BEFORE THE PANEL

IN THE MATTER of the Fast-track Approvals Act 2024 (**FTAA**)

AND

IN THE MATTER of an application by New Zealand Transport Authority under section 42 of the FTAA for the Alternative to the Brynderwyn Hills – Brynderwyn Hills Section

APPLICATION NO. FTAA-2603-1178

LEGAL SUBMISSIONS ON BEHALF OF THE DIRECTOR-GENERAL OF CONSERVATION – SECTION 53 COMMENTS

20 October 2026

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INTRODUCTION

1. These legal submissions are provided on behalf of the Director-General of Conservation (**D-G**, or **the Department**) under section 53 of the FTAA (**the Act**). They respond to issues raised in the Applicant's Opening Legal Submissions dated 2 April 2026, and elaborate on points made in the Department's section 53 comments document.

Key legal issues

2. These submissions address four key matters:

   a) the decision-making framework and scheme of the Act;

   b) the approach to expert assessments;

   c) the difference between 'adverse impacts' and 'adverse effects' for the purposes of section 85; and

   d) how the Panel should approach conditions.

A. THE DECISION-MAKING FRAMEWORK AND STATUTORY SCHEME

One-stop-shop approach to consenting under the Act

3. The Applicant has applied for a suite of approvals. In the context of this project:

   a) effects on habitat would be authorised by the resource consents and designation; and

   b) effects on wildlife would be considered, and measures imposed to address them through the resource consents and designation conditions, but

   c) the harm to the wildlife itself would be authorised by the wildlife approvals.

4. As signalled by Mallon J in *Solid Energy New Zealand Ltd v The Minister of Energy*:[1]

   > *[112] Under the RMA a land use consent authorises a person to make a "use" of the land that would otherwise contravene a district or regional plan. Because a "use" of land includes "any destruction of, damage to, or disturbance of, the habitats of plants or animals in, on, or under the land", potentially a land use consent can be granted to carry out such destruction, damage or disturbance*

[1] *Solid Energy New Zealand Ltd v The Minister of Energy & Ors*, High Court of New Zealand, Wellington Registry, Mallon J, CIV-2007-485-001381, 18 June, 10 December 2008, at [112], [116] and [117].

> *which, absent the consent, would otherwise contravene the relevant district or regional plan. Destruction of a habitat is likely to involve some harm to animals within it. The RMA does not empower a consenting authority to authorise that harm. Rather, the consenting authority is empowered to impose conditions to address adverse environmental effects of the proposed use of land. Thus the harm to plants and animals from a proposed use may be addressed either by refusing consent to the use or by imposing conditions to address the harm. In this way the RMA process is intended to achieve its purpose of sustainable management of our natural and physical resources (which includes plants and animals).*
>
> …
>
> *[116]...The requirement that these conditions be met in order to use the land according to the consent is not "lawful authority" to take the actions that the conditions entail. The Environment Court was not empowered by the RMA to authorise the "hunting or killing" or the "possession" of wildlife. Its power was to authorise a land use and to impose conditions upon which that use was subject.*
>
> *[117] The Director-General of Conservation was, however, empowered by s 53 of the Wildlife Act to authorise the catching alive or killing of the wildlife…*

5. The FTAA does not change this underlying legal position. Accordingly, fast-track RMA approvals (resource consents and designation) authorise the land use activities giving rise to disturbance or killing of wildlife, but they do not authorise that disturbance or killing of the wildlife itself. That is the role of wildlife approvals.

Wildlife Approvals

6. As the Supreme Court has observed, the Wildlife Act "is the principal means by which wildlife in New Zealand, including many of its most endangered species, are protected."[2] It is the "mainstay of statutory protection of animals in the environment".[3] The purpose of the Wildlife Act is a mandatory relevant consideration under clause 5 of Schedule 7, as are the other 15 items relating to the activity and effects of the activity as set out in clause 2 of Schedule 7.

7. In the Department's submission, a key question for the Panel is: What standard should the Applicant be required to achieve under the wildlife approvals, if the Panel is minded to grant those approvals? This is an important question, not only for the

[2] *Shark Experience Ltd v PauaMac* NZSC [2019] NZSC 111, at [45].
[3] *Shark Experience Ltd v PauaMac* NZSC [2019] NZSC 111, at [46].

purposes of what the Panel needs to decide regarding the parameters of the wildlife approvals themselves, but also for the way the wildlife approvals and their conditions would interrelate with the other fast-track approvals sought.

