

UNDER THE FAST-TRACK APPROVALS ACT 2024

FTAA-2603-1185

UNDER the Fast-track Approvals Act 2024

AND

IN THE MATTER of approvals for resource consents, wildlife approvals, an archaeological authority and complex fish passage approvals under the FTAA by Winstone Aggregates for the **Hunua Quarry Development**

**SUBMISSIONS ON BEHALF OF THE APPLICANT
REGARDING STREAM DIVERSION AND OTHER MATTERS**

15 September 2026

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MAY IT PLEASE THE PANEL:

1. This memorandum responds to paragraph 3(f) of Minute 8 regarding the stream diversion topic. It also provides an update as to (a) feedback on the draft Cultural Management Plan from Waikato-Tainui and (b) proposed donation by the Applicant to Supporters of Tiritiri Matangi Inc.

Stream diversion — remediation or mitigation?

2. In paragraph 3(f) of Minute 8, the Panel asked the Applicant to address the legal question of whether the stream diversion is remediation or some form of “mitigation” and to consider relevant case law on this topic.
3. This memorandum responds to that request.
4. The concepts of remedy and mitigate appear in section 5(2)(c) of the Resource Management Act 1991, as part of the concept of sustainable management. That subparagraph refers to “avoiding, remedying or mitigating any adverse effects of activities on the environment”.

Case law

5. The Environment Court in *Winstone Aggregates Ltd v Papakura District Council* explained that “while in the wording of the subsection the words “avoid, remedy or mitigate” follow a continuum, ... the grammatical construction is such that the words are to be read conjunctively and with equal importance.” Whether emphasis is given to avoidance, remedying, or mitigation will depend on the facts of a particular case and how s 5 of the Act applies to those facts.¹
6. The Courts have provided some guidance on what is meant by “remediation”/“remedying” compared with “mitigation”. However, it needs to be recognised that these concepts are part of a continuum and searching for a hard line between them may be elusive.
7. In *Alexandra District Flood Action Society Inc v Central Otago District Council*, the Environment Court was considering an appeal against the grant of resource consents for water use for hydroelectric generation.² The Court referred to the language of section 5(2)(c) and said that the verb “remedy” should be defined as “rectify, make good”. The court then said that to put the phrase “avoid, remedy or mitigate adverse effects” into context would mean:³
 - (a) To avoid potential adverse effects is to ensure they do not occur;
 - (b) To mitigate them is to allow them to occur but to lessen their impact;

¹ *Winstone Aggregates Limited v Papakura District Council* EnvC Auckland, A049/2002, 26 February 2002 at [24]–[25].

² *Alexandra District Flood Action Society Inc v Central Otago District Council* EnvC. Christchurch, C102/2005, 20 July 2005.

³ At [145].

- (c) To remedy adverse effects is, again, to allow the probability of potential adverse effects to arise and, if the effect does occur, then to rectify or make good those adverse effects.
8. The remediation and mitigation concepts were also discussed by the Environment Court in *J F Investments Ltd v Queenstown Lakes District Council*.⁴ In that case the issue related to a proposed condition for the consent holder to remove off-site pine trees on an outstanding natural landscape as part of a consent application to build a house. The Court said that a remedy should be defined as a means of counteracting or removing anything undesirable, or of redress or other reparation.⁵ The Court noted that there is a continuum of remedial or mitigating actions which may be appropriate and that the best remedy may be a payment of compensation to persons adversely affected in some circumstances.⁶ The Court indicated that works such as off-site removal of pine trees would be considered a "remedy" where it remedies effects caused by the activities on site.⁷
9. The distinction between remedying and mitigation was touched on by the Supreme Court in *Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board*.⁸ Ellen France J said that the ordinary dictionary meanings of the words "avoid," "remedy," and "mitigate" suggest varying levels of protection. Her Honour suggested that:⁹
- (a) "avoid" means to keep off, prevent, obviate;
 - (b) "remedy" means to put right, reform a state of things, to rectify or to make good; and
 - (c) "mitigate" means to lessen the suffering or trouble caused by a difficulty and to moderate the severity or rigor of something.
10. That decision was in the context of different legislation, and Ellen France J's comments form part of a minority judgment. This may limit the precedent value of the comments. Nonetheless the idea that "avoid," "remedy," and "mitigate" are varying levels of the concept of protection is consistent with the idea that these concepts are a continuum.
11. The definition of remediation was also discussed by the Fast Track panel determining the *Takitimu North Link — Stage 2* application. That was an application by Waka Kotahi for approvals for a state highway project, including a diversion and permanent realignment of streams. An issue had emerged between the applicant and the commenting parties as to whether the stream realignment should be classified as remediation or offset in terms of the effects management hierarchy.

