposed on the nature of the plant that could operate within a distance of 250m of the eastern extent of the proposed quarry. In addition, a Quarry Noise and Vibration Management Plan (**QNVMP**) is recommended for the management of effects.
291. The assessment concluded that with the imposition of the limit and the implementation of the QNVMP, the noise and vibration from the activities associated with the proposed extension of Kings Quarry could operate within the relevant noise and vibration limits of the AUP.

5.6.1 Comments received

292. Comments on the Application in relation to noise issues were received from:
- (a) Auckland Council;
 - (b) K Jones & C Wedd;
 - (c) The Auckland Swiss Club; and
 - (d) Berry Simons, on behalf of neighbours;
293. Comment received from Council recorded a general level of agreement with:
- (a) the assessment methodology and conclusions reached in the Applicant's Acoustic Report; and
 - (b) the adequacy of mitigation proposed for likely noise levels at 782 Haruru Road.
294. General matters raised in the comments from others included:
- (a) questions about the adequacy of the Applicant's noise assessment, particularly in relation to operations within the overburden site;
 - (b) hours of operation and blasting;
 - (c) the effects of noise on the local ecology and the amenity of the surrounding rural zone;
 - (d) reliance on the Quarry Buffer Area to manage reverse sensitivity effects; and
 - (e) the lack of mitigation of effects.

⁷⁵ AEE, Appendix 13.

295. Bladon Bronka Acoustics Ltd prepared evidence on behalf of neighbours in response to the Applicant's Acoustic Report. This evidence made comments in relation to:
- (a) modelling assumptions regarding the type and number of heavy machines to be used on site;
 - (b) the possibility of cumulative effects if Stage 1 and Stage 2 quarrying operations occur concurrently;
 - (c) hours of operation and start/finish times for noise generating activities on site;
 - (d) compliance with AUP noise limits;
 - (e) a lack of assessment against background noise levels; and
 - (f) traffic noise.

5.6.2 Applicant's response

296. A memorandum dated 23 August 2024 was prepared by Hegley Acoustic Consultants in response to the noise and vibration comments. That memorandum:
- (a) tabulated the differences in noise levels that may be experienced between Stage 1 of the quarrying operations and Stage 2;
 - (b) confirmed that the quarry would comply with the quarry zone noise rule at all stages of activity;⁷⁶
 - (c) confirmed that noise monitoring and reporting would be undertaken, the details of which would be confirmed through the development of the QNVMP that is to be certified by Auckland Council prior to works commencing; and
 - (d) set out how blasting frequency and timing is to be managed.
297. The memorandum also provided specific responses to the technical comments provided by Bladon Bronka Acoustics Ltd including that:
- (a) Stage 1 and Stage 2 quarrying operations would occur independently of one another and therefore no cumulative noise effects would arise;
 - (b) the proposed operating constraints limit the hours of operation;
 - (c) the Quarry Management Plan should be amended to remove reference to an extension to the hours of operation;
 - (d) the modelling assumptions regarding the type and number of heavy machines to be used on site is correct;
 - (e) while background noise measurements could provide further understanding as to how the proposal would fit within the existing soundscape, it was not necessary, given the proposal met the AUP noise limits; and

⁷⁶ Rule H28.6.2.1 of AUP.

- (f) the modelling of road traffic noise undertaken in the original acoustics assessment is appropriate, and the resulting analysis of that modelling is consistent with best practice.

298. The Applicant's response to the effects of blasting on fauna, was briefly addressed in its ecological response memoranda,⁷⁷ by noting that it was considered that any effects on bats from blasting would be temporary. No assessment was however provided to substantiate that view.

5.6.3 *Evaluation and findings*

299. We acknowledge the concerns raised by the submitters in relation to noise and vibration. In considering those concerns, we are mindful that the AUP has set noise limits which are considered reasonable for activities occurring in the quarry zone. Accordingly, while the proposal would increase the noise emissions from the Site, provided the noise limits are still met, such effects would not be unreasonable for the surrounding community.

300. As noted above, the Applicant's Acoustic Assessment and Responses indicate that:

- (a) the noise effects would be able to comply with the AUP noise limits (with mitigation for one property); and
- (b) noise and vibration effects could be appropriately managed through the proposed consent conditions and QNVMP.

301. After carefully reviewing all of the evidence and information, we are satisfied that (with the exception of the effects of blasting on terrestrial fauna), the noise and vibration effects of the proposal have been adequately assessed by the Applicant, and that the measures proposed by the Applicant would have been adequate to appropriately manage any such effects.

302. For the effects of blasting on terrestrial fauna, we have found we do not have sufficient information to determine the scale, acceptability (or otherwise) of those effects.

5.7 Hydrology and groundwater

303. Williamson Water and Land Advisory has prepared a Groundwater Model Analysis Report (**Groundwater Report**) in support of the applications to assist with understanding potential effects on the groundwater resource from the proposed quarry excavation.⁷⁸ The Report only generally describes the groundwater resource by recognising the contribution that the shallow groundwater makes to the local headwater streams and tributaries, and the deeper groundwater to the Waitoki Stream.

304. The Groundwater Report sets out the development of a conceptual hydrological model of the Site that is used in the development of a numerical groundwater model. These models are used to provide a qualitative analysis of groundwater effects from the proposed quarry excavation. Those potential effects include:

- (a) groundwater drawdown;

⁷⁷ Bioresearches, 23 August 2024, and 13 September 2024 response from Chris Wedding.

⁷⁸ AEE, Appendix 21.

- (b) interference with neighbouring bores;
- (c) depletion of stream baseflow;
- (d) effects on wetlands; and
- (e) settlement.

305. In relation to these matters, the Groundwater Report found:

- (a) groundwater drawdown outside of the excavation area is limited to 7m which occurs directly north of the completed quarry. The extent of drawdown is otherwise constrained by surrounding streams that control groundwater elevation;
- (b) no bores are within the area affected by drawdown;
- (c) during low flow conditions, when the Waitoki Stream is most sensitive to depletion, the maximum depletion rate is 1.3L/s (approximately 10% of mean annual low flow);
- (d) there is one wetland in the catchment, but it is outside of the envelope of effects because is on the opposite side of the Waitoki Stream from the quarry; and
- (e) the predicted drawdown is not enough to cause land settlement in the underlying Albany Conglomerate due the nature of this material.

306. On the basis of the findings reached in the Groundwater Report, the AEE concluded that the potential adverse effects on groundwater and groundwater-related features within the Waitoki catchment would be minor. Similarly, any settlement effects associated with the groundwater drawdown on neighbouring buildings, structures and infrastructure are considered to be less than minor due to the non-compressibility of the underlying geology of the Site.

5.7.1 Comments received

307. Comments on the Application in relation to groundwater issues were received from:

- (a) Winstone Aggregates; and
- (b) Berry Simons on behalf of neighbours.

308. In its comments, Winstone Aggregates noted that it operates the Flat Top Quarry approximately 1.2 km from the proposed Kings Quarry site. As part of that operation, it is required to monitor groundwater levels in the vicinity of Kings Quarry. Winstone Aggregates therefore requested that if consents are granted to Kings Quarry, a collaborative approach be taken to future monitoring.

309. Technical evidence prepared by PDP was presented on behalf of neighbours. PDP made comments in relation to:

- (a) effects on water quality associated with a groundwater bore used for water supply at 70 Pebble Brook Road;
- (b) reduction in baseflow to waterways;

- (c) monitoring of stream flows and groundwater quality;
- (d) lack of information relating to site water requirements and the need for a water balance model; and
- (e) conditions.

