

**BEFORE THE KAIMAI HYDRO-ELECTRIC POWER SCHEME
RECONSENTING [FTAA-2502-1024] EXPERT PANEL**

In the matter of

The Fast-track Approvals
Act 2024

And

Approvals sought under the
Resource Management Act
1991

**[DRAFT] Record of Decision of the Expert Panel under Section 87 of the
Fast-track Approvals Act 2024**

Date of Decision: [May] 2026

Date of Issue: [May] 2026

Expert Panel:

Gerald Lanning (Chair)

Martin Neale

Reginald Proffit

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PART A: EXECUTIVE SUMMARY

1. This decision concerns an application by Manawa Energy Ltd (**Manawa** or **Applicant**) for resource consents to continue the operation, use and maintenance of the Kaimai Hydro-Electric Power Scheme (**Kaimai HEPS** or **Scheme**) (**Application**).
2. The Scheme is located within the Wairoa River catchment in the rohe of several hapū, southwest of Tauranga.
3. The Application is made under the Fast-track Approval Act 2024 (**FTAA**). Schedule 2 of the FTAA includes the Scheme as a “listed project”. This Expert Panel was established on 28 November 2025 to determine the Application in accordance with the FTAA.
4. We have considered the Application, applying the relevant statutory matters, and have decided that the Application should be **granted subject to conditions**, set out in **Appendix A**, because:
 - (a) The Scheme promotes the purpose of the FTAA;
 - (b) Granting consent is not inconsistent with obligations arising under relevant Treaty settlements;
 - (c) The Scheme achieves the purpose of the RMA, as set out in that Act (excluding section 8);
 - (d) The Scheme will not, subject to compliance with the conditions set out in Appendix A, have any residual adverse effects that are unacceptable;
 - (e) The Scheme is generally consistent with, and gives effect to, relevant statutory planning documents; and
 - (f) The Application is generally supported by the parties that were invited to comment.
5. [Complete, following comments]

PART B: CONTEXT, PROJECT DESCRIPTION AND ENVIRONMENT

The Kaimai HEPS

6. The Kaimai HEPS comprises an integrated set of structures (dams, weirs, intakes/drop-pipes, pipes/tunnels, canals and power stations) within several watercourses that ultimately flow into the Wairoa River approximately 12 km southwest of Tauranga City in the Bay of Plenty. The Scheme’s location and key elements are shown on the following maps:

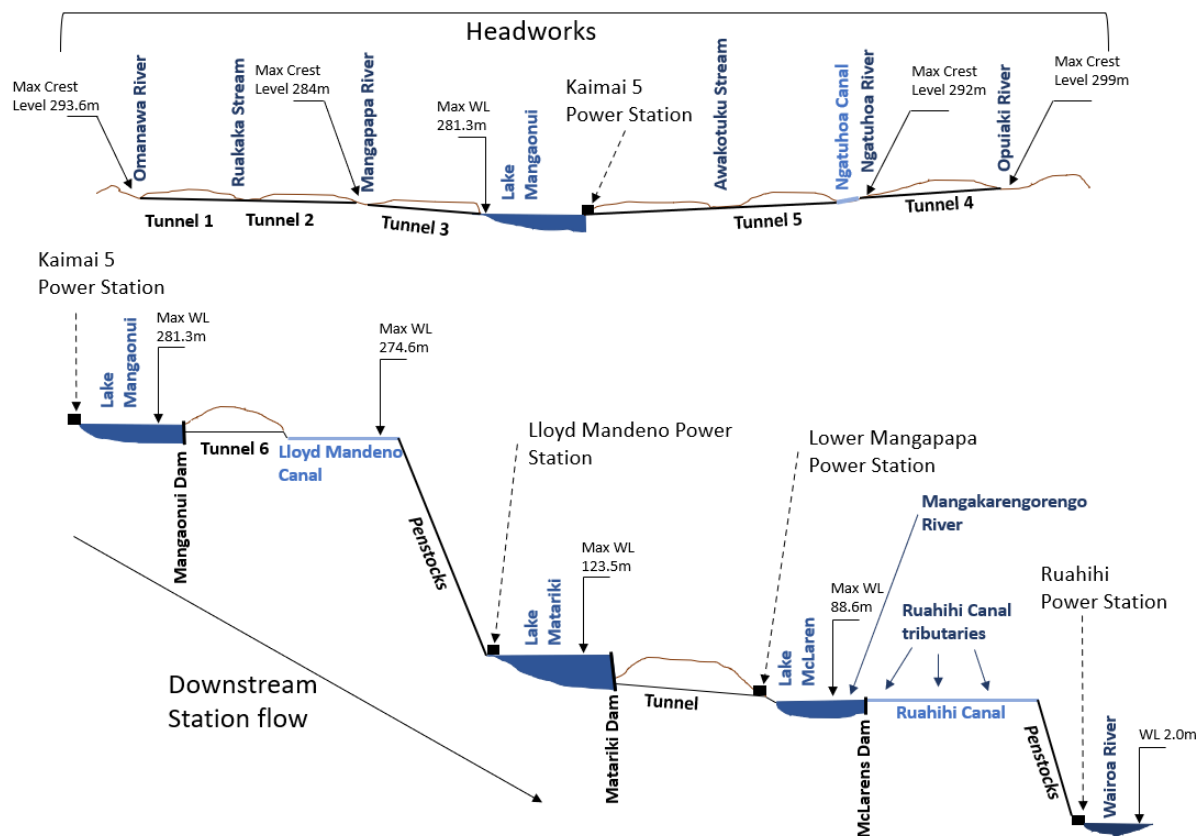
7. The Application describes the Kaimai HEPS as follows:¹

The Kaimai HEPS was initially commissioned in 1915 with the Omanawa Falls Power Station (now separately owned), with subsequent power stations commissioned in 1925 (McLaren Falls, now decommissioned), 1972 (Lloyd Mandeno), 1979 (Lower Mangapapa), 1981 (Ruahihi) and 1994 (Kaimai 5). The Scheme also includes:

- Three storage lakes and associated dams: Lake Mangaonui, Lake Matariki, and Lake McLaren.
- Eastern Diversions: Tunnel 2 (Omanawa weirs/intake, Ruakaka drop pipe), Tunnel 3 (Mangapapa weir/intake).
- Western Diversions: Tunnel 4 (Opuiaki and Ngatuhua weirs/intakes, Ngatuhua Canal, and Tauwharawhara drop pipe), Tunnel 5 (Awakotuku drop pipe).
- Downstream Diversions: Mangakarengorengo intake, Tunnel 6, Lloyd Mandeno Canal, Ruahihi Canal (which intercepts three minor tributaries).

All flow that is diverted throughout the scheme for the purposes of hydroelectric power generation is retained within the larger Wairoa catchment and is ultimately discharged back into the Wairoa River.