⁴ *J F Investments Ltd v Queenstown Lakes District Council* EnvC Christchurch C48/2006, 27 April 2006

⁵ At [21].

⁶ At [36].

⁷ At [42].

⁸ *Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board* [2021] NZSC 127, [2021] 1 NZLR 801.

⁹ At [76] and n 131.

12. The position of DOC and the regional council (in that case) was that stream realignments should be treated as offsets because the original channel is lost.¹⁰
13. Waka Kotahi's position was that realignments were not reclamation and when they are for the same length and properly integrated, they do not reduce stream extent or value. Therefore, they are not an offset.
14. Waka Kotahi submitted to the panel that it was an academic debate as to whether the stream realignment was an offset or a remedy, as the desired ecological outcomes were to be secured by the conditions.¹¹
15. The Panel accepted the submission that the debate about whether the reclamation was a mitigation or remediation was academic and did not need to be resolved. It found that the proposed conditions would ensure that effects on streams will be managed in a manner consistent with the effects management hierarchy and the requirements of the Fast Track Approvals Act.¹²
16. The Panel in that case also indicated that it agreed with its technical advisor, Dr Graham Ussher, that stream realignments were considered a form of mitigation, rather than reclamation, and therefore that only residual losses (after realignment) would be subject to offsetting. The consequence of that was that an assessment of potential values would only apply to residual effects where watercourse length and values are not fully replaced through stream realignment.¹³

Application to this project

17. Winstone Aggregates submits that there is no need for the Panel to determine the academic issue of whether the stream diversion is a mitigation or a remediation. As the case law makes clear, there is a continuum between avoidance, remediation and mitigation. The three concepts describe varying ways of responding to the adverse effects of an activity as part of sustainable management. As the Panel's Minute 8 notes, all parties accept the ecological outcome is the key. So, terminology is an academic question.
18. If, however, the Panel considers it necessary to form a view on this issue, then the Applicant's position is that the stream realignment is clearly remediation. It involves putting right or reforming the stream with the goal of responding to the adverse effects of the quarrying activity. The stream realignment involves like-for-like stream length and values and the same or improved habitat and water quality within the same site. Therefore, it meets the NPS-FM requirements for no net loss and net gain in values.¹⁴

¹⁰ [Director-General of Conservation comments on the Takitimu North Link project, Appendix C: Review of the Effects Management Packages](#), pages 33-34.

¹¹ [Takitimu North Link – applicant's closing submissions](#) at paragraphs 129–139.

¹² [Takitimu North Link - Stage 2 Expert Panel Report Decision](#) dated 19 March 2026 at paragraph 336.

¹³ [Takitimu North Link - Stage 2 Expert Panel Report Decision](#) dated 19 March 2026 at paragraph 339.

¹⁴ Application, Appendix B12.4.5, at Table 23; paragraph 10.7.2; and table 37.

19. The stream realignment is not a “mitigation” because the realignment does not involve lessening the adverse effects of the quarrying activity. The adverse effects of the quarrying activity on the stream environment are allowed to occur, but they are made good by constructing a realigned stream in a different configuration on the same site.
20. A mitigation in this context might involve creating some form of barrier to lessen the adverse effects of the quarrying activity on the stream and its values. But that is not what the stream realignment involves.
21. Dr Boothroyd further explains the Applicant's approach to stream realignment, which consists of a permanent remedy of 570m with a residual length of 628m to be permanently offset. This is set out in his response to the material filed by DOC and Auckland Council.¹⁵ He considers the 570m of realigned stream to be a remedy in the sense that is a rectification or making good of the loss of 570m of stream. He also notes that there is no temporary loss of extent or values within the Applicant's proposed approach; in fact, there is a temporary gain in stream extent due to the proposal for staged livening.
22. For the reasons outlined above, Dr Boothroyd's approach should be preferred.