5.7.2 Applicant response

310. Williamson Water and Land Advisory responded to PDP;s comments in a memorandum dated 22 August 2024 which noted::
- (a) the low likelihood of effects on water quality in the groundwater bore at 70 Pebble Brook Road and the adequacy of the existing water quality monitoring provisions to provide advanced warning of any unexpected contamination;
 - (b) agreement with the establishment of stream gauging sites upstream and downstream of the quarry for purposes of monitoring stream flows;
 - (c) a proposal to develop a water balance model to account for the water required for dust control and processing; and
 - (d) responses to suggested conditions.
311. In relation to the matters raised by Winstone Aggregates, the Memorandum of Counsel on behalf of Kings Quarry Limited dated 23 August 2024 confirmed advice from Winstone Aggregates that the monitoring of a borehole situated on the Kings Quarry site is not essential to Winstone Aggregates as other options for monitoring are available to them.

5.7.3 Evaluation and findings

312. The Panel prefers the Applicant's position but notes the additional mechanisms agreed to and arising from the comments received on the Application have been very relevant to that position being arrived at.
313. The quarry activity would proceed in stages over several decades. Proposed on-going monitoring requirements would ensure that any observed outcomes materially different to what have been estimated could trigger corrective action(s) such that significant adverse effects could be avoided. Because the Panel is satisfied that the proposal's potential adverse effects could be managed by way of conditions of consent (including in terms of stream gauging and water balance modelling), it follows that this would not be a basis to refuse consent. The Panel notes that such conditions could have potentially extended to withholding the commencement of individual quarry stages to ensure that an understanding of the full extent of any adverse effects arising from previous stages, and any additional action(s) relevant to future stages, could occur.
314. Had the Panel found that consent could be granted, the Council and interested parties would have had an ability to comment on the proposed relevant monitoring conditions. The Panel envisages that this would have allowed the appropriate scope, extent and content of those conditions to be satisfactorily refined.
315. The Panel otherwise accepts that there is a low (and acceptable) likelihood of adverse effects on the bore at 70 Pebble Brook Road.

316. In conclusion, overall the proposal's adverse effects on groundwater and hydrology could be managed by way of conditions to ensure adverse effects are minor or less and would not be a reason to refuse consent.

5.8 Land disturbance

317. The AEE considered the following land disturbance matters:

- (a) earthworks and sediment controls; and
- (b) geotechnical and site stability.

318. We address these in turn below.

Earthworks and sediment controls

319. An Erosion and Sediment Control (**ESC**) Report has been prepared by Land and Development Engineering in support of the Application.⁷⁹ The ESC Report summarises the proposed development and the ESC measures to be put in place during earthworks and proposed quarrying activities.
320. The ESC Report relies on a technical document known as GD05⁸⁰ in terms of design and sizing of the controls. The ESC Report notes that up to six sediment retention ponds would be operating across the Site at any one time, and that some of the ponds are to be managed through multiple stages of quarry expansion.
321. Chemical treatment of the discharges from the sediment retention ponds is not proposed, although provision is made for the development of a Chemical Treatment Management Plan should monitoring of water quality suggest this is necessary.
322. The ESC Report notes that earthwork controls, if undertaken in accordance with the controls set out in GD05, would minimise/mitigate any adverse environmental effects of sediment laden runoff.
323. We note that neither the AEE nor the ESC provide any assessment of potential effects of sediment discharges from the Site on the receiving environment. However, the AEE concludes that with best practicable erosion and sediment control measures implemented onsite, the adverse effects associated with earthworks including silt and sediment runoff (and resulting effects on water quality) would be less than minor.

Geotechnical and site stability

324. The Application includes a Geotechnical Report prepared by CMW Geosciences.⁸¹ The Geotechnical Report:
- (a) makes various recommendations on the design of the quarry based on the results of slope stability analyses and site observations to ensure that the quarry face is left in acceptable safe condition at the end of its life;

⁷⁹ AEE, Appendix 14.

⁸⁰ Erosion and Sediment Control Guide for Land Disturbing Activities in the Auckland Region Guideline Document 2016/005 Incorporating Amendment 3 Reprinted August 2023.

⁸¹ AEE, Appendix 19.

- (b) looks at the stability of the backfill areas under seismic load and determines an acceptable displacement; and
- (c) describes the engineering requirements that must apply to earthworks.

325. The AEE concludes that provided the recommendations in the Geotechnical Report are adhered to for quarry design and management, any adverse land instability effects would be avoided or mitigated to be less than minor.

5.8.1 Comments received

326. Comments on the Application in relation to ESC and geotechnical matters were received from:

- (a) K Jones & C Wedd; and
- (b) Berry Simons on behalf of neighbours.

327. General matters raised in comments included:

- (a) failure to follow best practice ESC measures, including consideration of the increased risks associated with seasonal (winter) works;
- (b) adequacy or otherwise of effects assessments associated with ESC measures and the engineering design;
- (c) a need for ESC measures to be peer reviewed by an independent and suitably qualified ESC professional to establish whether the proposal is feasible and the controls compliant with GD05; and
- (d) adequacy or otherwise of available geotechnical information to assure stability of the proposed overburden dump.

5.8.2 Applicant response

ESC matters

328. Land Development Engineering responded to comments relating to the erosion and sediment controls in its 23 August 2023 memorandum as follows:

- (a) that GD05 provides best practice guidelines for the industry, but alternative ESC methods are allowable if equivalent levels of erosion and sediment management could be demonstrated;
- (b) detailed plans that include confirmation of contributing catchment areas and pond sizing would be prepared and submitted for certification by Council as part of finalising the ESC Management Plan; and
- (c) overburden earthworks, considered to be the highest sediment generating operation, are not planned to occur during winter months. If deemed essential to achieve programming milestones, appropriate controls would be planned and approval for the winter earthworks would be sought from Council.

Geotechnical

329. CMW Geosciences responded to comments relating to geotechnical issues in their 22 August 2024 memorandum, noting that:
- (a) only a conceptual geotechnical model has been provided of the final quarry landform; and
 - (b) a detailed investigation and design of the fill disposal area should be undertaken, as proffered in the draft conditions.

5.8.3 Evaluation and findings

330. We acknowledge the concerns raised by the neighbours but consider that the Applicant has provided sufficient evidence to establish that land disturbance effects could be appropriately managed via compliance with GD05 and conditions.
331. We do however consider that had consent been granted, the conditions would have needed to be strengthened and refined to ensure water bodies would be appropriately protected, to better reflect and respond to climate change, and to appropriately address and to ensure the stability of the overburden area.
332. While not determinative of our decision on this issue, we also note that we found the Applicant's evidence in relation to potential effects on water quality for the downstream receiving environments of the Waitoki Stream and Kaipara Harbour, somewhat lacking. This is because while a conclusion was provided that water quality effects would be less than minor with the implementation of the proposed ESC measures,⁸² we were provided with no detail as to whether stream quality would remain the same, be improved or reduced (presumably slightly).
333. In the end however, these are not matters that by themselves would have necessitated the decline of consent, and accordingly, we find that land disturbance effects could have been appropriated addressed through the Project design and the imposition of appropriate conditions of consent.

5.9 Archaeology

334. The Application relies on an Archaeological Assessment undertaken by CFG Heritage Ltd that identifies the potential effects on archaeological values associated with the proposed quarry development.⁸³
335. The assessment details the existence of an archaeological site, being two pits (R10/918), within the wider Kings Quarry Site. These pits are described as occurring outside of the Project area. Based on field surveys, no further archaeological features were identified.
336. The assessment notes that an archaeological authority⁸⁴ is not required for the works but recommends that all works be undertaken under the provisions of an Accidental Discovery Protocol.⁸⁵

⁸² Updated AEE, section 10.8.

⁸³ AEE, Appendix 27.

⁸⁴ As per s.44 of the Heritage New Zealand Pouhere Taonga Act 2014.

⁸⁵ As per Chapter E11.6.1 of the AUP.

337. Based on the conclusions in the assessment, and provided that all works are undertaken utilising the Accidental Discovery Protocol, the AEE identifies that the potential adverse effects on archaeological values are considered to be less than minor.

