

**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**

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**MEMORANDUM OF COUNSEL IN RESPONSE TO MINUTE 8 — ECOLOGY  
WORKSHOP ACTIONS**

**11 September 2026**

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**PHERNNE  
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**MAY IT PLEASE THE PANEL:**

1. This memorandum is filed on behalf of the Applicant in relation to legal topics raised by the Panel in Minute 8. This memorandum responds to the following matters:
  - a. Paragraph 3(c) legality of proposed condition 162.
  - b. Paragraph 3(j): Application of Regulation 42(2) of the Freshwater Fisheries Regulations 1983.
2. The Applicant's responses to these are discussed below.

**Legality of wording proposed in condition 157/162**

3. In paragraph 3(c), the Applicant is to consider drafting condition 157/162 (depending on the version) "to confirm the legality and intent (which all parties supported) of including the proposed offsetting now".
4. The Panel's question implies that offsetting of the 191m of Tributary 4 is being done in advance. That is incorrect.
5. Offsetting the 191m of Tributary 4 during tranche 1 (stage 2) will occur within the duration of the current permit sought, and this relates to effects that occur at the time of the construction of the haul road culvert as detailed in condition 161.
6. Offsetting for stages 7 and 8 is also not being done in advance (as part of this consent, as those actions sit outside the duration of the consent).

**Intent of condition 162**

7. Condition 162 is titled Stream Offset and Compensation for Stages 7 and 8. It is found in Part C of the proposed condition set, which includes specific conditions for construction and mineral extraction activities related to land use consents (section 9 RMA) granted in perpetuity and stream works and consents (section 13 RMA), and discharge to water permits (section 15 RMA) which have a maximum duration of 35 years.
8. The intent of the condition is to:
  - a. Provide certainty as to the extent of the environmental effects being approved as part of the land use consent (no net loss) granted in perpetuity.
  - b. It does this by providing that at Stage 6 (before the Tranche 1 section 13 consents expire circa year 30), the Applicant must provide a Stream Offset and Compensation Management Plan (SOCMP).
  - c. The SOCMP has been drafted with flexibility to apply future processes and trigger an Assessment of values before the permit expires (i.e., within the consent period). This appropriately accounts for the need to reassess values based on changes that have occurred over the 41-year period between granting consent and quarrying these areas (which would be difficult to value now) and cannot currently be consented.
  - d. It also seeks to manage the differences between land use consents (granted in perpetuity), the current stream works consent (35-year

duration), and the future stream works consent for Tributaries 3 and 4 (future process). Providing that:

- i. Offsetting the 191m of Tributary 4 that occurs in stage 1 is within the duration of the current permit sought and this relates to effects occurring at the time of the construction of the haul road culvert.
  - ii. Seeks to make it clear that, prior to exercising the land use consents for quarry stages 7 and 8, future consents will be needed for the reclamation of Tributaries 3 and 4 under s13 RMA (or replacement) prior to undertaking quarrying activities in stages 7 and 8 (works circa year 41). These sit outside the maximum duration for a consent Under s13, they are not available in this process. This is not uncommon for long-duration activities such as quarries, which require renewals and reconsenting over the quarry's lifetime. (wording and condition note 162A).
  - iii. Records that 191m of stream length from Tributary 4 will be offset during construction of the haul road and culvert (tranche 1 – stage 2) (which is consented under the current approvals and relates to effects that occur in stage 2). This ensures that this is not double counted in any future offset calculations for Tributary 4 in stages 7 and 8. This is reflected in both the wording of the condition and in note 162B.
9. In the Applicant's submission, draft condition 162 is lawful, legally enforceable and certain and relates to an effect of the development for which consent is sought. For example, it permits only actions that occur during the consent period approved by the Panel; for example, the offsetting of 191 m of stream loss at Tributary 4 is for effects associated with the culvert works at stage 2. The SOCMP provided at the beginning of stage 6 assesses values to be considered before quarrying in stages 7 and 8 (circa year 30). These actions are expected within the lifetime of the consent sought.
10. Advice Note on 162A and 162B is appropriate in that it recognises this by advising that the consent holder must obtain the necessary regional consents to reclaim tributaries 3 and 4 in stage 7. It does not authorise activities outside of the 35-year duration of the consent (that would be ultra vires).
11. This condition was developed in an effort to address concerns expressed by Auckland Council and the Department of Conservation (DOC) about what was being covered by the consents sought and the confusion that those parties said arose in the existing conditions.