Offset or remedy

23. The Panel's Minute 8 does not ask the applicant to consider whether the stream diversion is an “offset”. However, as that issue was raised in the *Takitimu North Link - Stage 2* decision, and arises in the arguments advanced in the material filed by DOC and Auckland Council ecologists, it will be discussed briefly here. The Panel in *Takitimu North Link* faced a similar argument as those currently before the Panel, and addressed them as follows:¹⁶

Offset v Remedy

An issue has been raised as to whether stream realignment should be classified as ‘remediation’ or ‘offset’ when assessed under the effects management hierarchy. DOC and BOPRC consider that stream realignments should be treated as offsets, because the original channel is lost. NZTA disagrees, arguing that realignments/diversions are not reclamation and (if at least the same length and properly integrated) do not reduce stream extent or value. NZTA's package includes like-for-like (or better) stream length, improved habitat and water quality, and outcomes-based conditions that meet NPS-FM offset principles and secure no net loss and a net gain in values. As above, NZTA concludes that this debate is academic given the desired ecological outcomes will be secured by the conditions. We tend to agree. We consider that our proposed amendments to conditions should ensure that effects on streams will be managed in a manner consistent with the effects management hierarchy and the requirements of the FTAA.

¹⁵ Memorandum of Ian Boothroyd dated 15 September 2026 at page 5, applicant response column.

¹⁶ [Takitimu North Link - Stage 2 Expert Panel Report Decision](#) dated 19 March 2026 at paragraph 336.

24. Winstone submits that the stream diversion aspect of its proposal is not an “offset”. An offset is defined in the NPS-FM as a conservation outcome that is intended to redress more than minor residual effects after all appropriate avoidance, minimisation, and remediation measures have been sequentially applied. The stream diversion element of Winstone’s proposal is a remediation for the reasons set out above.
25. However, there are more than minor residual adverse effects on the environment after the stream diversion remedy is applied. The effects management hierarchy requires that these residual effects are subject to an offset action. That offset action is the proposal to improve conservation outcomes on other sites, including Meremere Quarry Stream and the Waipokapū Stream.
26. For the reasons given by the expert Panel in the *Takitimu North Link* decision, it is only the residual effects of the quarrying activity (after the stream diversion remedy is considered – rather than the effects of the stream diversion itself) that are properly subject to offsetting and an assessment of potential values. That is the approach that the Applicant’s ecologists have taken, as confirmed by Dr Boothroyd.¹⁷

Concluding remarks

27. The Panel will need to determine the remaining areas of disagreement on ecology issues. In the Applicant’s view, Auckland Council and DOC’s ecologists have adopted an unhelpful position, in that they:
- (a) apply the wrong approach to the Stream Diversion (as outlined above the realigned portion of the stream does not result in any loss – it is a temporary gain);¹⁸
 - (b) Focus on adherence to the effects management hierarchy without applying a ‘fast track lens’;
 - (c) Seek amendments under the guise of “certainty” and “quantification” that make the condition set more onerous, but in the Applicant’s view do not materially alter the ecological outcome;
 - (d) Fail to consider the overall benefits of the proposed ecological package.
28. Those parties have tended to focus on the minutiae of how the values are articulated, measured and quantified and the “what-ifs” around potential values and uncertainty. In doing so, they ignore, or fail to give significant weight to, the bigger picture: the substantial ecological benefits of the Applicant’s ecological package, which has been developed and is supported by its technical experts.
29. This is not a case where the environmental benefits of the application are incapable of being managed by conditions; the Applicant has provided robust conditions that do that. The environmental effects are not

¹⁷ Memorandum of Ian Boothroyd dated 15 September 2026 at page 5, applicant response column.

¹⁸ Dr Boothroyd’s response page 5.

disproportionate to the significant regional and national benefits of the application.

