

BEFORE THE FAST-TRACK PANEL

FTAA-2502-1009

UNDER

The Fast-track Approvals Act 2024

IN THE MATTER OF

An application by CCKV Maitai Dev Co LP for
resource consents for the Maitahi Village Project -
FTAA-2502-1009

**MEMORANDUM OF COUNSEL ON BEHALF OF THE APPLICANT
RESPONDING TO REQUEST FOR INFORMATION NO. 5 OF THE PANEL**

24 JULY 2025

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MAY IT PLEASE THE PANEL

INTRODUCTION

1 This Memorandum is provided in response to the Panel's Request for Information (RFI) No. 5, dated 17 July 2025. The Applicant's response to RFI 5 includes a:

1.1 Technical memorandum prepared by the Project ecologist, Dr Ben Robertson; and

1.2 Brief legal submissions on exclusion (c) of the National Policy Statement's¹ (**NPS-FM**) definition of Natural Inland Wetland (**NIW**).²

2 NIW is defined as:

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

- (a) *in the coastal marine area; or*
- (b) *a deliberately constructed wetland, other than a wetland constructed to offset impacts on, or to restore, an existing or former natural inland wetland; or*
- (c) *a wetland that has developed in or around a deliberately constructed water body, since the construction of the water body; or*
- (d) *a geothermal wetland; or*
- (e) *a wetland that:*
 - (i) *is within an area of pasture used for grazing; and*
 - (ii) *has vegetation cover comprising more than 50% exotic pasture species (as identified in the National List of Exotic Pasture Species using the Pasture Exclusion Assessment Methodology (see clause 1.8)); unless*
 - (iii) *the wetland is a location of a habitat of a threatened species identified under clause 3.8 of this National Policy Statement, in which case the exclusion in (e) does not apply*

3 The Act referred to in the NIW definition, is the Resource Management Act 1991 (**RMA**). Its definition of wetland is:

***wetland** includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions.*

4 The essence of the Applicant's response is:

4.1 The southern floodplain area does not include a wetland, as defined by the RMA; and

¹ National Policy Statement for Freshwater Management 2020.

² Refer to subpart 3, clause 3.21.

4.2 Even if there was a wetland in that area, it would be excluded from the definition of NIW in the NPS-FM, by virtue of clauses (c) and (e).

5 Clause (c) depends on there being a water body that has been *deliberately constructed*. The meaning of this clause is discussed in the remainder of this Memorandum.

A Deliberately Constructed Water Body

6 These submissions briefly address whether the current alignment of the Kākā Stream constitutes a *deliberately constructed water body*. Dr Robertson's memorandum addresses the second question posed by clause (c), as to whether any wetland features that might be present (noting the Applicant's primary position this area does not contain a wetland) *have developed in or around* the current stream *since the construction* of the current stream.

Did the Re-Alignment Result in a Water Body?

7 "Water body" is not defined in either the NPS-FM or NES-F, but it is defined in the RMA. Given the relationship between these instruments (including that the NPS-FM expressly adopts the RMA definition of wetland) it is appropriate to refer to the RMA's definition of "water body".

8 "Water body" under the RMA means:

*... fresh water or geothermal water in a **river**, lake, **stream**, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area.*

9 The RMA definition of "river" means:

*... a continually or intermittently flowing body of fresh water; and **includes a stream and modified watercourse**; but **does not include any artificial watercourse** (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal).*

10 Section 3.0 of the Historical and Archaeological Assessment³ confirms that the pre-diverted Kākā Stream was likely an intermittently flowing stream that once ran along the base of Branford Park Hill and into Dennes Hole. Re-alignment to its present course therefore resulted in the modification of Kaka Stream, which meets the definition of "river" and therefore "waterbody" under the RMA.

³ Dated 17 December 2020, attached to Dr Ben Robertson's Technical memorandum dated 24 July 2025 as Attachment B.

Deliberate Construction

- 11 Neither the NPS-FM or NES-F define what is meant by "deliberately constructed". There is no case law (that we have found) regarding clause (c) of the definition of NIW. It is submitted the natural and ordinary meaning of the words "deliberately constructed" can be applied. Deliberate is defined as:⁴

done on purpose rather than by accident.

- 12 Construction is defined as:⁵

*the process or method of building or making something,
especially roads, buildings, bridges, etc.*

- 13 To a large degree, what the Applicant is proposing by way of realignment is the mirror image of what happened in the past. From the technical information provided (including in Section 3.0 of the Historical and Archaeological Report) it is apparent the previous alignment of the Stream was a material distance away from its present location. As such, there would have had to be active intervention to move it to its current location, just as bringing it back requires active intervention on the part of the Applicant.
- 14 It is therefore submitted as reasonable to conclude that the historic realignment exercise would have required works of a similar kind to those now proposed by the Applicant, to effectively reverse the historic realignment.
- 15 Based on the ordinary meanings of "deliberate" and "construction", the Applicant submits the historic re-alignment activities satisfy that aspect of clause (c) such that any features that have appeared subsequent and because of the realignment, exclude the definition of NIW applying.



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⁴[refer to definition here.](#)

⁵[refer to definition here.](#)