8. The schematic layout of the Kaimai HEPS is shown as follows:²



9. As this diagram illustrates, the Scheme operates as a:³

... cascading scheme of four power stations in sequence on 12 tributaries of the Wairoa River. Thus, through a series of diversions (tunnels and canals) the scheme progressively combines water from across a large catchment, into a series of storage lakes that feed the successive power stations. The Kaimai HEPS is operated as an integrated power generation facility,

¹ Sediment and Erosion Effects Assessment, Application, Appendix L, at 3.

² Sediment and Erosion Effects Assessment, Application, Appendix L, Figure 1.2

³ Sediment and Erosion Effects Assessment, Application, Appendix L, at 4.

where downstream stations rely on the discharges from those upstream, and directly supplies the electricity network that supports Tauranga and the Western Bay of Plenty.

10. The Kaimai HEPS operates in accordance with resource consents that have their origins in consents granted in August 1976 under the Water and Soil Conservation Act 1967⁴ that were continued under the transitional provisions of the RMA. To a large extent the current consents have remained unchanged from those granted in 1976.⁵ They will expire in August of this year.

Context – the environment⁶

11. The Scheme is located within the Wairoa River catchment on the eastern edge of the Kaimai Ranges and draws water from a significant portion of the catchment.⁷ The Wairoa catchment, covers an area of 460km², and is located to the southwest of Tauranga City. It drains northwards from the Mamaku Ignimbrite plateau towards the Tauranga Harbour. The catchment features the bush covered Kaimai Ranges to the south and west. Spanning approximately 36km in length and 15km in width, the catchment encompasses a total of 1570 km of stream margins. The main waterway in the catchment is the Wairoa River that has 35 named tributary streams and numerous unnamed tributaries.
12. The soils in the catchment area belong to the Katikati soil series and originate from air-fall ash. Geologically, the catchment consists of a thin layer of rhyolitic tephra. These soils are classified as Typic Orthic Allophanic, characterised by high clay content. Generally, areas with poor vegetation cover or intensive land-use are prone to soil erosion. In the lower section of the catchment floodplain soils are a combination of peat and alluvial rhyolitic ash.
13. The catchment is part of the Tauranga and Otanewainuku Ecological Districts, characterised by diverse and extensive forests, including indigenous broadleaf and podocarp forests. The rugged terrain, with its steep gorges and valleys, supports a variety of flora and fauna, making the area rich in biodiversity. The upper catchment primarily consists of Indigenous Forest representing approximately 41 percent of the land cover. Pastoral vegetation covers the largest portion of the catchment, accounting for 47 percent of the total area and is typically concentrated in the lower portions of the catchment.
14. The Scheme is fully contained within the Wairoa River catchment and draws upon a significant portion of the overall catchment area. The upper catchment and streams are

⁴ Application, Appendix F.

⁵ A summary of key changes made to the consent conditions under the Resource Management Act 1991 was provided by the Applicant on 4 February 2026 in response to the Panel's Minute 6. The changes generally related to matters of operational detail.

⁶ The following paragraphs are adapted from Application, Appendix L, 3-4.

⁷ Natural Character, Landscape and Visual Effects Assessment, Application Appendix L, at 3-4.

largely situated within deeply incised gullies, surrounded by steep topography. As the water flows towards the mid-reach of the catchment, the topography becomes less incised and more open, particularly in the lower portions of the Wairoa River closer to the Harbour.

15. In terms of elevation, the upper catchment of the Scheme ranges from approximately 294m at the Opuaki Weir on the Opuaki River to 291m at the Ōmanawa Weir, while the Ruahihi Power Station on the Wairoa River is situated at an elevation of 13m above sea level.
16. The main vegetation types surrounding the Scheme include:
 - Large areas of exotic pine plantation forest which is cropped on a rotational basis;
 - Pastoral farms located around the upper and mid reaches of the Wairoa River;
 - Areas of indigenous forest in some of the headwaters and upper tributaries of Opuaki River, and the Ōmanawa River; and
 - Indigenous vegetation and exotic weed species along the riparian margins of the streams and rivers.
17. The physical aspects (summarised above) are addressed further below in the discussion of specific effects. In addition to these physical aspects the area is of particular significance to mana whenua as addressed in our discussion of Treaty settlements and mana whenua effects; and is of importance for several recreational activities that we discuss below.

Mana whenua and Treaty settlements

18. Section 7(1) of the FTAA is of particular importance, as it requires us to “act in a manner that is consistent with”:
 - (a) the obligations arising under existing Treaty settlements; and
 - (b) customary rights recognised under—
 - (i) the Marine and Coastal Area (Takutai Moana) Act 2011;
 - (ii) the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.
19. Subsection (b) is not relevant to our consideration of the Application. In terms of subsection (a), “Treaty settlement” is defined as “a Treaty settlement Act” or a “Treaty settlement deed”.⁸
20. Given that section 7 is (we assume) intended to give effect to the Crown’s obligations under the Treaty of Waitangi/Te Tiriti o Waitangi, we have adopted a “broad unquibbling, and practical interpretation”⁹ of the section. Moreover, while section 7

⁸ FTAA, s 2.

⁹ *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 655 per Cooke P.

and the FTAA generally does not expressly require consideration of the Treaty principles, we are mindful of the Supreme Court’s view that:¹⁰

The courts will not easily read statutory language as excluding consideration of Treaty principles if a statute is silent on the question. It ought to follow therefore that Treaty clauses should not be narrowly construed. Rather, they must be given a broad and generous construction. An intention to constrain the ability of statutory decision-makers to respect Treaty principles should not be ascribed to Parliament unless that intention is made quite clear.

21. In this regard, we note that Treaty settlements that we are required to consider are intended to, at least in part, embody and implement the principles of the Treaty. Accordingly, we have adopted a “broad and unquibbling” approach to interpretation of the relevant Treaty settlements.
22. The Application included a list of relevant Treaty Settlements.¹¹ This list is consistent with the advice of 11 November 2025 provided by the Ministry for the Environment to the Panel Convenor under section 18 of the FTAA, although this advice also discusses the signed settlement deed (21 January 2015) for the Tauranga Moana Iwi Collective.¹² Accordingly, the Panel understands, that the following are the relevant existing Treaty settlements:
 - (a) Ngā Hapū o Ngāti Ranginui Claims Settlement Act 2025;
 - (b) Raukawa Claims Settlement Act 2014;
 - (c) Ngāti Pūkenga Claims Settlement Act 2017;
 - (d) Ngāti Hinerangi Claims Settlement Act 2021;
 - (e) Central North Island Forests Land Collective Settlement Act 2008;
 - (f) Ngāi Te Rangi and Ngā Pōtiki deed of settlement, signed 14 December 2016; and
 - (g) Tauranga Moana Iwi Collective deed, signed 21 January 2015
23. Section 8.3 of the Application records the Applicant’s engagement with the relevant Iwi authorities, hapū and Treaty Settlement Entities. The latter are defined as including:
 - (a) a post-settlement governance entity:
 - (b) a board, trust, committee, authority, or other body, incorporated or unincorporated, that is recognised in or established under any Treaty settlement Act:...
24. Based on the advice provided to the Panel several entities were invited to comment on the Application, including the several hapū listed in section 12 of the Ngā Hapū o Ngāti

¹⁰ *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board & Ors* [2021] NZSC 127 at [151], per Ellen France and William Young JJ.