### **Fish passage**

12. In paragraph 3(i) of Minute 8, the Panel invited the Applicant to provide a response to the DOC's view that clause 42(2) of the Freshwater Fisheries Regulations 1983 applies to all culverts.
13. The Applicant has reviewed DOC's memorandum dated 9 September 2026 on this topic.

14. The Applicant agrees with DOC that regulation 42(2) applies to all culverts and fords regardless of the time they were constructed.
15. However, this conclusion is not decisive in terms of whether the Applicant's proposed improvement works provide additionality.
16. As noted by the Panel and discussed at the ecology workshop the culverts predate the introduction of the Regulations.
17. The more significant issue is what regulation 42(2) requires a land occupier to do. For convenience, regulation 42(2) says:

The occupier of any land shall maintain any culvert or ford in any natural river, stream, or water (including the bed of any such natural river, stream, or water in the vicinity of the culvert or ford) in such a way as to allow the free passage of fish:

Provided that this requirement shall cease if the culvert or ford is completely removed or a written exemption has been given by the Director General.

(emphasis added)

18. The verb that defines the occupier's obligation is "maintain". This word has been interpreted in both the Ministry for the Environment's Fish Passage Guidelines and the New Zealand Forest Road Engineering Manual as imposing a requirement to maintain the culvert or ford to "prevent the development of fish passage barriers".<sup>1</sup>
19. That is, the regulation requires land landowners to undertake maintenance of culverts and fords that allow free passage of fish so that barriers do not develop (such as a culvert silting up). But it does not require an upgrade or improvement to the culvert or ford if it does not already allow free passage of fish
20. This approach is consistent with the ordinary meaning of "maintain" as to "keep in an existing state, preserve from failure or decline."<sup>2</sup> The Environment Court has held that maintain means "cause or enable to continue, keep at the same level or rate and keep in good condition."<sup>3</sup>
21. Maintain has a different meaning to upgrade or improve.
22. This interpretation aligns with common sense. At the time the Freshwater Fisheries Regulations were enacted in 1983, there were thousands of fords and culverts in Aotearoa that did not allow fish passage. For many, upgrading to allow fish passage will be costly. Improving fish passage by upgrading or removing culverts that impede fish passage is a commonly accepted form of aquatic offset/compensation.
23. There is no suggestion in the wording of Regulation 42 that such a significant regulatory burden was being imposed on an unknown number of land occupiers, particularly in circumstances where criminal liability

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<sup>1</sup> .New Zealand Fish Passage Guidelines (V2.0, Ministry for the Environment, June 2024) at 31; New Zealand Forest Owners Association Inc "New Zealand Forest Road Engineering Manual 2020" at 8.1 (available [here](#))

<sup>2</sup> Merriam Webster, [definition of "maintain"](#).

<sup>3</sup> *Port Otago v Dunedin City Council* EnvC Christchurch C4/02, 22 January 2002 at [41]; *The Outstanding Landscape Protection Society Inc v Hastings District Council* [2008] NZRMA 8 (EnvC) at [90].

could result if an occupier failed to upgrade the ford/culvert to allow fish passage.