5.9.1 Comments received

338. Heritage New Zealand Pouhere Taonga provided a comment on the Application that:
- (a) advocated for continued consultation with mana whenua; and
 - (b) agreed with the conclusions reached in the Archaeological Assessment.
339. Further, and as noted in the cultural considerations section (Part 4 above), the use of an Accidental Discovery Protocol was supported by both Te Kia Ora Marae and Ngāti Manuhiri.

5.9.2 Evaluation and findings

340. In light of all information received and considered, the Panel:
- (a) accepts the Applicant's findings in the relevant supporting technical reports; and
 - (b) finds that, with the implementation of appropriate conditions, including an Accidental Discovery Protocol, any potential adverse effects on archaeological values would be acceptable, and would not have precluded a grant of consent to the Project.

5.10 Other matters

341. In this section we address a discrete issue raised by the Auckland Swiss Club.
342. We do however acknowledge that other general matters have been raised through the submission process. To the extent that some of these matters have not expressly been addressed above, we record our satisfaction with, and adoption of the assessments provided by the Applicant.

5.10.1 Auckland Swiss Club boundary issue

343. The Auckland Swiss Club raised an issue in relation to its joint property boundary with the Applicant. In particular the Club noted:
- (a) a boundary fence shared with Kings Quarry had been removed;
 - (b) a metalled access road that originates within the Quarry site and extends into property owned by the Auckland Swiss Club had been constructed; and
 - (c) the absence of any permissions from the Club for such activities to occur.

5.10.2 Applicant response

344. The Memorandum of Counsel dated 23 August 2024 responded to this boundary issue noting:
- (a) the issue is understood to have been raised with the previous quarry owner in 2021;

- (b) the Applicant did not construct the track or remove the fencing along the boundary, and has not accessed or disturbed the area; and
- (c) the affected area is outside the current Application before the Panel.

5.10.3 Evaluation and findings

345. The Panel acknowledges the concern. However, as this an existing situation and relates to a property matter between the Club and the Applicant rather than an environment effect of the Application, it is not a matter that we are able to consider or determine. We therefore confirm we have not taken it into account in reaching our decision on this Application.

PART 6: STATUTORY ASSESSMENT

346. This part sets out the Panel's consideration of the relevant statutory considerations in the following order:

- (a) New Zealand Coastal Policy Statement (**NZCPS**);
- (b) NPS-FM;
- (c) NES-FW;
- (d) NPS on Urban Development 2020 (**NPS-UD**);
- (e) NPS-IB;
- (f) AUP; and
- (g) Other plans.

347. Note, while Iwi Management Plans are relevant statutory documents these were assessed in Part 4 above, and therefore are not addressed again here.

6.1 NZCPS

348. The Applicant did not include an assessment of the NZCPS in its AEE as the Site is not located in or (directly) adjacent to the coastal environment, and therefore it considered the NZCPS was not directly relevant.

6.1.1 Comments received

349. K Jones & C Wedd's comments on the proposal suggested that the Applicant had wrongly treated the NZCPS as "irrelevant".
350. No other party commented on this issue.

6.1.2 Applicant's response

351. In its 23 August 2024 memorandum, Barker & Associates in responded to this issue and noted:
- (a) the Site and Proposal is not located in or adjacent to the coastal environment;

- (b) notwithstanding its location, appropriate sediment control measures would be adopted to ensure that any discharges to water would be undertaken in accordance with Policy 23 of the NZCPS; and
- (c) any effects in relation to the coastal environment would be appropriately managed.

6.1.3 Evaluation and findings

352. We are not necessarily persuaded that the NZCPS applies to the proposal. While we did not receive full legal argument on this point we note that the Applicant considers it is not directly relevant and it was not identified as a relevant planning document by the Council. However, given the decision we have reached on this proposal (to decline consent) we are not required to finally determine this point.

6.2 NPS-FM

353. In relation to the NPS-FM, the AEE considers that the Project accords with the Objective and Policies of the NPS-FM through:

- (a) the design of the Quarry where streams have been avoided where possible, noting the functional need for quarrying to occur in this location because that is where the aggregate is located, as supported by the underlying Special Purpose – Quarry Zoning of the Site;
- (b) the proposed removal of a weir in the Waitoki Stream to improve fish passage; and
- (c) the adoption of the effects management hierarchy for the management of adverse effects.

354. Further, with regard to policies that relate to Te Mana o Te Wai and tangata whenua involvement, the AEE records the engagement undertaken with mana whenua and the responses made to feedback from those engagements.

6.2.1 Comments received

355. Comments on the application of the NPS-FM were received from:

- (a) Auckland Council;
- (b) Environmental Defence Society
- (c) K Jones & C Wedd; and
- (d) Berry Simons on behalf of neighbours.

356. The comment from Auckland Council noted in response to the unavoidable loss of stream extent that:

- (a) the effects hierarchy is followed as per the NPS-FM;
- (b) there is a functional need for the quarry to operate in this location;
- (c) the quarry is within the Special Purpose – Quarry Zone; and
- (d) the proposal is considered generally consistent with the NPS-FM.

357. The comment from the Environmental Defence Society noted the requirements of the NPS-FM to ensure that there is no net loss and that a net gain is achieved through offsetting. On the basis that a net gain should be achievable and without reasoning provided as to why a net gain cannot be achieved, the proposal was seen as not in keeping with the outcomes sought in the NPS-FM.
358. The comment from Berry Simons on behalf of neighbours relied on the ecological advice of Boffa Miskell in suggesting that the Panel give close consideration to:
- (a) the calculations and statements of the Environmental Compensation Ratio, including its application to existing stream diversions;
 - (b) statements that the Environmental Compensation Ration provides a net gain; and
 - (c) the application of the NPS-FM requirements for loss of stream extent.
359. The comment from K Jones & C Wedd noted that the proposal:
- (a) was contrary to directive policies in the NPS-FM;
 - (b) does not meet the thresholds for the “exception” policies;
 - (c) does not meet the effects management hierarchy; and
 - (d) does not meet the requirements for reclamation of the beds of rivers.

6.2.2 Applicant’s response

360. Barker & Associates’ 23 August 2024 memorandum in response noted:
- (a) their disagreement that the proposal is contrary to the objective and policy of the NPS-FM;
 - (b) that they maintained their view that the Project accords with the NPS-FM objectives for the reasons set out in section 11 of the AEE; and
 - (c) the offsetting proposal (both terrestrial and freshwater) is undertaken in accordance with best current practice guidelines for achieving a net environmental gain.

6.2.3 Evaluation and findings

361. As we noted in Part 4 above, we have not been satisfied that there is sufficient ecological information to properly determine ecological effects (including those on freshwater) and the adequacy or otherwise of measures or parameters proposed in conditions to mitigate or offset those effects.
362. We are therefore unable to confidently determine whether and to what extent the Application is consistent with or contrary to the objectives and policies in the NPS-FM. Without repeating the substance of our findings on ecological effects, we were not satisfied with the Applicant’s accounting to confirm:
- (a) resultant Waitoki Stream flow characteristics and volumes;
 - (b) extent and effects of suspended sediment and downstream sedimentation;

- (c) the extent of adverse effects resulting from the permanent removal of 2,137m of headwater stream length in light of removal of an existing weir, and the sufficiency of the weir's removal in this regard; and
- (d) the overall quantum of offset calculated.

363. As set out previously we do not accept that the above, which speak to the core of what overall type and extent of mitigation, remediation, offsetting or compensation should be the subject of action via management plans, should themselves form part of the matters that the management plans themselves resolve. That amounts to an inappropriate delegation of our decision making powers and ability to satisfy ourselves that the granting of consent has been merited.
364. Following on from that, being in the position of not being able to conclude that freshwater effects are acceptable including in terms of the values of waterways (including cultural values), and not being satisfied that conditions of consent can be used to assure this, we are also unable to conclude with confidence that granting the proposal would be in keeping with the outcomes required by the NPS-FW.
365. We wish to be clear at this point however that it is not our position that quarrying activity on the Site, potentially along the lines of the proposal, is fundamentally unacceptable on the Site in terms of its impacts on freshwater or the NPS: FM's provisions; the matter has become one of the information needed to justify a decision and the available timeframe left for that to be undertaken.