¹¹ Application, Appendix Q. Note that this Appendix referred (incorrectly) to the Ngā Hapū o Ngāti Ranginui Claims Settlement Bill 2015.

¹² This Deed is addressed in Appendix Q to the Application.

Ranginui Claims Settlement Act 2025.¹³ Of those invited, comments were only received from Ngāti Hangarau Hapū (and Ngamanawa Incorporation).

25. Separately, the Panel requested the Applicant to provide an update on its engagement with mana whenua.¹⁴ The Applicant’s response of 16 January 2026 explained that:
8. An agreement has been reached between Manawa, and the Ngāti Hangarau Settlement Trust and Ngamanawa Incorporation. The agreement resolves Ngāti Hangarau Settlement Trust and Ngamanawa Incorporation’s position on the Application, based on the consent conditions proposed by Manawa as part of the substantive application. The agreement also addresses aspects of the wider relationship between the parties and the impacts of the Kaimai HEPS.
 9. Manawa provided a draft relationship agreement to Pirirākau on 10 November 2025. Pirirākau has responded with its proposed relationship agreement on 8 January 2026. A relationship agreement has not been entered into between Manawa and Pirirākau yet, and engagement is ongoing.
 10. Manawa has offered to develop a relationship agreement with Te Wairoa hapū through the Ngāti Kahu representative over the years; however, no response or progress has been received.
 11. No other relationship agreements have been entered into.
 12. Manawa remains open to discussing any unresolved matters with mana whenua parties.
26. We received correspondence on behalf of Ngāti Kahu, Ngāti Rangi and Ngāti Pango (Wairoa Hapū) on 16 January 2026, which related to the Applicant’s response of the same day. The Applicant responded to these matters in a memorandum of counsel dated 11 February 2026. We have considered the matters raised in the correspondence mentioned above. At the time of writing this decision the Panel understands that this correspondence reflects the current situation. By way of an update, a joint memorandum of counsel on behalf of the Applicant and between Manawa Energy / Contact Energy Limited (**Contact**) and Pirirākau Tribal Authority – Incorporated (**PTAI**) dated 20 April 2026, records that “a relationship agreement has been signed between PTAI and Contact; and that “PTAI confirms its support for the proposed consent conditions filed by Manawa Energy dated 12 February 2026, including the agreed Mana Whenua Kaitiaki Rōpū provisions (Conditions 15.1 to 15.6)”.¹⁵
27. We discuss mana whenua effects and the relevant resource consent conditions later. In terms of section 7(1) of the FTAA, based on the advice that has been provided we have determined that granting consent subject to the proposed conditions would not be

¹³ Minute 1, 17 December 2025, [2].

¹⁴ Minute 2, 17 December 2025.

¹⁵ Joint Memorandum Providing Engagement Update (20 April 2026), [3] and [4]. At [2] the parties record that the Memorandum is “submitted solely for the purposes of the Kaimai HEPS Re-Consenting Project application (Reference FTAA-2502-1024 / FTA056) under the Fast-track Approvals Act 2024 and the associated regional consents (including but not limited to Reference RM25-0606) under the Resource Management Act 1991”.

inconsistent with any obligations created by the relevant Treaty settlements. In particular, we note the following:

- (a) The Applicant has, in our view, engaged in good faith with the relevant entities or has endeavoured to do so. In relation to Ngā Hapū o Ngāti Ranginui the Applicant has, in our view, engaged in a manner that respects the “reality that the identity, mana and responsibilities for whenua and awa are held at the hapū level”, as reinforced by the Ngā Hapū o Ngāti Ranginui Claims Settlement Act 2025;¹⁶
- (b) All relevant entities were invited to comment on the Application. We note that the Department of Conservation, which has a role in implementing some of the Treaty settlements was also invited to comment. None of the comments raised any issues in terms of a Treaty Settlement or the Crown’s obligations under a Treaty Settlement;
- (c) No specific Treaty Settlement provisions (eg in relation to statutory acknowledgment areas) are triggered by the Application;¹⁷
- (d) As discussed later, the Application has adequately addressed matters of concern to tangata whenua (including Treaty Settlement entities). In this regard the conditions to be included on the resource consents will help to recognise and provide for the relationships that hapū have with the affected area (which are also generally recognised by the Treaty Settlements). Relevantly, the section 18 Report explained that:¹⁸

As part of its apologies to Ngāti Ranginui, Raukawa, Ngāti Hinerangi and Ngāti Pūkenga, the Crown stated that it looked forward to building a new relationship with these groups based on co-operation, mutual trust, and respect for te Tiriti o Waitangi/the Treaty of Waitangi and its principles. In its apologies to Ngāi Te Rangi and Ngā Pōtiki, the Crown stated that it seeks a relationship based on mutual respect and cooperation. The redress mechanisms provided for in Treaty settlements should be viewed in the context of these intentions.

PART C: PROCEDURAL MATTERS

Referral to Panel

28. The Project is a project listed in Schedule 2 to the FTAA.

¹⁶ Pirirākau Tribal Authority Incorporated “Wai–Pirirākau Assessment of Cultural Effects (W–Pace). Kaimai Hydro Electric Power Scheme (Kaimai HEPS) FTAA-2502-1024/RM-0268 Fast-track Approvals Application for Resource Consent Renewal 2025, at 12.

¹⁷ The Panel notes that, in relation to the Ngāti Raukawa Settlement Act 2014, “part of the Kaimai HEPS is within the statutory acknowledgement area for part of the Kaimai-Mamaku conservation park.... Tunnel 4 and likely part of the Ngatuhua Canal are located in this part of the statutory acknowledgement area. The Kaimai HEPS takes and diverts water from the Opuiaki River at the Opuiaki Weir, which then passes through Tunnel 4 into the Ngatuhua Canal. Note consent is not being sought for Tunnel 4 or the Ngatuhua Canal as it is existing infrastructure”: Application, Appendix Q

¹⁸ Section 18 Report, at [38].

29. In accordance with section 42 of the FTAA an authorised person¹⁹ for a listed project may lodge a substantive application with the EPA. The substantive application is required to follow the process set out in sections 43 and 44.
30. Manawa lodged the Application on 29 September 2025. It was deemed complete on 16 October 2025, with the EPA confirming that the Application (lodged on 29 September 2025) complied with the requirements of section 46(2) of the FTAA. The EPA also confirmed, on 28 October 2025, the absence of any competing application or existing resource consent under section 47 of the FTAA. The Application was thereafter referred to the Panel Convener, who appointed this Panel from 3 December 2025.