24. The culverts at issue on this application were constructed prior to 1983 in a way that does not allow the free passage of fish. Because they were built before 1983, they were not subject to the prohibition in reg 42(1)<sup>4</sup> on building them in such a way that fish passage would be impeded.
25. There is no obligation under reg 42(2) to “maintain” the free passage of fish as there is nothing to maintain in that respect. The lack of fish passage is not due to a lack of maintenance of the culvert.
26. The Applicant's proposed culvert upgrade and improvements therefore meet the requirement for additionality. The Applicant's position is that the Panel is entitled to consider the benefits to fish passage as part of the offsetting and compensation package.
27. There is a similar issue about whether fish passage improvements provide additionality before the expert panel who is determining the Auckland Prison Capacity Increase fast track application. The applicant in that case (Department of Corrections) takes a similar view to Winstone Aggregates on this issue.<sup>5</sup> We understand that a draft decision on that application is due to be issued in early October 2026.

**Update on applicants' consultation with Waikato - Tainui and Te Akatai on cultural conditions.**

28. In the Applicant's response to comments, counsel's legal memorandum noted that the Applicant intended to consult with Waikato- Tainui and Te Akatai in respect of its proposed draft Katikati Forum and Cultural Management Plan and related management plan conditions. The Applicant circulated its draft conditions to those parties and requested feedback. Winstone has received feedback from Te Akatai (which it is currently considering); a copy is attached to this memorandum.



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**P TANCOCK/D BALLINGER**  
Counsel for the Applicant

Dated 11 September 2026

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<sup>4</sup> To the extent that it is relevant, there is a presumption against retrospectivity; secondary legislation (including regulations) can only have retrospective effect where it is clearly and unequivocally provided for, which is not the case.

<sup>5</sup> Sixth Memorandum on behalf of the Department of Corrections in support of the section 55 response to written comments and the section 51 reports Date: 4 August 2026 at paragraphs 39-42, available [here](#).

## Caroline Cheetham

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**Subject:** FW: RE: Hunua Quarry Development [FTAA-2603 -1185] amended draft conditions provided in response to section 53 comments for the Katiaki Forum and Cultural Management Plan Conditions

**Attachments:** Te Ākitai feedback on draft conditions 33 and 34.docx

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**From:** Tania Richmond <[tania@richmondplanning.co.nz](mailto:tania@richmondplanning.co.nz)>

**Date:** Friday, 4 September 2026 at 9:53 AM

**To:** Cam Russell (Winstone Aggregates) <[Cam.Russell@winstoneaggregates.co.nz](mailto:Cam.Russell@winstoneaggregates.co.nz)>

**Cc:** [Phil.Heffernan@winstoneaggregates.co.nz](mailto:Phil.Heffernan@winstoneaggregates.co.nz) <[Phil.Heffernan@winstoneaggregates.co.nz](mailto:Phil.Heffernan@winstoneaggregates.co.nz)>; [phernne.tancock@legalchambers.co.nz](mailto:phernne.tancock@legalchambers.co.nz) <[phernne.tancock@legalchambers.co.nz](mailto:phernne.tancock@legalchambers.co.nz)>; Nick Pollard <[Nick.Pollard@boffamiskell.co.nz](mailto:Nick.Pollard@boffamiskell.co.nz)>; [tawst@teakitai.com](mailto:tawst@teakitai.com) <[tawst@teakitai.com](mailto:tawst@teakitai.com)>; Jeff Lee <[teteconsultancy@gmail.com](mailto:teteconsultancy@gmail.com)>

**Subject:** RE: Hunua Quarry Development [FTAA-2603 -1185] amended draft conditions provided in response to section 53 comments for the Katiaki Forum and Cultural Management Plan Conditions

Kia ora Cam

I was asked by Te Ākitai Waiohūa to review, on their behalf, the draft conditions proposed to the Fast-track Expert Consenting Panel (the Panel) for the Hunua Quarry development.

1. The amendment to clarify Condition 16 is supported.
2. Te Ākitai Waiohūa continues to support retaining Conditions 14 to 19 relating to the Kaitiaki Forum.
3. Proposed Conditions 33 and 34 are supported in principle, subject to amendment.
4. The recommended amendments to Conditions 33 and 34 are set out in the attached document using track changes.
5. Comment boxes have been used to explain the reasons for the amendments. If you would prefer these to be removed before the document is entered into the record, please advise and I can provide the explanations in an email instead.