6.3 NES-FW

366. The AEE noted that the NES-FW is relevant to the Application in terms of the proposed reclamation of streams on the Site as a Discretionary Activity under Regulation 57. In relation to the effects management hierarchy, the AEE recognised that there are effects arising from the stream reclamations that cannot be mitigated and that there are residual adverse effects requiring offset or compensation.
367. The AEE incorporated a Stream Loss Offset Report prepared by Bioresarches that concluded that no net loss of freshwater habitat and stream extent could be achieved, and that the offset actions would be sufficient to outweigh the impacts from the Project.⁸⁶
368. Based on conclusions reached in the Offset Report, the AEE concluded that the Project would meet the intent of the NES-FW.

6.3.1 Comments received

369. Comments on the application of the NES-FW were received from:
- (a) K Jones & C Wedd; and
 - (b) the Environmental Defence Society.
370. K Jones and C Wedd:

⁸⁶ Updated Ecological Offsetting Report for Freshwater Ecology Values, 5 July 2024.

- (a) questioned the functional need to reclaim any of the streams within Area A based on their understanding that:
 - (i) no mineral extraction is proposed in the area; and
 - (ii) there are other operational options for the quarry to locate the overburden disposal area elsewhere; and
- (b) concluded that the reclamation must be considered as a non-complying activity under the Regulation 57(2)(2) of the NES-FW.

371. The comment from EDS reminded the Panel that the reclamation of streams is a discretionary activity under Regulation 57, and that Regulation 57 states a consent must not be granted unless there is a functional need for the reclamation and the effects management hierarchy has been applied.

6.3.2 Applicant's response

372. A memorandum dated 23 August 2024 was prepared by Barker & Associates on behalf of the Applicant that responded to the comments received on the NES-FW and noted that:
- (a) there was a clear functional need for quarrying to occur on the Project site as that is where the aggregate is located;
 - (b) from a practical and operational perspective the fill site needs to be as close to the pit as possible;
 - (c) other locations are either not large enough to accommodate the fill volume or would impact higher value ecological areas of kauri podocarp;
 - (d) avoidance of stream loss is not possible given there are many watercourses scattered across the Site and the Site is zoned for quarry purposes; and
 - (e) the activity was a discretionary activity under the NES-FW, but a non-complying activity under the AUP.

6.3.3 Evaluation and findings

373. In terms of the activity status issue, we are satisfied that, for the reasons given by the Applicant:
- (a) there is a functional and practical need for the overburden fill site to be located within the quarry Site;
 - (b) such works would require a discretionary activity consent under the NES-FW; and
 - (c) overall a non-complying activity consent is required.
374. However, for the reasons given in Part 5 above, we are not satisfied that we have sufficient information to assess ecological effects (including freshwater), and as set out previously we are not satisfied that the granting of consent in this circumstance can with sufficient confidence be said to achieve the required outcomes of the NPS-FM. We have reached the same finding in terms of the NES-FW.

6.4 NPS-UD

375. The AEE notes the necessity of aggregate in the development of buildings, roading and infrastructure and the contribution it makes to well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing. The AEE considers that contribution to the development of land and infrastructure for urban land uses is consistent with the NPS-UD.

6.4.1 Comments received

376. No comments were received in relation to the NPS-UD.

6.4.2 Evaluation and findings

377. In the absence of any challenge to the Applicant's assessment and given our findings on the positive effects of the proposal (noted in Part 5 above), we accept that to the extent the NPS-UD is a relevant consideration, the proposal is consistent with it.

6.5 NPS-IB

378. The AEE observes that the objective of the NPS-IB is to maintain indigenous biodiversity across New Zealand so that there is no overall loss. In turn, the AEE notes that the policies seek to restore and enhance ecosystems and habitats where necessary and avoid adverse effects to SNAs.
379. Observing that the Site is subject to an SEA under the AUP, the AEE acknowledges that the NPS-IB is a relevant consideration. The AEE also observes that the exceptions regime under Clause 3.11(1) is relevant to aggregate extraction⁸⁷ and allows for adverse effects on SNAs to be managed by applying the effects management hierarchy.
380. Assessing the Application against the requirements of Clause 3.11(1), the AEE sets out that:
- (a) the quarry provides significant regional public benefit in terms of the supply of aggregate, transport cost savings and avoided transport-related CO₂ emissions (Clause 3.11(1)(a)(iii));
 - (b) there is a functional need for the quarrying to occur on the Site because that is where the aggregate is located, which is supported by the Special Purpose – Quarry Zoning of the Site (Clause 3.11(1)(b)); and
 - (c) the quarry is strategically located relative to the Auckland market, making alternative source impracticable (Clause 3.11(1)(c)).
381. In terms of the effects management hierarchy, the AEE relies on the Ecological Offsetting reports⁸⁸ that conclude that a net gain in biodiversity values is anticipated following the completion of all offset and compensation actions. As such, the AEE considers that the overall objective of the NPS-IB to ensure there is no overall loss in indigenous biodiversity is achieved.

⁸⁷ NPS-IB Clause 3.11(a)(iii).

⁸⁸ AEE, Appendix 16,17.

6.5.1 Comments received

382. Comments on the application of the NPS-IB were received from:
- (a) Auckland Council;
 - (b) The Environmental Defence Society;
 - (c) K Jones & C Wedd; and
 - (d) Berry Simons on behalf of neighbours.
383. In response to the loss of biodiversity at the subject site Auckland Council noted that:
- (a) this will be offset within the same ecological district to ensure a net biodiversity gain overall;
 - (b) the effects hierarchy will be followed as per the NPS-IB;
 - (c) there is a functional need for the quarry to operate in this location; and
 - (d) the proposal is considered generally consistent with the NPS-IB.
384. The comment from the Environmental Defence Society noted the requirements of the NPS-IB to ensure that there is no net loss and that a net gain is achieved through offsetting. On the basis that a net gain should be achievable and without reasoning provided as to why a net gain cannot be achieved, the proposal was seen as not in keeping with the outcomes sought in the NPS-IB.
385. The comment from K Jones & C Wedd noted that the proposal:
- (a) did not meet the NPS-IB requirement that identified adverse effects within SEAs are to be avoided, except where provided for under Clause 3.11;
 - (b) did not meet the thresholds for the exceptions in Clause 3.11; and
 - (c) did not contain sufficient information to determine whether the proposal can meet the effects management hierarchy.
386. The comment from Berry Simons on behalf of neighbours relied on the ecological advice of Boffa Miskell in noting:
- (a) the NPS-IB requirement that identified adverse effects within SEAs are avoided, except where provided for under Clause 3.11; and
 - (b) the overriding purpose to maintain indigenous biodiversity in Aotearoa as set out on section 1.7 of the NPS-IB.

6.5.2 Applicant's response

387. A memorandum dated 23 August 2024 was prepared by Barker & Associates on behalf of the Applicant that responded to comments received on the NPS-IB and noted:
- (a) their disagreement that the proposal is contrary to the objective and policy of the NPS-IB; and

- (b) the offsetting proposal (both terrestrial and freshwater) is undertaken in accordance with best current practice guidelines for achieving a net environmental gain.

6.5.3 Evaluation and findings

- 388. We refer back to our evaluation and findings on ecological effects. Without unnecessarily repeating ourselves, we were not satisfied with the sufficiency of the Applicant's assessments and field-surveys of habitat, or reliance on management plans to undertake such analysis to then confirm what effects the management plans should manage.
- 389. In the same way that we have been unable to confirm whether granting consent would be in-line with the NPS-FM, we are not confident that the required outcomes of the NPS-IB would be achieved either.
- 390. For offsetting to be acceptable in light of the magnitude of adverse effects predicted and the NPS-IB expectations of both adherence to an effects-hierarchy and then a net-gain to be achieved via offsetting, there must be a high-level of confidence in the quantified values needing to be offset. Without this, the NPS-IB cannot be said to be being appropriately implemented.