Request for comments

31. In accordance with our Minute 1 of 17 December 2025 several parties were invited to comment on the Application under sections 53 and 54 of the FTAA. Comments were received from thirteen parties and the Panel is grateful for this input, especially given that the period to comment spanned the Christmas/New Year holiday period. All comments have been carefully considered by the Panel and taken into account when making our determinations. Nevertheless, it is worth noting that the comments were, overall, supportive of the Application.
32. On 12 February 2026 the Applicant provided its response to the comments in accordance with section 55 of the FTAA. This included 4 statements of evidence and an updated set of draft conditions with amendments intended to address matters raised in comments. For the most part the Applicant addressed satisfactorily the issues raised in comments. The exception to this relates to the Sediment Monitoring Plan, which we address further below.

Applicant briefing

33. On 20 January 2026 the Applicant provided an on-line briefing for the Panel in accordance with our Minute 3 of 17 December 2025. An invitation to attend was provided to all those parties who were invited to comment, and a recording was made available on the EPA website. The briefing was a valuable opportunity for the Panel to further their understanding of the Kaimai HEPS and the proposed resource consent conditions.

Site visit

34. On 10 February 2026 the Panel conducted a site visit, accompanied by Brooke Benny from the EPA. We were taken by two Manawa staff members to the various elements of the Kaimai HEPS.

¹⁹ FTAA, ss 4 and 42.

35. The Site visit generally followed the way in which the water flows down the catchment – from the Eastern and Western diversions – through the 3 power stations and into the Wairoa River. We were able to visit all of the key elements of the Scheme.

Draft decision and conditions

36. In accordance with section 72 of the FTAA the Panel provided a draft decision and draft conditions to the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development on 24 April 2026.
37. In accordance with section 70 of the FTAA the Panel provided draft conditions on 24 April 2026 to the Applicant and every party that provided comments on the Application.
38. The draft conditions were largely based on the set of conditions provided by the Applicant as part of its response to comments, with amendments that:
- (a) Require the current nature and scope of public access to be (at least) maintained;
 - (b) Make is clear that, in the event an entity that is entitled to join the Mana Whenua Kaitiaki Rōpū decides not to join, the consent holder must engage with and consult that entity;
 - (c) Require the consent holder to consider and respond to any recommendations to address adverse effects identified by sediment monitoring; and
 - (d) Ensure that the warning of a recreational release of water provides sufficient time for people to vacate the affected area.
39. [To be completed following comments from Applicant and parties].

PART D: LEGAL CONTEXT

Decisions on resource consents: section 81 and schedule 5

40. Section 81 of the FTAA, and the relevant FTAA schedules direct the Panel’ decision-making. As decision-making under the FTAA is relatively new, and this Panel must be careful to apply the correct legal tests, we set out section 81 in some detail here. That section relevantly states:
- (1) A panel must, for each approval sought in a substantive application, decide whether to—
 - (a) grant the approval and set any conditions to be imposed on the approval; or
 - (b) decline the approval.
 - (2) For the purpose of making the decision, the panel—
 - (a) must consider the substantive application and any advice, report, comment, or other information received by the panel under section 51, 52, 53, 55, 58, 67, 68, 69, 70, 72, or 90:

- (b) must apply the applicable clauses set out in subsection (3) (see those clauses in relation to the weight to be given to the purpose of this Act when making the decision):
- (c) must comply with section 82, if applicable:
- (d) must comply with section 83 in setting conditions:
- (e) may impose conditions under section 84:
- (f) may decline the approval only in accordance with section 85.

41. Importantly, section 81(2) directs this Panel to the matters that we must consider, apply and comply with, and what conditions we may impose. It also notes the application of section 85 (declining consent), which we will come to later. For the purposes of subsection (2)(b), the relevant clauses for our decision are clauses 17 to 22 of Schedule 5²⁰, of which Clause 17(1) is key. It provides as follows:

For the purposes of section 81, when considering a consent application, including conditions in accordance with clauses 18 and 19, the panel must take into account, giving the greatest weight to paragraph (a),-

- (a) the purpose of this Act; and
- (b) the provisions of Parts 2, 3, 6, and 8 to 10 of the Resource Management Act 1991 that direct decision making on an application for a resource consent (but excluding section 104D of that Act); and
- (c) the relevant provisions of any other legislation that directs decision making under the Resource Management Act 1991.

42. As observed by the Expert Panel for the Drury Quarry Expansion- Sutton Block, the Schedule 5 clauses direct the Panel as to:²¹

- (a) the matters we must take into account;
- (b) the weight to be given to the purpose of the FTAA, relative to other matters (including those under the RMA) in our decision-making.²² The purpose of the FTAA, as defined in section 3, is “to facilitate the delivery of infrastructure and development projects with significant regional or national benefits”. For the approvals sought in relation to this Project the FTAA’s purpose is to be given the greatest weight; and
- (c) the provisions of the RMA that are to be applied (as relevant to the approvals sought).

²⁰ FTAA, s81(3)(a).

²¹ Record of Decisions of the Drury Quarry Expansion–Sutton Block [FTAA-2503-1037] (11 December 2025), at [111].

²² Emphasised by section 81(2)(b) FTAA.

43. We understand the phrase “take into account” requires us to directly consider the relevant matters and to give them genuine consideration; rather than mere lip service, such as by identifying them and setting them aside.²³
44. The requirement to give the greatest weight to the purpose of the FTAA is ‘legislatively directed weighting’ similar (though not identical) to that under the Housing Accords and Special Housing Areas Act 2013 (specifically, section 34 of that Act). That weighting was helpfully addressed by the Court of Appeal in *Enterprise Miramar Peninsula Inc v Wellington City Council* [2019] 2 NZLR 501.
45. The Panel notes, with gratitude, the decision of the Expert Panel for the Bledisloe North Wharf and Fergusson North Berth Extension and that Panel’s summary as to the guidance provided in the *Enterprise Miramar* decision, adapted to apply to the FTAA.²⁴ We generally agree with the Panel’s summation of the Court’s guidance, as relevant to the FTAA, which is as follows:²⁵
- 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]
 - b. Clause 17 require us to consider the matters listed in clause 17(1)(a) to (c) on an individual basis, prior to standing back and conducting an overall weighting in accordance with the specified direction: *Enterprise Miramar* [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* [55].
46. In terms of point c. above we note that there can be, as in this case, some overlap between the positive effects (benefits) of a project and the purpose of the FTAA. In this case, for example, the economic and associated benefits of the Scheme are both relevant to the purpose of the FTAA and positive effects under the RMA. In this regard, for the record, we would have granted the resource consents in the absence of the statutory requirement to consider and give greatest weight to the purpose of the FTAA.