30. As described in the AEE¹⁹ the proposal will result in:

- (a) A comprehensive biodiversity offset/compensation package is proposed to address the loss of 44.46 ha of indigenous forest and scrub and associated terrestrial fauna habitat over the life of the Project.
- (b) The terrestrial ecology offset and compensation proposal includes:
 - a. a total of 85.62ha of revegetation within the Hunua Quarry landholding and surrounding landscape, within the Hunua Regional Park, and at Meremere Quarry;
 - b. comprehensive pest management across some 69.5 ha of forest and scrub within the Hunua Quarry Site and adjacent Focus Areas staged during the consent implementation (excluding Hunua Pit re-forestation).
 - c. Comprehensive pest management across 29.4ha of forest and scrub within the Meremere Quarry Site owned by FCIL and adjacent revegetation areas for the duration of the consent.
 - d. Extensive weed control to make way for revegetation plantings, particularly within Hunua Road and Hunua Regional Park, with weed and pest management to be managed via a pest management plan.
- (c) The offset areas required to fully offset the project have been calculated using the Biodiversity Offset Accounting Model and total 96.7ha. Areas identified for revegetation total 85.62ha, leaving a shortfall of 11.08ha to achieve full offset.
- (d) An additional area of 16.33 ha of existing indigenous bush has been identified for protection and the strategic and comprehensive pest and weed control package described above provides compensation to address the shortfall in planting area and ensure biodiversity benefits meet or exceed losses. The condition and Ecological Management Plan will manage implementation of the offset and compensation package.
- (e) The proposed Quarry expansion will result in the loss of a total area of 0.45ha of natural inland wetland, of which 0.21ha comprises several small patches of ecologically significant forest seepage, and 0.24ha is degraded exotic grass-dominated swamp.
- (f) The calculated offset for this loss is a 2.4ha area of enhancement and planting to achieve full offset of the losses. The wetland enhancement and planting areas to a total area of 2.51 ha, are located in Focus Areas A (Hunua Quarry and environs) and Focus Area B (Meremere Quarry), and within land owned in the Hunua Ranges by Auckland

¹⁹ AEE B7.2.3.1

Parks. With full offset provided, no additional compensation is required; however, these areas will also include fencing, stock removal, and pest plant and pest animal management to ensure success.

- (g) The stream length will be diverted, with the created like-for-like diverted channel providing a remedy to 571m managed via the stream diversion management plan. The remainder is offset for the overall offset of loss and change to waterways is an integrated suite of measures at several locations and includes re-connecting waterways, provision for improved fish passage and planting the riparian margins of waterways.
 - (h) The proposed biodiversity offset for the loss of stream length and habitat comprises a mix of:
 - a. Planting riparian vegetation along stream margins, in Focus areas 1, 2 and 3
 - b. Re-establishing connectivity and linkages to and between reaches of existing watercourses.
 - c. including removal of farm ponds in the Hunua Road landholdings.
 - d. Removal of willow, blackberry and other woody weeds from reaches of stream and
 - e. rehabilitation with native riparian vegetation in the Hunua Regional Park area identified as Focus area 3.
 - (i) The offset package will lead to restoration of stream length, riparian planting resulting in enhanced stream habitat, reduction in bank erosion, improved fish passage and connectivity, and the cessation of stock grazing and their access to waterways.
 - (j) 3,580 m of freshwater offset is planned for the same location as components of the vegetation offset; the overall result is, in part, a complete re-vegetation and restoration of a headwater tributary catchment feeding the Mangapū Stream catchment. Increased native planting in headwater catchments will improve the quality of water from the start as it descends its catchment.
 - (k) Comprehensive wildlife management, salvage, and relocation for lizards.
31. In the Applicant's view, insufficient weight has been placed on the robust suite of conditions (monitoring, management plans, offsetting and long-term protection, adaptive management, enlivening) to ensure that the adverse ecological effects of the development are approached cautiously, are appropriately managed and have been developed in accordance with best practice. This is a generous and well-developed package and is no more onerous than is necessary to address the reasons for which it is set. The applicant is the long-term owner and operator of the site, has

considerable experience with ecological mitigation and is confident these outcomes are achievable.

32. The comments from Auckland Council and DOC infer that the Applicant's ecological mitigation package is insufficient and seek additional monitoring, quantification, or surveying work without demonstrating why it is needed. In the Applicant's view, this is not necessary to manage the project's effects and will not necessarily result in better ecological outcomes.
33. The outcomes sought by DOC and Auckland Council would also result in conditions that are overly onerous and not proportionate, necessary, or reasonable given what is required to manage the effects. This is contrary to the statutory direction as to conditions in section 83 of the Act.
34. Lastly, while the Applicant's experts consider that the ecological package is robust, and has been designed to meet the effects management hierarchy (where needed) and is well aligned with the NPS-FM, it is noted that, if it forms a different view, the Panel is not bound to slavishly adhere to the effects management hierarchy when considering a fast track application. The FTAA, which is not a "no effects" approach, expressly allows residual effects to remain, and requires the Panel to place more weight on the purpose of the Act than on adverse effects.

Update on other matters

35. The Applicant has now received feedback from Waikato-Tainui on the draft Cultural Management Plan and Kaitiaki Forum condition. A copy of this email correspondence is attached and marked "A".
36. The Panel has also asked the applicant to provide an update on whether DOC has responded to Winstone Aggregates' proposal regarding a donation to Supporters of Tiritiri Matangi Inc. The latest email correspondence with DOC is attached and marked "B".



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