6.6 AUP

- 391. The AEE summarises the proposal against the relevant objectives and policies of the AUP, inclusive of the Regional Policy Statement (**RPS**) and the regional and district plan components. We briefly note these in turn below.

Regional Policy Statement

- 392. The AEE recognises that the RPS sets out the overall strategic statutory framework to achieve integrated management of the natural and physical resources of the Auckland Region. The AEE considers the following chapters of the RPS to be relevant to the proposal:
 - (a) B6 Mana Whenua;
 - (b) B7.1 Natural Resources – Indigenous Biodiversity;
 - (c) B7.3 Natural resources – Freshwater Systems;
 - (d) B7.5 Natural Resources – Air; and
 - (e) B7.6 Natural Resources – Minerals.

- 393. On the basis of the engagement that has been undertaken with mana whenua and the conclusions reached in the various technical reports prepared in support of the Application, the AEE reaches a broad conclusion that the Project is consistent with the policy direction of the RPS.

Regional and District Plans

- 394. The AEE considers the following chapters of the regional and district components of the AUP to be relevant to the proposal:
 - (a) D9 – Significant Ecological Areas Overlay;

- (b) E2 – Water Quantity, Allocation and Use;
- (c) E3 – Lakes, Rivers, Streams and Wetlands;
- (d) E11 – Regional Land Disturbance & E12 – District Land Disturbance;
- (e) E14 – Air Quality;
- (f) E15 – Vegetation Management;
- (g) E27 – Transport;
- (h) E28 – Mineral Extraction from Land;
- (i) H19 – Rural Production Zone; and
- (j) H28 – Special Purpose Quarry Zone.

395. The AEE observes that in evaluating the policy framework, it is not whether the proposal complies entirely with each and every relevant objective and policy, but rather whether, reading the relevant objectives and policies, it could be said that the proposal is contrary to them as a whole.
396. The AEE recognises that the Application presents some inconsistencies with the policy direction of the AUP, notably whether provision is made for offsetting of adverse residual effects on ecological values within the Special Purpose Quarry Zone. However, in noting that the proposal would be generally consistent with, and not contrary to, all the objectives and policies, the AEE concludes that the proposed development is not contrary to the relevant AUP objectives and policies.

6.6.1 Comments received

397. Comments on the application of the AUP were received from:
- (a) Auckland Council;
 - (b) Auckland Transport;
 - (c) Environmental Defence Society;
 - (d) K Jones & C Wedd; and
 - (e) Berry Simons on behalf of neighbours.
398. A memorandum from Auckland Council dated 2 August identified that:
- (a) the proposal is located within the Special Purpose – Quarry Zone, where quarries are anticipated to occur;
 - (b) the proposal is generally consistent with the objectives and policies in chapter H28 of the AUP;
 - (c) the proposal is considered inconsistent with this Policy H28.3(3) that requires the avoidance of adverse effects on natural resources where practicable, otherwise remedying and mitigating these;

- (d) offsetting is proposed and enabled by the RMA, however that does not fall within the wording of Policy H28.3(3);
- (e) the objectives and policies of chapters E3 and E15 of the AUP recognise and encourage offsetting where significant residual effects are evident; and
- (f) accordingly, while not stated within chapter H28, offsetting is still a relevant pathway and greater weight should be placed on Policies E3.3(4) and E15.3(3) than H28.3(3).

399. The Auckland Council memorandum concluded:

- (a) the AUP anticipates quarries to occur within the Auckland region, and
- (b) that balancing of effects on natural resources and the requirement for mining and quarrying should be undertaken;
- (c) the proposal is consistent with the objectives and policies contained within chapters E14 and E25 as noise, vibration, and dust will be appropriately managed and mitigated; and
- (d) that the proposal is generally consistent with the objectives and policies of the AUP.

400. A further detailed assessment of the proposal against the relevant AUP objectives and policies was provided by Council in response to our RFI#4. This assessment:

- (a) noted that there is no implicit hierarchy between the overlays and the zones in the Auckland Unitary Plan and that all relevant provisions must be assessed for any resource consent application as confirmed by the Environment Court,⁸⁹ and
- (b) concluded that:

“... on the whole, that while a lot of objectives and policies [sic] the proposal may be inconsistent with or contrary to [the AUP], overall, it is considered to be generally consistent given that some policies take into account offsetting as a final action.

... the proposal is, in my opinion, generally consistent with Chapters H28, D10, and B4; and inconsistent with Chapters D9, E3, and B7”.

401. The comment from Auckland Transport noted the relevance of Policy H28 (6) of Special Purpose – Quarry Zone that requires the effects of traffic generation on safety road users to be avoided or mitigated, in particular in relation to heavy vehicles entering and exiting the site.

402. The comment from the Environmental Defence Society noted that as the site is zoned Special Purpose Quarry and subject to exemptions or lesser tests, the proposal is not considered to be contrary to the relevant objectives and policies.

403. The comment from Berry Simons on behalf of neighbours relied on the advice of Mr Brown in noting that the AEE omitted appropriate discussion of the relevant provisions of Chapters B4.2 and D.10 of the AUP which focus on protecting the integrity of Auckland’s ONLs.

⁸⁹ *Auckland Council vs Budden* [2018] NZEnvC 30.

404. Mr Brown also noted that new and expanded quarries within the Special Purpose – Quarry Zone need to be tested in relation to:
- (a) their amenity effects, including effects on residents in the Quarry Buffer Overlay; and
 - (b) landscape effects with the potential to erode the nearby ONL.
405. The comment from K Jones & C Wedd provided a fulsome review of the Application against the following chapters of the AUP:
- (a) B7 – Natural resources (and B7.2 – Indigenous Biodiversity in particular);
 - (b) D9 – Significant Ecological Areas Overlay;
 - (c) E3 – Lakes, Rivers, Streams and Wetlands;
 - (d) E13 – Cleanfills, Managed Fills and Landfills;
 - (e) E15 – Vegetation Management; and
 - (f) H19 – Rural Zones.
406. K Jones & C Wedd also noted a lack of assessment by the Applicant of the following chapters:
- (a) B4 – Natural Heritage;
 - (b) B8 – Coastal Environment;
 - (c) B9 – Rural Environment; and
 - (d) B10 – Natural Hazards and Climate Change.

6.6.2 Applicant's response

407. Barker & Associates' memorandum of 23 August 2024 in response noted that:
- (a) other than some inconsistencies relating to offsetting that is not specifically contemplated for in the Quarry zone, the proposal will not be contrary to the AUP objectives and policies;
 - (b) an apparent misinterpretation with the application of the ONL chapter of the AUP given that:

The ONL Overlay objectives, policies and provisions are contained within Chapter D10 of the AUP. The ONL provisions are clearly directed at managing effects of development within the ONL overlay itself, rather than the effects on the ONL overlay from activities on adjoining land. The chapter states that "The objectives and policies in this chapter apply to all activities undertaken in areas identified in the Outstanding Natural Features Overlay and Outstanding Natural Landscapes Overlay, both above and below mean high water springs".

There are no objectives, policies nor provisions within the AUP that relate to activities adjacent to an ONL.
 - (c) disagreement that Chapter B8 (Coastal) was applicable to the proposal;

- (d) a clear functional need for the quarrying to occur on the Site because that is where the aggregate is located, which is supported by the Special Purpose – Quarry Zoning of the Site;
- (e) with regard to the zoning of the Site and the comprehensive offsetting package proposed, it is considered that the Project is not contrary to the SEA policy framework; and
- (f) other than some inconsistencies relating to offsetting that is not specifically contemplated for in the Quarry zone, the proposal will not be contrary to the AUP objectives and policies.