²³ *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26.

²⁴ See page 33 onward of the Record of Decisions of the Bledisloe North Wharf and Fergusson North Berth Extension Expert Panel [FTAA-2503-1028] (dated 21 August 2025).

²⁵ At [121].

Section 85 FTAA (when approvals must or may be declined)

47. Section 85 of the FTAA sets out the limited circumstances when approvals must or may be declined. Alongside the decision-making directions provided by section 81(2) and the weighted criteria in the relevant clauses of Schedules 5, 7 and 8, this section provides a key difference to ordinary decision-making under the RMA. It provides as follows:

Approval must be declined

(1) The panel must decline an approval if 1 or more of the following apply:

- (a) the approval is for an ineligible activity;
 - (b) the panel considers that granting the approval would breach section 7;
 - (c) to (h) [not applicable]
- (2) [Not applicable]

Approval may be declined if adverse impacts out of proportion to regional or national benefits

(3) A panel may decline an approval if, in complying with section 81(2), the panel forms the view that—

- (a) there are 1 or more adverse impacts in relation to the approval sought; and
- (b) those adverse impacts are sufficiently significant to be out of proportion to the project's regional or national benefits that the panel has considered under section 81(4), even after taking into account—

- (i) any conditions that the panel may set in relation to those adverse impacts; and
- (ii) any conditions or modifications that the applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.

(4) To avoid doubt, a panel may not form the view that an adverse impact meets the threshold in subsection (3)(b) solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider in complying with section 81(2).

(5) In subsections (3) and (4), adverse impact means any matter considered by the panel in complying with section 81(2) that weighs against granting the approval.

48. As addressed above in Part B the Panel does not consider that granting resource consent would breach section 7 of the FTAA. The Panel may therefore decline consent sought only if:

- (a) having complied with section 81(2) of the FTAA;
- (b) we form the view that there are one or more adverse impacts that are sufficiently significant to be out of proportion to the Project's regional or national benefits;
- (c) even after taking into account any conditions that we may set in relation to those adverse impacts; and any conditions or modifications that the Applicant may agree to or propose to avoid, remedy, mitigate, offset, or compensate for those adverse impacts.

49. To avoid doubt, we may not form the view that an adverse impact meets the threshold (to be able to decline consent)) solely on the basis that the adverse impact is inconsistent with or contrary to a provision of a specified Act or any other document that a panel must take into account or otherwise consider in complying with section 81(2).
50. It is not entirely clear how section 85 applies in the context of an application for a controlled activity, as in this case. In the normal course, consent must be granted for controlled activities under the RMA, with discretion limited to matters of control specified in the relevant statutory planning document (regional plan in this case).²⁶ Section 85 is not subject to any exceptions – it applies to all approvals sought. Moreover, the RMA provisions that constrain decision-making for controlled activities are only matters that must be taken into account.²⁷
51. Ultimately the Panel does not need to make further enquiries or assessment here. For the reasons outlined later in this decision report (particularly in **Parts E, F and G**), the Panel is satisfied that none of the circumstances in section 85 of the FTAA apply to the Application or the Project. Further, we would have granted the resource consent even if section 85 were not in operation. In particular, and in case it is needed, we record that we have formed the view on the facts and evidence before us that, after taking account of the conditions that we have set, any adverse impacts are not sufficiently significant to be out of proportion to the Project’s benefits.

Section 87 Content of panel decision documents

52. Section 87 of the FTAA requires us to prepare a decision document that states our decision, the reasons for the decision, include a statement of the principal issues that were in contention and include our main findings on those issues.

PART E: DECISION

53. With the above legal framework in mind, we now turn to our decision on the Application.
54. In accordance with clause 17 of Schedule 5 of the FTAA, the relevant matters we have taken into account comprise:
 - (a) The purpose of the FTAA, being “to facilitate the delivery of infrastructure and development projects with significant regional or national benefits.” When assessing this criterion we must consider the extent of the projects’ national or regional benefits.²⁸ This criterion is to be individually assessed as part of a clause

²⁶ RMA, ss 87A(2) and 104A.

²⁷ Clause 17(1), Schedule 5 of the FTAA. Although it appears that the ability to impose conditions is limited to the matters of control: see cl 18, schedule 5 FTAA and 104A9B0 RMA.

²⁸ FTAA, s 81(4).

17(1) assessment, and then, when conducting an overall assessment, is to be given the greatest weight.

- (b) Part 2 of the RMA, including section 5 (sustainable management purpose); section 6 (matters of national importance), and section 7 (other matters). We note that, the reference to Part 2 of the RMA excludes section 8 of the RMA (taking into account the principles of the Treaty of Waitangi/te Tiriti o Waitangi).²⁹ However, section 7 of the FTA requires the Panel to “act in a manner that is consistent with... the obligations arising under existing Treaty settlements”.³⁰ We addressed these issues above at paragraphs [18-27].
- (c) Part 3 of the RMA, and in particular section 13 (restrictions on certain uses of beds of rivers), section 14 (restrictions relating to water) and section 17 (duty to avoid, remedy or mitigate adverse effects).
- (d) Part 6 of the RMA, and in particular section 88 and its link to Schedule 4 (information required in applications for resource consent), sections 104 and 104A (consideration of applications), sections 105, 106A and 107 (matters relevant to certain aspects of the Application including restrictions on grant); and sections 108 and 108AA (relating to conditions of resource consents).

55. In respect of clause 17, we further record that:

- (a) Parts 8-10 of the RMA do not apply to the Application.
- (b) No other relevant provisions of any other legislation that directs decision making under the RMA have been drawn to our attention as being relevant to the Application.

PURPOSE OF THE FTAA

56. As noted above in **Part C**, when taking the purpose of the FTAA into account, section 81(4) specifically requires us to consider the extent of the Projects’ regional or national benefits. Furthermore, the purpose of the FTAA is “to facilitate the delivery of infrastructure and development projects with significant regional or national benefits”; and that an approval can only be declined if the adverse impacts are out of proportion to regional or national benefits.

57. There is no specific definition of what might constitute a significant regional or national benefit. However, section 22(2) of the FTAA, which relates to the criteria for assessing a referral application, might be seen as providing some guidance. Relevant to this Project, that section provides:

(2) For the purposes of subsection (1)(a), the Minister may consider—

²⁹ FTAA, sch. 5, cl 17(2)(a)

³⁰ FTAA, 7(1)(a).

(a) whether the project—

...

(ii) will deliver new regionally or nationally significant infrastructure or enable the continued functioning of existing regionally or nationally significant infrastructure:

(iii) will ... contribute to a well-functioning urban environment (within the meaning of policy 1 of the National Policy Statement on Urban Development 2020):

(iv) will deliver significant economic benefits:

...