Happy to discuss.

Ngā Mihi

Tania Richmond

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----- Forwarded message -----

**From:** Cam Russell (Winstone Aggregates) <[Cam.Russell@winstoneaggregates.co.nz](mailto:Cam.Russell@winstoneaggregates.co.nz)>

**Date:** Thu, 3 Sep 2026 at 2:16 PM

**Subject:** RE: Hunua Quarry Development [FTAA-2603 -1185] amended draft conditions provided in response to section 53 comments for the Katiaki Forum and Cultural Management Plan Conditions

**To:** teteconsultancy <[teteconsultancy@gmail.com](mailto:teteconsultancy@gmail.com)>, [tawst@teakitai.com](mailto:tawst@teakitai.com) <[tawst@teakitai.com](mailto:tawst@teakitai.com)>

**Cc:** Philip Heffernan (Winstone Aggregates) <[Phil.Heffernan@winstoneaggregates.co.nz](mailto:Phil.Heffernan@winstoneaggregates.co.nz)>, Phernne Tancock <[phernne.tancock@legalchambers.co.nz](mailto:phernne.tancock@legalchambers.co.nz)>, Nick Pollard <[Nick.Pollard@boffamiskell.co.nz](mailto:Nick.Pollard@boffamiskell.co.nz)>

Tēnā koe Jeff,

We write on behalf of Winstone Aggregates (the Applicant) and seek to update you in respect of amendments made to the draft conditions proposed to Fast-track Expert Consenting Panel (the Panel) for the Hunua Quarry development following the receipt of comments provided by yourselves, under section 53 FTAA in response to the Panel's invitation.

For reference we include below the conditions that relate to the Kaitiaki Forum and a new Cultural values and Cultural Management Plan, the full set of draft conditions are also attached that have been provided to the Panel on 2 September 2026. Should you have any feedback on these conditions, to meet the Panel's reporting deadlines we'd receive a response on close of business 4 September 2026. Should more time be required please let us know how long is needed so that we can update the Panel.

The amended conditions are as follows (additions are shown underlined and deletions are shown ~~strikethrough~~):

### **Kaitiaki Forum**

14. *The Consent Holder must invite hapū with mana whenua to facilitate and operate an Kaitiaki Forum with respect to the Project.*

15. *The purpose of the Kaitiaki Forum is to:*

1. *facilitate feedback to the Consent Holder on detailed design plans;*
2. *facilitate feedback to the Consent Holder on the maintenance requirements associated with completed infrastructure authorised by this consent;*
3. *facilitate feedback to the Consent Holder to inform the preparation of any of the Monitoring or Management plans required by the conditions of this consent;*
4. *facilitate ongoing cultural and environmental engagement on any other matters relating to the Project;*
5. *work collaboratively and constructively with the Consent Holder in relation to the Project;*
6. *enable Kaitiaki Forum members to inform individual Hapū organisations, entities and/or constituents in relation to the Project; and*
7. *facilitate the appropriate tikanga and kawa (customary practices and protocols) being applied throughout the design, construction, and operation of the Project.*

16. *The Consent Holder must hold at least one meeting with the Kaitiaki Forum prior to the submission to the Council of any of the final plans or Management and Monitoring Plans required by the conditions of this consent. The Consent Holder must ensure that copies of the draft plans and Management and Monitoring Plans are made available at the meeting and must consider any feedback provided by the Kaitiaki Forum prior to submitting the plans and Management and Monitoring Plans to the Council for certification.*

17. *The Consent Holder must use its best endeavours to ensure that meetings with the Kaitiaki Forum are held at a time agreed by mana whenua during the lifetime of the Project. The Consent Holder and the Kaitiaki Forum must agree the frequency of meetings.*