408. Barker & Associates also provided a further memorandum dated 13 September 2024 in response to Auckland Council's further assessment of the AUP objectives and policies. This memorandum noted:

- (a) agreement with Auckland Council's assessment that there is no implicit hierarchy between the overlays and the zones in the AUP and that all relevant provisions must be assessed for any resource consent application;
- (b) that the test was not contrary to, rather than not inconsistent with the objectives and policies as a whole;
- (c) while Auckland Council considered that the proposal was inconsistent with the objectives and policies in some of the chapters of the AUP, this did not reach the level of contrary to, and in any event, Barkers & Associates disagreed for the most part with those findings of inconsistency;
- (d) disagreement with Auckland Council where it considered the Proposal contrary to individual objectives and policies, with Barkers & Associates instead finding the proposal was either consistent with, or at most inconsistent with, but not contrary to those individual objectives and policies;
- (e) that the NPS-IB was adopted post-AUP and broadens the effects management hierarchy with a focus on biodiversity offsetting and compensation;
- (f) while the objectives for the Special Purpose Quarry Zone do not specifically contemplate offsetting⁹⁰, it is specifically provided for through the objectives and policies for the SEA overlay (Chapter D9); lakes, rivers, streams and wetlands (Chapter E3); and vegetation management (Chapter E15);
- (g) that the assessment of how the proposal sits against the policy should have regard to the intent of the policy rather than solely focussing on the strict wording; and
- (h) the absence of support for an activity in the objectives and policies of a plan does not equate to 'contrary to', which requires repugnancy or opposition.

6.6.3 Evaluation and findings

409. Having carefully reviewed all of the comments provided by the neighbours, the Council and the Applicant, we prefer the Council's assessment. We consider this more accurately assesses the extent to which the proposal is consistent/inconsistent with or contrary to each

⁹⁰ AUP Objective H28.2

of the relevant policies and objectives. As we note, in our s.104D assessment section below, while we have some reservations as to whether overall the proposal can be considered as not contrary to the AUP, in the absence of any expert evidence reaching that conclusion, we accept, at least in principle that the proposal is not contrary to the AUP objectives and policies as a whole.

410. However, we record that based on our concerns with the (in)sufficiency of on-site aquatic and terrestrial ecological effects assessment undertaken, and that management plans (or other conditions) are not appropriate to undertake that assessment, we find that the proposal does sit in tension with the objectives and policies of the AUP-OP that focus on those matters.
411. On the matter of the application of the Outstanding Natural Landscape chapter of the AUP, we agree with the interpretation provided by Barker & Associates, that the ONL Overlay provisions are not directly applicable for the reasons quoted above.

6.7 Other Plans

412. The AEE identifies the following documents as “Other Plans” to be assessed as part of this Application:
- (a) Iwi Management Plans; and
 - (b) Auckland Plan 2050.
413. Iwi Management Plans have been addressed in Part 4 of this Decision Report.
414. In relation to Auckland Plan 2050, the AEE notes this document sets out the vision for the Auckland Region to 2050 and serves as the key strategic document to set the Council’s social, economic, environmental and cultural objectives.
415. Considered relevant to this proposal, the AEE notes that the Auckland Plan 2050 recognises quarries as part of the Rural Strategy and the importance of aggregate to Auckland, particularly in infrastructure and housing construction.

6.7.1 *Comments received*

416. The comment received from Forest & Bird highlighted that the Auckland Plan 2050 also provides focus and direction regarding biodiversity and natural features under its Environment and Cultural Heritage Outcomes section.

6.7.2 *Evaluation and findings*

417. We accept that the Auckland Plan 2050 recognises the importance of both aggregate and biodiversity to the Auckland Region. It also refers to the Council’s Indigenous Biodiversity Strategy, which sets out a vision, objectives, and measures to achieve the biodiversity outcomes sought.
418. We find that the Auckland Plan 2050 raises no issues that would be determinative of the proposal or would materially add to the matters otherwise already addressed in our decision including the AUP, NPS-FM and NPS-IB. Ultimately we find no strategic, Auckland-wide issues relevant to our decision, with the reasons for our refusal being limited to specific

matters related to ecological accounting and the appropriate way to distinguish between a decision-making function and a decision-actioning function (management plan conditions).

PART 7: SECTIONS 104B AND 104D

419. As the Project is a non-complying activity, the Panel is also required to consider ss.104B and 104D of the RMA.

7.1 Section 104B

420. Section 104B sets out the parameters that a consent authority has with respect to non-complying activities. The Panel may grant or refuse an application; and if it grants an application, may impose conditions under s.108 of the RMA.
421. As demonstrated in other parts of this decision, we have considered all of the matters in s.104 that are relevant to this Application and have determined that the Application should be refused on ecological grounds. In accordance with s.104B of the RMA, we exercise our discretion in favour of that outcome and refuse consent.

7.2 Section 104D

422. The Panel could only grant consent to the Application, if we are satisfied that it meets one of the 'gateway' tests under s.104D of the RMA. This requires that either:
- (a) the adverse effects on the environment would be minor; or
 - (b) the application is for an activity that would not be contrary to the objectives and policies of the relevant plan and/or proposed plan in respect of the activity.
423. In determining this issue, the Panel is cognisant that for an activity to be "*contrary*" to the objectives and policies of the relevant plans, it must be "*opposed to*" or "*repugnant to*" the objectives and policies of the relevant plans.⁹¹ In undertaking an assessment of the activity against the relevant objectives and policies, these provisions are to be considered in their entirety or "*as a whole*."⁹²
424. The Applicant concludes that the Application:⁹³
- (a) does not satisfy the first gateway test as "*adverse effects on ecological values cannot be avoided, remedied or mitigated given almost the entire King's Quarry site is subject to the SEA overlay such that effects are considered to be more than minor*"; but it
 - (b) satisfies the second gateway test as it would "*give effect to the relevant plans overall*" and while offsetting is not specifically contemplated in the Special Purpose Quarry Zone, the Project "*would not be contrary to all the objectives and policies*".

7.2.1 Comments received

425. Comments in relation to s104D matters were received from:

⁹¹ *Outstanding Landscape Protection Soc Inc v Hastings DC* [2008] NZRMA 8.

⁹² *RJ Davidson Family Trust v Marlborough District Council* [2016] NZEnvC 81.

⁹³ AEE, section 12.2.2.

- (a) Environmental Defence Society;
- (b) Forest and Bird;
- (c) K Jones & C Wedd; and
- (d) Berry Simons on behalf of neighbours.

426. The comment from the Environmental Defence Society reminded the Panel of the threshold tests that apply as to the whether consent can be granted and determined that:

- (a) offsetting is not considered for the purposes of assessing adverse effects at the s104D stage and therefore the adverse effects of the proposal on ecology must be considered to be greater than minor; and
- (b) given that the site is zoned Special Purpose Quarry and there are exemptions or lesser tests stated in the objectives and policies for ecological impacts on streams for example, the proposal is not considered to be contrary to the relevant objectives and policies.

427. The comment from Forest and Bird considered it crucial to ensure the application passes s104D in respect of ensuring that the limits to offsetting and compensation are applied as set out in the criteria of the NPS-IB, and how these are to be applied under the effects management hierarchy.

428. The comment from Berry Simons on behalf of neighbours requested that the Panel have particular regard to the conclusions reached by Mr Brown in relation to landscape and visual amenity effects in its evaluation of the threshold tests for non-complying activities.

429. The comment from K Jones & C Wedd noted that the application is clearly unable to pass either gateway test in s104D on the basis that:

- (a) the works in Forested Area A will not avoid significant adverse effects;
- (b) the proposal relies on “offsetting”, which does not meet the requirements for offsetting in the AUP;
- (c) the proposal does meet the expectations of the AUP (chapter E3) because it does not “avoid where practicable” effects on streams in Forested Area A;
- (d) there is no assessment of effects on the ONL, noting the proposal is likely to have significant adverse effects on the ONL; and
- (e) there is no assessment of effects on rural amenity values, noting the proposal is likely to have significant adverse effects on those values.