(vii) will support climate change mitigation, including the reduction or removal of greenhouse gas emissions:

...

(ix) will address significant environmental issues:

(x) is consistent with local or regional planning documents, including spatial strategies. ...

58. The Scheme plays a vital role in terms of providing electricity to the Bay of Plenty community. According to the Application:³¹

... the Scheme generates an average of 169 GWh per year equivalent of the electricity needs of approximately 24,600 households and contributes 32% to Tauranga’s electricity demand. The provision of, and access to, controllable, secure and reliable renewable electricity is of critical importance to the social and economic wellbeing of the Bay of Plenty, and all New Zealanders. The Kaimai HEPS contributes to meeting peak demand and total volume requirement for electricity in Tauranga. If the Kaimai HEPS ceased operation this demand would need to be met from outside the region. Controllable electricity generation is in growing demand due to increased light vehicle transport and electrified industry process heat, increased wind and solar generation without a controllable input, and reduced availability of thermal generation (gas fuel source).

59. The Panel has not been provided with any evidence that would contradict this. Moreover, several comments supported the view that the Scheme provides significant national and regional benefits. For example, in its comments, the Regional Council noted that it recognised the “significance of the Kaimai HEPS in terms of its contribution to the supply of renewable electricity generation in New Zealand” and achieving the outcomes sought by the National Policy Statement for Renewable Electricity Generation and the Government’s aspiration to achieve 100% renewable energy by 2030.³²

60. And, as noted by the Minister for Economic Growth in her comments:

While this proposal may not directly generate additional economic impacts, its primary benefit is ensuring the availability of a reliable electricity supply and the continued provision of

³¹ Application, section 1.2, pp 5-6.

³² Page 2. See also, comments from the Minister of Climate Change, and the Minister for Energy.

renewable energy. This has substantial benefits and continually supporting businesses in the region which is essential in a growing economy.

61. These economic benefits are addressed in the Applicant's Economic Assessment, included with the Application.³³ Based on this Assessment, the Application explains the Scheme's benefits as follows:³⁴
- > If energy demand is met by the Kaimai HEPS, it would avoid the increased capital for constructing of new generation (around \$205.5 million) and operating cost of a less efficient supply solution.
 - > Kaimai HEPS will provide controllable and predictable renewable electricity to meet demand in Tauranga, the Bay of Plenty Region and elsewhere in New Zealand.
 - > Kaimai HEPS aligns with Government and Local Council Policies towards energy and environment.
 - > Kaimai HEPS will contribute to greenhouse gas emissions reductions in line with international agreements, avoiding an increase in emissions of about 26,693 tonnes of CO₂ per year.
 - > Provides local employment and investment to maintain the existing power stations and supporting infrastructure.
 - > The Scheme operation will avoid the risk of load shedding as there are currently constraints that limit the amount of electricity that can be supplied from outside the region.
62. Again, the Panel has not been provided with any evidence to contradict the above. There is no reasonable basis to conclude other than that the Scheme creates significant regional and national benefits – including those specifically listed in section 22(2) of the FTAA. Granting resource consents will, for example, “enable the continued functioning of existing regionally or nationally significant infrastructure” that will “deliver significant economic benefits” and “support climate change mitigation, including the reduction or removal of greenhouse gas emissions”. We note that the above findings are also consistent with the controlled activity status of the consents required to enable the continued operation of the Scheme. This status signals a desire that the Scheme should continue.

CONSENTS REQUIRED AND ACTIVITY STATUS

63. The Panel agrees with the Applicant that, in terms of the Regional Plan, the application for resource consents is a controlled activity under Rule WQ R20 (47C), with the following matters of control:
- (a) Measures to provide for the passage of fish, both upstream and downstream.
 - (b) Upstream and downstream water levels, residual flows and water quality.
 - (c) Screening of intake and diversion structures.
 - (e) Measures to manage erosion effects (including destabilisation of beds and banks)

³³ Application, Appendix D.

³⁴ Application, section 1.2, p6.

or river).

(f) Measures to identify and manage the risk of dam failure.

(g) Stability of the land bordering the dam.

(h) Measures to manage discharges to water from the use or alteration of the dam structure.

(i) Measures to avoid, remedy or mitigate any adverse effect on aquatic ecosystems, areas of significant indigenous vegetation, significant habitats of indigenous fauna.

(j) The quantity and flow rate, outstanding natural features and natural character.

(k) Measures to avoid, remedy or mitigate any effects on other lawfully established users of the river or stream of water released from the dam.

(l) Volume and rate of any take or diversion.

(m) Techniques for ensuring the safe passage of flood water.

(n) Effects on the relationship of tangata whenua and their culture and traditions with the site and any waahi tapu or other taonga affected by the activity.

(o) Effects on the ability of tangata whenua to exercise their kaitiaki role in respect of any waahi tapu or other taonga affected by the activity.

(p) Measures to avoid, remedy or mitigate adverse effects of the operation on downstream sediment transport processes.

(q) Measures to avoid, remedy or mitigate adverse effects on lawfully established downstream infrastructure.

(r) The range, or rate of change of levels or flows of water.

(s) The structural integrity and maintenance of the structure.

(t) Measures to avoid, remedy or mitigate adverse effects on amenity values (including recreation), and existing public access to and along the margins of rivers and lakes.

(u) Information and monitoring requirements.

(v) Administration charges under section 36 of the Act.

(d) Intake velocities

64. As noted earlier, the Panel has taken this activity status into account when considering the Application. Moreover, the Panel has considered the matters of control when evaluating the effects of the proposal and the conditions that should be imposed in accordance with clauses 17 and 18 of Schedule 5 of the FTAA. The Panel notes, however, that the above list is lengthy and extensive, and from a practical perspective does not appear to limit the matters to that could be considered in any material way.

EFFECTS ON THE ENVIRONMENT

65. Clause 5(4) of Schedule 5 to the FTAA requires a consent application to provide an assessment of an activity's effects on the environment covering the information in clauses 6 and 7. The AEE provided a full assessment of these matters, and participants who commented also raised a range of actual and potential effects.

66. The following categories of actual and potential effects on the environment, which we list in no particular order, have been identified as requiring the Panel’s close attention and care, during our assessment of the Application:
- (a) Mana whenua effects
 - (b) In-stream effects:
 - ecology
 - water quality
 - sedimentation
 - (c) Natural character, landscape and visual effects
 - (d) Positive effects.