8. At a practical level, the requirements set out in the wildlife approval conditions would influence (and can even drive) the outcomes to be achieved under the conditions of the RMA approvals. The standards and requirements set out in the wildlife approvals must not be undermined by inconsistent conditions, standards or methodologies set out in the RMA approvals (and vice versa). Approvals, and conditions, need to work in an integrated manner.

Schedule 7 FTAA requirements

9. Clause 6 of Schedule 7 provides:

> ***6 Conditions***
>
> *(1) A panel may set any conditions on a wildlife approval that the panel considers necessary to manage the effects of the activity on protected wildlife.*
>
> *(2) In setting any condition under subclause (1), the panel must—*
>
> *(a) consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife that is to be covered by the approval; and*
>
> *(b) where more than minor residual impacts on protected wildlife cannot be avoided, minimised, or remedied, ensure that they are offset or compensated for where possible and appropriate; and*
>
> *(c) take into account, as the case may be, the New Zealand Threat Classification System or any relevant international conservation agreement that may apply in respect of the protected wildlife that is to be covered by the approval.*

10. While these requirements are framed in the Act as requirements for conditions, in this case, they go to the heart of the project's design and the methodologies adopted.

11. The Department submits that the information requirements, criteria, and condition-setting powers for wildlife approvals as set out in Schedule 7, when read together and in light of the purpose and other relevant provisions in the FTAA as required, envisage that Panel's will set a <u>high</u> standard of wildlife protection through conditions.

12. Schedule 7 is consistent with, and reflects other important provisions in, the Act that are relevant to conditions setting and decision making. In particular:

    a) Reference in clause 5(a) and its chapeau to the purpose of the Act, and the requirement that it be given the greatest weight, reflects s 81(2)(b) and the requirement to apply the applicable schedules, and directions as to weighting contained within them, when making decisions on approvals.

    b) Reference in clause 6(1) to conditions being necessary to manage the effects on protected wildlife, reflects s 83 and the requirement that conditions be no more onerous than necessary to address the reasons for which they are set.

13. In the context of this project, the Department submits that there can be no question that comprehensive conditions to manage the adverse effects on protected wildlife will be 'necessary' if the project is to be approved. This is evident from the high numbers of absolutely protected species that are likely to be killed (whether before or after the Applicant's proposed conditions are applied), and the threat classification status of them as set out in the Department's experts' reports.

14. Necessity, in this context, is not ameliorated by the requirement to give the greatest weight to the purpose of the Act (clause 5(a)).[4] There is no information before the Panel that would suggest comprehensive conditions to address adverse effects on protected wildlife would threaten the viability of the project, and as such the Department submits that such conditions would be consistent with the purpose of the Act.

15. Even if that were not the case, the Department submits that significant adverse effects on wildlife are not outweighed by the purpose of the FTAA, despite the greatest weight being required to be given to that purpose. See for example, the *Bledisloe Wharf* fast track decision[5] (acknowledging that Panel Fast-track decisions do not have legal precedent effect):

    a. *While the greatest weight is to be placed on the purpose of the FTAA, we must be careful not to rely solely on that purpose at the expense of due consideration of the other matters listed in (b) to (c): Enterprise Miramar, at [41].*

[4] Refer also to the Department's "Weighting memo" forming part of its section 51 report on the application for wildlife approvals, at: Appendix-C-to-DOC-s51-report-weighting.pdf.

[5] See Port-of-Auckland-Fast-track-Application-Decision-of-Expert-Panel-including-Minor-Ccorrections-8.9.25.pdf at paragraph 121.

b. Clause 17 requires us to consider the matters listed in clause 17(1)(a)-(c) on an individual basis, prior to standing back and conducting an overall weighting in accordance with the specified direction: Enterprise Miramar, at [52] – [53].

c. The purpose of the FTAA is not logically relevant to an assessment of environmental effects. Environmental effects do not become less than minor simply because of the purpose of the FTAA. What changes is the weight to be placed on those more than minor effects; they may be outweighed by the purpose of facilitating the delivery of infrastructure and development projects with significant regional or national benefit, or they may not: Enterprise Miramar, at [55].[6]