7.2.2 Applicant’s response

430. In response the Applicant filed a memorandum dated 23 August 2024 from Barker & Associates that:

- (a) “*fundamentally disagreed*” with the conclusions of K Jones and C Wedd and of the conclusions in relation to landscape and visual effects; and
- (b) restated that the Project satisfies the second gateway test under section 104D.

431. Further, and as noted briefly above in the AUP assessment section, Barker & Associates also provided a further memorandum dated which:
- (a) went through every relevant AUP objective and policy and set out why they considered the proposal was not contrary to them;
 - (b) confirmed their understanding of what contrary to meant (being repugnant to); and
 - (c) set out their view on the scope of the s.104D test as follows:

We also understand that the evaluation required under s104D(1)(b) is not whether the Proposal complies entirely with each and every relevant objective and policy, but rather whether, it can be said that the Proposal is contrary to the relevant objectives and policies as a whole. We consider that overall, the Proposal will not be contrary to the relevant objectives and policies. Accordingly, the conclusions in respect to section 104D of the RMA remain that the Proposal satisfies the second gateway test.

7.2.3 Evaluation and findings

432. The Panel's evaluation of the environmental effects and assessment against the relevant plans and policies is set out in Parts 4 to 6 above.
433. There appears to be general agreement between the parties that the proposal fails the first gateway test as the effects would be more than minor. The Panel accepts that conclusion.
434. In terms of the second gateway test, while the Applicant has concluded that the proposal is not contrary to any of the 68 identified relevant AUP objectives and policies (and inconsistent with only 3), we are not persuaded that is the case. The Council in its detailed assessment found that the proposal would be contrary to 13 of those objectives and policies and inconsistent with a further 19. We consider the Council's assessment to be more accurate in that regard.
435. However, we are cognisant that whether a proposal is contrary to objectives and policies must be assessed overall, rather than simply on the basis of individual objectives and policies. We also acknowledge, as the Applicant pointed out, the AUP has not yet been updated to reflect the offsetting framework provided for in the NPS-IB, and offsetting could be relevant as to whether a proposal meets an avoidance policy.⁹⁴
436. While we considered the matter to be finely balanced, in the absence of any contrary expert evidence, we accept the conclusion reached by the Applicant, Council and EDS that overall the proposal is not contrary to the objectives and policies of the AUP, and therefore passes the second gateway test. In reaching that decision however, we record that based on our uncertainties related to aquatic and terrestrial ecological effects, the proposal does sit in tension with those objectives and policies of the AUP that address those matters. It is our finding that the shortcomings as to effects-accounting, attribution, and quantification should be classified as relating to environmental effects, not to the way in which the Applicant fundamentally structured its proposal to address the AUP.

⁹⁴ Memo of Counsel for the Applicant, 13 September 2024, at [29]-[30].

PART 8: SECTIONS 105 AND 107 RMA

8.1 Section 105

437. As the Project involves discharges to the environment,⁹⁵ both during construction and during the subsequent operation of the quarry, the Panel is required to have regard to the following matters set out in s.105 of the RMA:
- (a) *the nature of the discharge and the sensitivity of the receiving environment;*
 - (b) *the Applicant's reasons for the proposed choice; and*
 - (c) *any possible alternative methods of discharge, including discharge into any other receiving environment.*
438. We have largely addressed these matters in other parts of this decision. Having considered the relevant discharges, the information provided by the Applicant, the invited parties, and the Panel's ecological advisors, the Panel remains concerned that there is insufficient information regarding the sensitivity of the receiving environment and the species within it to be satisfied that effects would be acceptable, and measures proposed to manage those effects acceptable. Accordingly, we are unable to conclude that discharges could be appropriately managed, including of note downstream sedimentation.

8.2 Section 107

439. Under cl.31(5) of Sch.6, the Panel must not grant a resource consent that is contrary to s.107 of the RMA.
440. Section 107 prevents discharge permits being authorised if the discharge of water or contaminants into water (or onto land in circumstances that may result in it entering water) would result in:
- (a) *the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials;*
 - (b) *any conspicuous change in the colour or visual clarity;*
 - (c) *any emission of objectionable odour;*
 - (d) *the rendering of fresh water unsuitable for consumption by farm animals; or*
 - (e) *any significant adverse effects on aquatic life.*
441. The Applicant states that the Project is not anticipated to give rise to any of these effects, given the erosion and sediment controls and DMP that would be in place.⁹⁶ We are unable to determine the scale of adverse effects on aquatic life for the reasons set out in Part 5 of this decision.
442. Accordingly, we cannot be satisfied that the s.107 requirements would be satisfied in this case.

⁹⁵ Refer Table 1 above.

⁹⁶ AEE, section 12.2.4.

PART 9: PURPOSE OF THE FTA AND PART 2 OF THE RMA

443. An expert consenting panel is required to determine consent applications in accordance with the provisions of the FTA.⁹⁷
444. While the FTA includes an express requirement for the Minister⁹⁸ at the referral stage to consider whether a Project would help to achieve the purpose of the FTA by reference to a number of factors (s.19 of the FTA), there is no equivalent provision for expert consenting panels. Instead, cl.31 of Sch.6 makes our consideration of the effects, offsets, compensation, planning documents and any other relevant matters, subject to Part 2 of the RMA and the purpose (s.4) of the FTA – noting that the FTA Treaty provision (s.6) applies in place of s.8 of the RMA.⁹⁹
445. The FTA does however require every application to contain an assessment of the activity against Part 2 of the RMA, the purpose of the FTA, and the matters set out in s.19 of the FTA. The Applicant's AEE contained an assessment of these matters in sections 12.1 and 12.2.
446. In considering these matters, we are mindful that as the Court of Appeal stated in *RJ Davidson Family Trust v Marlborough District Council*,¹⁰⁰ where a plan has been prepared having regard to Part 2 of the RMA, then resort to Part 2 would not likely add any value, and Part 2 cannot be used to justify an outcome contrary to policies. We record our understanding that the RMA policies and plans to which we have had regard give effect to Part 2, although we acknowledge that some appeals still remain to be determined for parts of the AUP. We also acknowledge (as already noted) that the AUP has yet to be updated to give effect to the NPS-IB.
447. Having reviewed the AEE, the supporting technical reports, the information, technical advice and comments received, the Panel is not satisfied that it has sufficient information to determine whether the Project would achieve the purpose of the FTA and Part 2 of the RMA. In particular, in the absence of the key ecological information noted earlier, we are not able to determine whether the proposal:
- (a) would promote sustainable management as required by the purposes of both the FTA and RMA;
 - (b) recognises and provides for the following matters of national importance:
 - (i) the preservation of wetlands, rivers and their margins and the protection of them from inappropriate use and development (s.6(a));
 - (ii) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (s.6(c));
 - (iii) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites and other taonga (s.6(e));
 - (c) would have an unacceptable impact on:

⁹⁷ cl.1 of Sch.5 to the FTA.

⁹⁸ Minister is defined in s.7 of the FTA as: "the Minister of the Crown who, under the Authority of any warrant or with the authority of the Prime Minister is for the time being responsible for the administration of this Act".

⁹⁹ cl.31(2) of the Sch.6.

¹⁰⁰ *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

- (i) kaitiakitanga (s.7(a));
- (ii) the intrinsic value of ecosystems (s.7(d)); and
- (iii) the maintenance and enhancement of the quality of the environment (s.7(f)).

448. While we accept that the proposal is likely to appropriately address other aspects of the FTA purpose and RMA purpose and principles, given the information gaps noted earlier, we are unable to conclude that overall the proposal would be consistent with those purposes and principles.

PART 10: FINAL DECISION

449. After considering all of the matters to which we must or may have regard (as summarised in cls.31 and 32 of Sch.6 of the FTA) we have found that the dual purposes of the FTA and the RMA would best be served by refusing consent for this proposal.