The receiving environment

67. Any assessment of effects must include a description of the relevant receiving environment – against which effects must be assessed. The orthodox approach is that the receiving environment includes the current environment and:³⁵
- ... embraces the future state of the environment as it might be modified by the utilisation of rights to carry out permitted activity under a district plan. It also includes the environment as it might be modified by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented.
68. Determining a receiving environment for a reconsenting application is potentially more complex than for a new activity – for which the existing and likely future environment can be determined. Specifically, to what extent should we assess effects against the environment that existed prior to the Kaimai HEPS existing? This question has been addressed by the High Court in *Ngāti Rangī Trust v Manawatu-Whanganui Regional Council*³⁶.
69. *Ngāti Rangī* related to applications for resource consent and consent variations to enable the ongoing operation of the Raetihi Hydroelectric Power Scheme. The scheme had been in place since 1918 and took water for electricity generation from several watercourses.
70. When considering the effects of the water takes in the Environment Court, the applicant argued that the effects needed to be assessed against the stream environment that included the existing consented take and flow regimes.³⁷ The Regional Council argued that the effects assessment must not include the environment with these effects.
71. The Environment Court found that while it would ordinarily adopt the Council’s position, unique circumstances in the case (including that the hydro scheme had been in

³⁵ *Queenstown Lakes District Council v Hawthorn Estate Ltd* (2006) 12 ELRNZ 299 (CA), [84].

³⁶ [2016] NZHC 2948.

³⁷ *New Zealand Energy Limited v Ngāti Rangī Trust* [2016] NZEnvC 59, at [43]-[44].

operation for 100 years) led it to conclude that the receiving environment included the scheme as it currently operated.³⁸

72. The High Court reversed this finding and quashed the Environment Court’s decision.³⁹

73. In overturning the Environment Court, the High Court said that treating the receiving environment as including the current scheme would be contrary to the sustainable management objectives of the Act, and would essentially lock in the hydro-electricity water takes and flow rates and prevent adverse effects being avoided or mitigated.⁴⁰

74. The High Court also cited with approval commentary in the *Environmental and Resource Management Law* journal:⁴¹

Accordingly, the existing environment cannot include, in the context of a renewal application, the effects caused by the activities for which the renewal consents are sought, unless it would be fanciful or unrealistic to assess the existing environment as though those structures authorised by the consent being renewed did not exist ...

75. More recently, the High Court provided a useful summary of *Ngāti Rangī* in *Otago Fish and Game Council v Otago Regional Council*⁴² (in that case distinguishing it on the basis that that case related to a private plan change).

76. The Application records the above legal position but goes on to discuss the Environment Court’s decision in *Alexandra District Flood Action Society Inc. v Otago Regional Council* Decision No C 102/2005 which concerned renewing (in effect) resource consents for the Clutha River hydro-electric power scheme. Amongst other things, the Court discussed the practical difficulties of considering an environment that did not include the scheme.⁴³ The Court did, however, accept that “a regional council may look at “past effects” of the former activity and (subject to reasonableness, efficiency and other tests...) add conditions to control future effects, and in some cases to clean up effects of past activities by the consent-holder which were not covered before”.⁴⁴ That case preceded the High Court case law noted above and was not addressed by the High Court.

77. A further complication is that the current consents do not anticipate nor authorise the removal of the Scheme Structures and the proposed replacement consents are for controlled activities (ie the Regional Plan anticipates their continuance, subject to conditions). Moreover, the amended National Policy Statement for Renewable Electricity Generation includes Policy H(1)(a), which states that:

³⁸ At [48]-[49].

³⁹ *Ngāti Rangī Trust v Manawatu-Whanganui Regional Council* [2016] NZHC 2948.

⁴⁰ *Ngāti Rangī Trust v Manawatu-Whanganui Regional Council*, above n 2 at [63]-[64].

⁴¹ Derek Nolan *Environmental and Resource Management Law* (5th ed, Lexis Nexis, Wellington, 2015) at 610.

⁴² *Otago Fish and Game Council v Otago Regional Council* [2021] NZHC 3258, at [129] to [137]. We note that the High Court distinguished *Ngāti Rangī* because *Otago Fish and Game* related to a plan change as opposed to re-consenting regional consents which was the subject of *Ngāti Rangī*.

⁴³ At [52] and [64].

⁴⁴ At [68]

For consenting, upgrading and repowering of existing REG assets and activities, decision-makers must

- a. recognise that existing REG assets form part of the existing environment;
- b. take into account the extent to which the effects of the proposed REG assets and activities are different in scale, intensity, duration and frequency from the effects of existing REG assets and activities;
- c. ...

78. The Kaimai HEPS structures are “existing REG assets” as defined in the National Policy Statement. This Policy expressly addresses the issue of how to assess the effects of existing assets on the environment when consenting those assets. It is, therefore, deserving of considerable weight.
79. The Panel notes that, through its counsel, the Regional Council broadly supported the Applicant’s approach. Counsel submitted that the Regional Council “considers it appropriate to assess effects on a realistic, real-world basis that recognises the Kaimai HEPS assets and operations as part of the existing environment”, which is “consistent with relevant case law and with amended Policy H of the NPS-REG”.⁴⁵
80. The determination of the appropriate receiving environment for the purposes of assessing effects is a matter for the Panel, taking into account the relevant law and circumstances. The extent to which it is feasible to consider an environment without an activity such as the Kaimai HEPS will depend on a range of factors, including the extent to which the environment has been affected by other activities. Overall, the Panel agrees with counsel for the Applicant’s submission that the “mischief which *Ngāti Rangī* seeks to address, is an existing environment which locks in existing operations and prevents adverse effects from being avoided or mitigated”.⁴⁶
81. Taking the relevant case law into account, we have considered the effects (positive and adverse) associated with the proposed resource consents on an environment that would be generally unaffected by the Kaimai HEPS. That is, we have not discounted adverse effects that have been authorised by the existing resource consents. This has been relatively feasible because it is possible to physically experience such an environment. For example, it is possible to see the physical impact of the HEPS structures – upstream and downstream of the structures.⁴⁷ Moreover, the Applicant has provided evidence that assesses the changes caused by the Kaimai HEPS from prior to its construction. For example:

⁴⁵ Memorandum of Counsel for the Regional Council in Response to Minute 8 Request for Information, 17 April 2026, at [3].

⁴⁶ Memorandum of Counsel for the Applicant in Response to Minute 7 RFI (2 April 2026), at [29]. Counsel for the Regional Council made a similar submission in its Memorandum of Council of 17 April 2026 at [4].