16. Clause 6(2) of Schedule 7 sets out a stepped process for setting conditions on a wildlife approval that are necessary to manage the effects of the activity on protected wildlife, being:

a) First, to **consider** "*whether the condition would avoid, minimise, or remedy any impacts on protected wildlife that is to be covered by the approval*" (clause 6(2)(a)); and then

b) Second, where more than minor residual impacts on protected wildlife cannot be avoided, minimised, or remedied, to **ensure** *"that they are offset or compensated for where possible and appropriate."* (clause 6(2)(b)), and

c) Third, to **take into account** "*the New Zealand Threat Classification System or any relevant international conservation agreement that may apply in respect of the protected wildlife that is to be covered by the approval*" (clause 6(2)(c)).[7]

17. Panels have a broad discretion to set *any* conditions that are necessary to manage the effects of the activity on protected wildlife (clause 6(1)). In the case of this project, residual adverse effects on Hochstetter's frogs will likely be significant, and it is clearly 'necessary' to manage the effects of the activity on this protected wildlife, as well as the effects on other protected wildlife, in respect of which also, the adverse effects cannot presently be quantified.

18. A Panel is required ("*must*") consider whether conditions would avoid, minimise or remedy any impacts on protected wildlife covered by the approval. And, if adverse

[6] It is noted that the Opening Legal submissions for the Applicant at [41] purport to quote the above section from the fast-track panel's *Bledisloe Wharf* decision. However, it is not clear where that quote has come from. It is not a direct quote from the *Bledisloe Wharf* decision (at [121]), and it refers to various matters not relevant to that decision. It appears that counsel has revised the Bledisloe findings to incorporate other approvals required for this project.

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

effects would be more than minor, then the Panel *must ensure* that the adverse effects are offset or compensated where possible and appropriate. Clause 6(2)(b) is couched in highly directive language.

19. To 'ensure' means "to make something certain to happen".[8]

20. What offsetting and compensation is *possible* will involve matters of fact in the sense of whether something can feasibly be done.

21. What offsetting and compensation is *appropriate* introduces a more subjective test, and therefore introduces scope for differences of interpretation.

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

23. Clause 6(2)(b) of Schedule 7 broadly applies the "effects management hierarchy" (EMH) as described in the NPS-IB and the NPS-FM. Although it does not expressly require offsetting to be considered ahead of compensation, this could be inferred.

24. If biodiversity offsetting or compensation for more than minor residual effects is not *appropriate*, (in that it is beyond the limits for offsetting or compensation as set out in the Principles) adherence to the EMH means that the effects must be reduced by other means, i.e. further avoidance, minimisation and remediation, so they are no more than minor. Otherwise the effects are unacceptable. In this respect, the direction to offset or compensate adverse effects on protected wildlife only where possible and appropriate in clause 6(2)(b), could be seen as a bottom line.

25. The purpose of the Wildlife Act, which is the protection of wildlife[9], is a mandatory relevant consideration when considering conditions (cl 5(b)). The Department's submission is that the applicant's proposed management of effects of the project on Hochstetter's frogs in particular is inconsistent with the purpose of the Wildlife Act. The scale of residual impacts is so great, that it cannot be said that the proposed wildlife approvals will protect the wildlife.

[8] Cambridge Online Dictionary.
[9] *Shark Experience Ltd v PauaMac Inc* [2019] NZSC 111 at [44] – 46.

26. The Department submits that substantive changes to the proposed wildlife approval, and its conditions would be required, along with a more comprehensive offset and compensation package, before it could be regarded as being consistent with the statutory purpose of protecting wildlife.

27. Even if this Panel were to disagree and consider the NPS-IB is only relevant, not directive, of the approach to 'possible and 'appropriate', this does not change the interpretation that should be given to these terms. That is because the terms should be considered in a manner that, while achieving the purpose of the FTAA, is also not ultra vires or at odds with the Wildlife Act purpose. Should these terms be coloured by concepts such as financial cost or project viability, it would introduce matters into Schedule 7 that are against the protective purpose of the Wildlife Act, and clause 5 of Schedule 7. That kind of assessment would lead to the effective 'masking' of adverse effects, when these are plainly matters that need to be on the table for the Panel to ultimately weigh under s 85(3) when considering the cost of the project against its benefits.

B. THE APPLICANT'S EXPERTS' APPROACH TO THEIR ASSESSMENTS

28. The Applicant's experts have recorded in their reports that they have undertaken their assessments in accordance with the Environment Court's Code of Conduct for Expert Witnesses, as have the Department's experts. This approach aligns with the approach to expert engagement in fast-track processes taken by the Panel Conveners in their guidance note.