450. Accordingly, for the reasons given in this decision, consent for the development is **REFUSED**.

451. In accordance with cls.38 and 45 of Sch.6, the Panel records that a person entitled to appeal must file any appeal no later than 15 wd after they have received notice of this decision.



Vicki Morrison-Shaw (Chair)



Ian Munro (Member)



Glenn Wilcox (Member)

APPENDIX 1: GLOSSARY OF TERMS

AEE means assessment of environmental effects.

Applicant means Kings Quarry Ltd.

Application means the application by Kings Quarry Ltd for consents under the COVID-19 Recovery (Fast-track Consenting) Act 2020 to expand the operation of Kings Quarry, in Pebble Brook Road, Wainui, Auckland.

AQA means air quality assessment.

AUP means the Auckland Unitary Plan operative in part.

BOAM means Biodiversity Offset Accounting Model.

BCM means Biodiversity Compensation Model.

Brookfields means Brookfields Lawyers Ltd.

Council means the Auckland Council.

cl. or cls. means clause or clauses respectively.

CVA means Cultural Values Assessment.

EIA means the ecological impact assessment prepared for this Application.

EIANZ means the Environmental Institute of Australia and New Zealand.

Effects management hierarchy means the hierarchy set out in the NPS-IB.

EPA means the Environmental Protection Authority.

ESC means erosion and sediment controls.

FTA means the COVID-19 Recovery (Fast-track Consenting) Act 2020.

Groundwater Report means the report prepared by Williamson Water and Land Advisory, and attached as Appendix 21 to the Application.

ha means hectares.

LVA means Landscape and Visual Assessment.

MfE means Ministry for the Environment.

MACA Act means the Marine and Coastal Area (Takutai Moana) Act 2011.

Mitchell Daysh means Mitchell Daysh Ltd.

NES-FW means the Resource Management (National Environmental Standards for Freshwater) Regulations 2020.

NPS means National Policy Statement.

NPS-FM means the National Policy Statement for Freshwater Management 2020.

NPS-IB means the National Policy Statement on Indigenous Biodiversity 2023.

NPS-UD means the National Policy Statement on Urban Development 2020.

Offset Sites means the sites located at Oldfield Road, Wellsford; and the Hellyer Road site, Wainui.

ONL means outstanding natural landscape.

Panel means the expert consenting panel appointed under the FTA to determine this Application.

PDP means Pattle Delamore Partners.

QNVMP means the Quarry Noise and Vibration Management Plan.

Referral Order means the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020.

Reg means a regulation, being a form of delegated legislation.

RFI means request for information.

RMA means the Resource Management Act 1991.

Sch. means Schedule.

SEA means significant ecological area.

SEV means stream ecological valuation.

SISD means safe intersection sight distance.

Site means the area to which this Application relates which includes the Stage 2 Site as well as the two Offset Sites.

Stage 1 means the first stage of the Project for which consent was granted in 2021 (BUN60373589).

Stage 2 means the second stage of the Project for which consent has been sought in this Application.

TAR means threatened and at risk species.

TIA means the traffic impact assessment attached as Appendix 23 to the Application.

Treaty means the Treaty of Waitangi 1840.

wd means working days.

Wildlands means Wildland Consultants Ltd.

APPENDIX 2: LIST OF KEY DATES

Kings Quarry– Key Dates	
Application Lodged	13 December 2024
Completeness End Date	21 December 2024
Panel Appointed	18 March 2024
RFI#1 Issued	20 March 2024
Date Application Suspended	27 March 2024
Date Application Processing Resumed	10 June 2024
RFI#2 Issued	18 June 2024
Site visit	23 July 2024
Invitations to Comment Issued	26 July 2024
RFI#3 Issued	1 August 2024
Close of Initial Comments Period	16 August 2024
Close of Applicants Response Period	23 August 2024
Additional Invitation to Comment Issued	26 August 2024
RFI#4 Issued	2 September 2024
RFI#5 Issued	9 September 2024
Close of Additional Comment Period	9 September 2024
Extended Decision Deadline	25 October 2024
Date of Decision	14 October 2024
Appeal Deadline	5 November 2024

APPENDIX 3: SUMMARY OF COMMENTS RECEIVED

Notes:

1. The table includes a list of the key matters raised by submissions – it does not attempt to summarise each of the matters raised in submissions. If further detail is required, the full submissions should be referred to.
2. Where a comment has been formally withdrawn by a person, that is not recorded in the table.

Name	Summary of comments
Auckland Council	Comments are raised in relation to the following: <ul style="list-style-type: none"> • amenity effects (noise, dust); • terrestrial and aquatic ecology; • planning matters; and • conditions
Auckland Swiss Club	Comments are raised in relation to the following: <ul style="list-style-type: none"> • property/boundary issues; • ecology, including effects on local kiwi conservation efforts; • noise; • air quality; • operational hazards; and • consultation/engagement.
Auckland Transport	Comments are raised in relation to the following: <ul style="list-style-type: none"> • requirements of King's Quarry Stage 1 consents; • condition of Pebble Brook Road; and • traffic safety.
Berry Simons on behalf of the following neighbours: <ul style="list-style-type: none"> • B&D Hellyer • M&M Coombridge • K Jones & C Wedd • A&H Cato • R&D Crabb 	Comments are raised in relation to the following: <ul style="list-style-type: none"> • air quality; • noise; • traffic matters, including condition of Pebble Brook Road and one-lane bridge; • hydrology/groundwater; • rural character and amenity; • ecology and certainty with offsetting to achieve ecological gain; • economic benefits; and • erosion and sediment control. <p>Expert evidence has been submitted in relation to some of the matters raised above.</p>
Environmental Defence Society	Comments are raised in relation to the following: <ul style="list-style-type: none"> • ecology and certainty with offsetting to achieve ecological gain; • conditions of consent; and • assessment against s104D.
Heritage NZ Pouhere Taonga	No concerns raised, but encourages continual involvement of mana whenua
K Jones & C Wedd	Comments are raised in relation to the following: <ul style="list-style-type: none"> • assessment against s104D; • ecology and biodiversity; • adequacy of policy analysis; • rural character and amenity; • air quality (dust) and greenhouse gas emissions; • noise; • landscape and visual impacts; • erosion and sediment control;

Name	Summary of comments
	<ul style="list-style-type: none"> • geotechnical aspects; • economics; and • consultation. <p>Expert evidence has been submitted in relation to some of the matters raised above.</p>
M&M Coombridge	<p>Comments are raised in relation to the following:</p> <ul style="list-style-type: none"> • terrestrial and aquatic ecology; • visual effects; • rural amenity values; • noise; and • air quality (dust). <p>A video has been submitted in support of matters raised above.</p>
Property Council NZ	<p>Organisation supports the creation and retention of well-designed, functional and sustainable built environments which contribute to New Zealand's overall prosperity.</p> <p>As a membership organisation representing multiple owners and developers their policy prevents it commenting on a specific proposal.</p>
Rodney Local Board	<p>Comments are raised on behalf of residents in relation to the following:</p> <ul style="list-style-type: none"> • ecology; • road safety; • air quality (dust); • noise and hours of operation; and • visual impacts.
Royal Forest and Bird	<p>Comments are raised in relation to:</p> <ul style="list-style-type: none"> • effects on indigenous biodiversity; and • ecosystem classification.
T&E Keane	<p>Comments raised in relation to:</p> <ul style="list-style-type: none"> • site entrance; • Pebble Brook Road/Waitoki Road junction; • speed and width of road/condition; • dust pollution; • silica contamination; • quantity of trucks per day; • effects on native bush; • damming of the Waitoki Stream; • engagement; and • impacts on lifestyle.
Winstone Aggregates	<p>Organisation owns an adjacent quarrying operation.</p> <p>If consents are to be granted, seeks inclusion of conditions requiring a collaborative approach to monitoring of stream flow and groundwater impacts.</p>