18. *The Consent Holder must take minutes at each meeting and must provide those minutes to the Kaitiaki Forum members within one week of each meeting being held (or other period as agreed between the Consent Holder and the Kaitiaki Forum). The meeting minutes must include action points referring to actions and resolutions for decisions arising from the meeting(s). Once the meeting notes are confirmed, the resolutions contained in those meeting notes must be considered to be confirmed.*

19. *The Consent Holder must:*

1. *remunerate the members of the Kaitiaki Forum for their involvement with the activities set out in this consent at an hourly rate agreed between the parties.*
2. *provide sufficient administrative resources to facilitate their involvement in the activities set out in this consent.*

**(NEW) Cultural values and Cultural Management Plan**

33. *In recognition of cultural values, the Consent Holder must:*

1. *At least 6 months prior to the Commencement of Construction, invite Mana Whenua to prepare a Cultural Management Plan in conjunction with the Consent Holder that will record the preferred engagement and partnership protocols going forward for Mana Whenua.*
2. *The purpose of the CMP is to record the preferred engagement and kaitiakitanga arrangements between the Consent Holder and Mana Whenua and to provide a framework through which cultural values can be recognised and provided for during the construction, operation, rehabilitation and ecological restoration associated with the Project.*
3. *The CMP must, to the extent developed through engagement with Mana Whenua, address:*
  - (i) *protocols and contact arrangements for ongoing engagement and communication;*
  - (ii) *cultural monitoring procedures associated with vegetation clearance, topsoil removal, initial ground disturbance and any other activities identified through preparation of the CMP as warranting cultural monitoring;*
  - (iii) *procedures to be followed in relation to accidental discoveries;*
  - (iv) *opportunities for Mana Whenua to comment on relevant draft Management Plans prior to those plans being submitted for certification; and*
  - (v) *arrangements for providing relevant ecological, freshwater, rehabilitation and offset monitoring information to the Mana Whenua;*

- (vi) opportunities for the Mana Whenua to receive and use native vegetation or other cultural materials arising from vegetation clearance, where practicable and subject to applicable statutory requirements;*
- (vii) arrangements for providing relevant ecological, freshwater, rehabilitation and offset monitoring information to Manua Whenua; and*
- (viii) processes for reviewing and updating the CMP during the duration of the Project.*

*34. The Consent Holder must submit the CMP to the Council for certification at least 20 working days prior to the Commencement of Construction. Certification must be limited to confirming that:*

- 1. the requirements of Condition 33 have been addressed;*
- 2. the CMP records the engagement undertaken with the Manua Whenua and, where applicable, other iwi, hapū or Māori groups under Condition 33(c) including the matters raised and how they have been addressed;*
- 3. the CMP is consistent with the conditions of these consents and the approved Project; and*
- 4. appropriate processes have been established for ongoing engagement, implementation, review and updating of the CMP.*
- 5. The CMP may be amended in accordance with Condition 33 (c) viii (above) and Conditions 23 to 27 and 30 to 32. Any proposed material amendment affecting cultural engagement or cultural values must be provided to the Participating Iwi for comment before being submitted for certification.*

The insertion of condition 33 and the requirement for Cultural values and Cultural Management Plan has also necessitated the inclusion of change to Condition 24 which relates to certification process of management plans by Auckland Council. The table referred to in Condition 24 has been amended to include the Cultural values and Cultural Management Plan (referred to as a 'Cultural Management Plan' or 'CMP' and identifying that this is necessary 6 months prior to Commencement of Construction.

Please feel free to contact me if there are any questions at this stage.