29. This is entirely appropriate, as the Panel needs to understand the effects of the project in an unfiltered way before applying the law to it, and it needs to be confident that the evidence being considered does that (hence the safeguards provided in the Environment Court Code of Conduct).

30. The Applicant has "*asked its experts to undertake their assessments in light of the FTAA and to consider whether departures from industry guidelines or practice are appropriate*". [10]

31. The Department is concerned that some material forming part of the application (including the terrestrial and freshwater assessments), may not be able to be relied

[10] Applicant's Opening Legal Submissions, at [66].

on by the Panel as an impartial appraisal, given it is recorded in these assessments that they are influenced by that expert's interpretation of the statutory framework:

- The Terrestrial assessment records:

> "*We have assessed effects on high and very high value native vegetation (including kauri) and Hochstetter's frogs as moderate or greater, even after mitigation. While Project's residual adverse effects on those values will remain if unmanaged, those residual effects may be acceptable considering the purpose and relevant decision-making provisions of the FTAA in the context of the enabling benefits of the Project*." [11]

- The Freshwater assessment report expressly records:

> ***5. Effects Management Recommendations***
>
> ***5.1. Overview***
>
> *This section of the report recommends methods to avoid, minimise, remedy, offset and / or compensate for the Project's potential effects on streams and natural inland wetlands. In this report, the term 'mitigation' is used as a general term to encompass avoidance, minimisation, remediation, offset or compensation. The statutory framework relevant to the Project is outlined at Section 2 above. I acknowledge the NPS-FM policy direction is to achieve no loss of extent or values of both streams (where practicable) and natural inland wetlands. For specified infrastructure, the NPS-FM policy direction is for that outcome to be achieved through application of the effects management hierarchy. However, I also acknowledge the FTAA and NPS-I mean that strict application of the NPS-FM policy direction is not required in this context. My recommendations have been informed by that statutory framework. I have applied my own professional judgment when making recommendations, which is informed by whether I consider the natural inland wetlands and streams that may be impacted by the Project have values that warrant mitigation. I explain below the basis for my recommendations for managing the effects of the Project on natural inland wetlands and streams.*[12]

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

[12] Assessment of Effects on Freshwater Ecology, page 39.

32. The Department submits that this approach by a technical expert of applying a 'FTAA lens', does not accord with their duty to the Panel to provide impartial expert advice.

33. This approach is also at odds with the Panel's guidance in the *Bledisloe Wharf* decision at [121(c)] with reference to the Court's findings in *Enterprise Miramar* as set out above, and as referenced in the Applicant's opening legal submissions:[13]

> *"The purpose of the FTAA is not logically relevant to an assessment of environmental effects. Environmental effects do not become less than minor simply because of the purpose of the FTAA. What changes is the weight to be placed on those more than minor effects; they may be outweighed by the purpose of facilitating the delivery of infrastructure and development projects with significant regional or national benefit, or they may not: Enterprise Miramar, at [55]."*

34. The Department submits that the ecologists' assessments of values and effects, and their recommendations for measures to address the adverse effects, should not be influenced by the purpose of the Act. Where this has occurred, the Department submits that the Panel should treat that advice with caution and accordingly consider what weight the evidence can be given, especially in areas of disagreement with the Department's experts.

C. THE DIFFERENCE BETWEEN 'ADVERSE EFFECTS' AND 'ADVERSE IMPACTS'

35. It is important to note that 'adverse impact' for the purpose of section 85 of the Act is not the same as, and has a broader meaning than, 'adverse effect'.

36. 'Adverse impact' is defined in section 85(5) to mean: "any matter considered by the panel in complying with section 81(2) that weighs against granting the approval."

37. It is incorrect to treat 'adverse impact' and 'adverse effect' to mean the same thing, when undertaking the weighing exercise required by section 85. The result of doing so would be to omit important considerations in the section 85 weighing process. For example, a significant adverse impact might well be a proposal that is not meeting the protective purpose of the Wildlife Act in addition to the significant effects to wildlife that give rise to that inconsistency.

[13] Applicant's opening legal submissions at [41].

38. In the fast-track panel's draft *Taranaki VTM* decision, the Panel set out in an appendix (Appendix G) to its decision, a table comparing impacts and benefits spanning 11 pages.

39. In its introductory discussion to Appendix, G, the Panel recorded:[14]

> *An adverse impact is "any matter considered by the panel in complying with s81(2) FTAA that weighs against granting the approval". As such, the adverse impacts summarised below include findings on effects, as well as other matters that the Panel must consider in assessing the application (including when information was not the best available or was uncertain, or when best practice was not evident, or where the project is inconsistent with the nature and effect of other marine management regimes).*

40. The Panel in *Ashbourne* took a similar approach, in determining that the adverse impacts of the project included that:

a) There was no lawful pathway for locating the retirement village on highly productive land (HPL).

b) There was no demonstrated short or medium-term demand for retirement villages that would justify locating the retirement village on HPL, as shown in the evidence accepted by the Panel.

c) Alternative, serviced sites were available in Matamata on which the retirement village could be located, as also shown in the evidence accepted by the Panel.

d) The proposed location of the retirement village was inconsistent with both the Waikato Regional Policy Statement and the Matamata Piako Operative District Plan. [15]

41. The Department accordingly does not accept the Applicant's submission that adverse impacts under the FTAA and adverse effects under the RMA and HNZPTA (nor the Wildlife Act by implication) in this case can be treated by the Panel as equivalent.[16] Adverse impacts in this case would include all the matters the Panel needs to consider, and which would weigh as a 'negative' against the grant of consent.

[14] *Taranaki VTM* decision Appendix G, page 60. See: Appendices
[15] See Ashbourne-Final-Decision-20.05.26.pdf) at [13].
[16] Applicant's opening legal submissions at [56].

D. CONDITIONS

The Act does not direct a lower standard of environmental protection than for BAU processes

42. The Act's purpose as set out in section 3 "is to facilitate the delivery of infrastructure and development projects with significant regional or national benefits". The Department submits that this does not equate to reduced environmental protections where approvals are granted.

43. The Act as a "one stop shop" incorporates various elements from what the Act refers to as the "parent legislation", with varying information, criteria and provisions for conditions set out in the relevant schedule, depending on which of the parent Acts is being considered.

44. While it may allow it in appropriate circumstances, the Department does not accept that the Act directs a lesser standard of environmental management than the parent Acts when approvals are granted. The purpose of the Act is to 'facilitate' the delivery of particular infrastructure and development with significant regional or national benefit. In considering the purpose of the FTAA and whether a project is regionally or nationally beneficial it is correct to also consider the implications to biodiversity.[17]

45. Delivery is enabled via the Act's provisions enabling approvals to be granted where that would be impossible under the parent legislation – for example for prohibited activities under the RMA, and concessions that would otherwise be unlawful to grant under the Conservation Act.

46. Enabling approvals to be granted where they would not be able to be granted under "business as usual" processes in the parent legislation is an entirely different issue from the environmental standard fast-track approvals should be expected to meet, if granted.

47. There is nothing in the Act indicating a lesser environmental standard is necessarily warranted, and this approach is evident in other panel decisions.

48. Nor does the Department accept the Applicant's submission on conditions that:[18]

[17] See *Taranaki VTM*: Draft decision, at .[93]. See also *Climate Clinic Aotearoa v Minister of Energy and Resources* 1 NZLR [2025], at [57].
[18] Applicant's opening legal submissions at [77].

> *The key question for the Panel is whether any residual impacts of the Project, … are so significant that they would be "out of proportion" to the Project's substantial benefits.*

49. That is the threshold required to be met to enable a panel to decline an approval under section 85(3) of the Act. It is not a statement of the level of environmental protection required in each case. This is evidenced by the strongly protective focus in the requirements for conditions on wildlife approvals in Schedule 7, as is discussed above.

50. The Panel needs to set resource consent and designation conditions in light of all the relevant criteria in accordance with section 81(1)(a) (as part of its "decision to grant") which includes the purpose of the parent Acts, national policy statement, regional policy statement and Plan policies, and all the other criteria in the relevant schedules, subject only to the conditions not being more onerous than necessary as directed by section 83, and more weight being affording to the enabling purpose of the Act than other criteria.

51. What is necessary to address the reason for the condition for the purposes of section 83 must be considered on a case by case basis and in light of all the relevant criteria. Requiring greater weight to be given to the purpose of the FTAA does not provide licence to ignore the other criteria.[19]

52. Accordingly, while the Department agrees that section 83 of the Act requires any conditions set by the Panel to be no more onerous than necessary to address the reason for which they are set, and greatest weight must be afforded to the purpose of the Act compared to other considerations, that does not dictate an approach to conditions that prioritises cost-effectiveness over environmental protection.