Nga mihi,  
Cam

## **Cam Russell**

Senior Projects and Environmental Advisor

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# WINSTONE AGGREGATES



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## Cultural values and Cultural Management Plan

33. ~~In recognition of cultural values,~~ The Consent Holder must:

- a. At least 6 months prior to the ~~Commencement of Construction~~, invite Mana Whenua to prepare a Cultural Management Plan in conjunction with the Consent Holder that will record the preferred engagement and partnership protocols going forward for Mana Whenua.
- b. The purpose of the CMP is to ~~record the preferred engagement and kaitiakitanga arrangements between the Consent Holder and Mana Whenua and to provide a framework through which cultural values can be~~ recognised and provided for during the construction, operation, rehabilitation and ecological restoration associated with the Project. It also records the preferred engagement and kaitiakitanga arrangements between the Consent Holder and Mana Whenua. ~~These do not replace the Kaitiaki Forum required under Conditions 14 – 19.~~
- c. The CMP must, to the extent ~~developed through engagement agreed with~~ Mana Whenua, address:
  - (i) ~~the relationship between the CMP and other management plans;~~
  - (ii) ~~Mana Whenua cultural narrative;~~
  - (iii) ~~protocols and contact arrangements for ongoing engagement, and communication, induction and cultural monitoring;~~
  - (iv) ~~the role and function of kaitiaki and cultural monitors;~~
  - (v) ~~tikanga and cultural monitoring procedures associated with kaitiaki monitoring including vegetation clearance, topsoil removal, initial ground disturbance, stream realignment and any other activities identified through preparation of the CMP as warranting requiring cultural monitoring;~~
  - (vi) ~~procedures to be followed in relation to accidental discoveries;~~
  - (vii) ~~opportunities for Mana Whenua to comment on relevant draft Management Plans prior to those plans being submitted for certification; and~~
  - (viii) ~~arrangements for providing relevant ecological, freshwater, rehabilitation and offset monitoring information to the Mana Whenua;~~
  - (ix) ~~opportunities for seed collection, propagation and planting within the area or off-set mitigation locations within Drury to continue the whakapapa of ancestral rākau removed as part of the Project;~~
  - (x) ~~opportunities for the Mana Whenua to receive and use native vegetation or other cultural materials arising from vegetation clearance, where practicable and subject to applicable statutory requirements;~~
  - (xi) ~~arrangements for providing relevant ecological, freshwater, rehabilitation and offset monitoring information to Mana Whenua; and~~
  - (xii) ~~processes for reviewing and updating the CMP during the duration of the Project.~~

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**Commented [TR1]:** It is important to understand where cultural monitoring may be required as part of the implementation other management plans.

**Commented [TR2]:** Including cultural narrative in the CMP recognises Mana Whenua values and provides a basis for understanding the need for the management measures. It also provides a direct relationship between the significance of the values to be protected or managed and the corresponding mitigation measures.

**Commented [TR3]:** The cultural induction of contractors and other persons working on the Project is a significant component of tikanga. The cultural induction process also contributes to cultural safety.

**Commented [TR4]:** This is covered under condition 15

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**Commented [TR5]:** This is a recommendation in Te Ākitai Waiohū feedback and reflects the age and significance of trees that are proposed to be removed.

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**Commented [TR6]:** Duplication of (vi)

34. The Consent Holder must submit the CMP to the Council for certification at least 20 working days prior to the commencement of Construction. Certification ~~must be~~ is limited to confirming that:

~~a. the requirements of Condition 33 have been addressed;~~

**Commented [TR7]:** The content of the CMP is not for the Council to certify.

a. the CMP has been prepared by Mana Whenua or those whom they appoint on their behalf in conjunction with the Consent Holder;

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~~a.b. records the engagement undertaken with the Manua Whenua and, where applicable, other iwi, hapū or Māori groups under Condition 33(c) including the matters raised and how they have been addressed;~~

**Commented [TR8]:** If the CMP is prepared by Mana Whenua, a record of consultation is not required.

b.c. the CMP is consistent with the conditions of these consents and the approved Project; and

~~c.d. it appropriate establishes processes have been established for ongoing engagement, implementation, review and updating of the CMP.~~

**Commented [TR9]:** The appropriateness of these arrangements is not for the Council to certify.

d.e. The CMP may be amended in accordance with Condition 33 (c) ~~viixii~~ (above) and Conditions 23 to 27 and 30 to 32. Any proposed material amendment affecting cultural engagement or cultural values must be provided to the Participating Iwi for comment before being submitted for certification.