53. The recent decision of the fast-track panel for the Haldon solar farm project made that clear, in imposing conditions it expressly acknowledged *were* onerous. The point is, they cannot be *unduly* onerous. [20]

Conditions must include clear standards to be achieved.

54. The applicant has submitted that its proposed conditions "appropriately identify the outcomes to be achieved (the 'what')."[21]

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[19] See for example, *Ashbourne* at [787(c)].

[20] Haldon solar farm decision, Updated decision document at [628] and [697].

[21] Opening legal submissions at [87].

55. The Department does not accept that this the case, for the reasons set out in its section 53 comments document and the comments on conditions in the accompanying technical reports. The proposed conditions do not include clear standards to be achieved, particularly in respect of adverse effects on wildlife.

56. The Department rejects the Applicant's submission that any adverse residual impacts are not significant.[22] The Department is yet to be see the Applicant's updated proposed conditions incorporating its proposed effects management package prepared during the suspension. It is important that clear standards to be achieved are included in any revised conditions, to ensure residual adverse effects are appropriately managed.

The Applicant's "No Condition 1" approach

57. The Applicant is proposing that there be no standard "Condition 1" type condition imposed on its approvals. The Applicant's opening legal submissions state:[23]

> *The 'no Condition 1' approach is particularly beneficial to large linear infrastructure projects, where optimisation of the design is a standard practice during detailed design. Such optimisation allows for refinement of elements such as cut-fill balance and horizontal and vertical alignment, which can reduce both environmental effects and overall costs. For this Project, changes will occur through the detailed design phase once a contractor has been appointed. These changes will occur whether a 'Condition 1' is imposed or not. If a conventional 'Condition 1' was imposed, refinements to the Indicative Alignment through detailed design would likely necessitate alterations to designations or amendments to consent conditions, resulting in significant additional cost and delays to procurement, construction and the realisation of the Project's many national and regional benefits.*
>
> *…*
>
> *The 'no Condition 1' approach thus supports more efficient delivery of the Project, enables technical innovations, adoption of lessons learned from other projects, and responsiveness to evolving requirements, provided that environmental outcomes remain uncompromised.*

[22] Opening legal submissions a [37.6].
[23] At [81] to [83].

Importantly, the flexibility of the 'no Condition 1' approach does not reduce the level of environmental protection nor weaken NZTA's legal obligations.

58. The Department does not understand why a "Condition 1" is opposed by the Applicant, particularly given that the application documents make it very clear that the "indicative alignment" is just that – indicative, and that the Applicant is seeking the flexibility to design the final alignment anywhere within the designation corridor under an "envelope of effects" approach.

59. The Applicant's opening submissions[24] cite the Board of Inquiry's (BOI) Pūhoi to Wellsford decision[25] as an example of where the "no Condition 1" approach was accepted. With respect what is done in another approval is not relevant, and certainly not binding on this Panel. But in any case, it is also important to note the BOI's reasoning for accepting this approach, and the provisos to it as it clearly shows the approach can be distinguished from the present application. The BOI's decision in that case records:

> [272] *In essence, the Board's conclusion is that, given the range, detail and scope of the conditions it has imposed, imposition of an additional Condition 1 is unnecessary and would serve no useful purpose. The Board notes Ms Brosnahan's closing submission[97] that NZTA accepts the general principle that its activities would be limited, not only by the conditions, but also by the scope of its supporting documentation.[98] The Board agrees with Ms Brosnahan's broad comment that the consents which NZTA seeks would not sanction some undisclosed intention to do something which would result in effects outside what this Board has assessed. The various documents submitted by NZTA do not contain the confirmed alignment,[99] or design or construction methodology. But, construction methodologies and Project design methods are, in the Board's view, captured and controlled by the conditions the Board has imposed.*

60. The Department does not agree with removal of Condition 1. However, if the Panel accepts no Condition 1 is needed here, we submit it must ensure that:

a) The conditions of the approvals do not allow effects beyond what the Panel has assessed; and

[24] At [84].
[25] See Volume-1-Final-Report-and-Decision.pdf

b) Any ‘optimisation’ of the design of the project enabled through a ‘flexible’ approach does not increase the environmental effects of the project.



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20 October 2026