⁴⁷ A similar point was noted by the High Court in *Ngāti Rangī*, at [68]

- (a) The Application states that the “technical assessments... have sought to provide context as to the environment that would have existed prior to construction or discount the effects caused by the ongoing activities”.⁴⁸
- (b) The assessment of sediment-related effects includes a detailed discussion of the “historical context”, including pre- and post-construction aerial photographs.⁴⁹ The Sediment Monitoring Plan also proposes to use a nearby river as a ‘control’, essentially providing a ‘scheme free’ baseline against which to compare effects. There is also an explicit statement in the Sediment and Erosion Effects Assessment that “this report provides an assessment of erosion and sediment processes in the Kaimai HEPS rivers, as well as considering the processes that occurred prior to the establishment of the Scheme where practicable”.⁵⁰
- (c) The assessment of aquatic ecology and water quality effects has considered the changes above and below the Scheme’s structures, which provides some sense of the impact of the structures (and associated flow changes) on the environment as it would have been prior to the structures. The water quality assessment also uses BOPRC monitoring stations from outside of the Scheme as context for water quality results in the absence of the scheme. The assessment has also considered characteristics of the environment pre-Scheme, for example comparing current fish populations with those expected to be present prior to the Scheme.⁵¹
- (d) The assessment of natural character, landscape and visual effects provides a detailed description of the environment above and below the Scheme Structures. The assessment records that “consideration has also been given to the environment that might have existed without the Scheme in place in order to provide context and inform the assessment of effects. Accordingly the assessment “acknowledges what the environment would be like without the Scheme in place (eg having regard to the rivers and streams that are upstream of lakes and water take locations)”, which “enables an understanding of what changes the Scheme has brought about and to assess what effects should be addressed... through the re-consent process”.⁵²
- (e) The assessment of recreational effects has taken into account the recreational activities that would have been available prior to the Scheme.⁵³

82. We have also considered the effects on the broader environment that receives the benefits of the Scheme and relies upon its continued operation.

⁴⁸ Application, 27

⁴⁹ Application, Appendix I, at Part 2.4

⁵⁰ Application, Appendix I, at ix.

⁵¹ For example, Application, Appendix J, p 96.

⁵² Application, Appendix L, at 3.

⁵³ Application, Appendix M, at 49.

Mana whenua effects

83. We have adopted the approach taken by the Environment Court in *McCallum Bros Ltd v Auckland Council*⁵⁴ to refer to the term “mana whenua effects”, rather than the more common term “cultural effects” because, as the Court said “it better captures those effects cloaked in tikanga, mātauranga Māori/Māori knowledge, and the underpinning relationships, rights and obligations”.⁵⁵ The Court noted that it used the term “mana whenua” as both a pronoun and verb, to “describe hapū or iwi/tribes actively exercising customary authority in an area”.⁵⁶ The term is used to:⁵⁷
- ... reflect the intangible metaphysical aspects of Te Ao Māori/the Māori world, where Māori are intrinsically and holistically connected with the natural world and that world with them.
84. This approach, in turn, requires the effects to be assessed by adopting a “Māori/mana whenua lens when addressing tikanga and related mātauranga Māori”.⁵⁸
85. The Kaimai HEPS application noted that the Applicant understands (correctly) that mana whenua are best placed to undertake any cultural assessments of potential *mana whenua* effects. The Applicant noted engagement undertaken with mana whenua since 2020 and provided detail of this within Section 8 of the Application.⁵⁹
- The purpose of this engagement has been to build an understanding of the cultural values and interests associated with the Wairoa River Catchment that may be impacted by the operation of the Kaimai HEPS, and ultimately to enable an assessment of the Scheme on:
- > Effects on the relationship of mana whenua and their culture and traditions with the site and any wāhi tapu or other taonga affected by the activity; and
 - > Effects on the ability of tangata whenua to exercise their kaitiaki role in respect of any wāhi tapu or other taonga affected by the activity.
86. The Application included a Cultural Impact Assessment⁶⁰ produced by Ngāti Hangarau dated April 2025. Documentation submitted also included an agenda for a hui with Ngāti Hangarau dated May 2025⁶¹.
87. The Application noted Kaimai HEPS falls within the rohe of Ngāti Hangarau, Ngāti Kahu and the Pirirākau rohe respectively. It also notes Ngamanawa Incorporation, an entity owned by different whanau and trusts that whakapapa to Ngāti Hangarau, Ngāti Kahu, Pirirākau and Raukawa.⁶²
88. Table 11 of the Application details the entities consulted, including iwi, hapū and iwi/Māori entities. A summary of this engagement is provided in Section 8.3 of the application.

⁵⁴ [2024] NZEnvC 075 [check if updated citation]

⁵⁵ At [156].

⁵⁶ At [157].

⁵⁷ At [157].

⁵⁸ At [160]

⁵⁹ Application, Section 3.5 Pg 75

⁶⁰ Application, Appendix G

⁶¹ Application, Appendix 14

⁶² Application, Section 3.5 Pg 77

89. Based on the Application, the Panel understands that Mana Whenua effects include⁶³:
- (a) Reduced flows within the rivers and streams caused by the structures adversely affecting waterfalls and other places of significance, and the wider environment. Associated with these effects is an erosion of tikanga⁶⁴, including the Hapū role as kaitiaki.
 - (b) Reduced and modified flows in Rivers, and structures affecting fish populations and habitat, including fish mortality at the power stations;
 - (c) The effects of the Ruahihi Canal collapse on the downstream reach of the Wairoa River and reduced flows in the Wairoa River.
90. The Application notes the aspirations sought by mana whenua in relation to the Kaimai HEPS as including:⁶⁵
- (a) The restoration and protection of the mauri and flows of the rivers and waterfalls within the area affected by the Scheme, including unimpeded fish passage (with a focus on tuna) where practicable.
 - (b) Active involvement in decision-making and fish passage initiatives;⁶⁶
 - (c) Unimpeded access to cultural sites; and
 - (d) Preference for passive passage for fish rather than trap and transfer.⁶⁷
91. In response to mana whenua effects identified, the Applicant has engaged with the relevant hapū entities and proposes conditions requiring it to establish a Mana Whenua Kaitiaki Rōpū to facilitate on-going engagement between the Applicant and hapū, including in relation to the development and implementation of a Native Fish Management Plan.
92. The FTAA, requires that relevant Māori groups are invited to comment on Fast-track applications by an expert panel. The Ministry for the Environment identified a comprehensive list of groups relevant to the Kaimai HEPS renewal application in its report under section 18 of the FTAA.⁶⁸
93. As discussed at **paragraph 22** of this decision, the Panel was advised of several entities to be invited the opportunity to comment on the application. Iwi and Hapū entities invited to comment are detailed in the Ministry for the Environment's section 18 report. Of those invited, comments were only received from Ngāti Hangarau Hapū and Ngamanawa Incorporation. We note the Wairoa Hapū did not provide any comment.⁶⁹

⁶³ Application, 75-78.

⁶⁴ Application, Appendix G, 11.

⁶⁵ Application, 75-78

⁶⁶ Application, Appendix G, 14; W-PACE, 17.

⁶⁷ W-PACE, 24.

⁶⁸ Dated 11 November 2025

⁶⁹ See paragraph **26**, above.

94. Of note, the 16 January response from Ngāti Hangarau and Ngamanawa Incorporation stated:
3. Since prior to lodging the Application, Manawa Energy has continued to engage constructively with both Ngāti Hangarau and Ngamanawa in relation to the Application. That engagement has enabled Ngāti Hangarau and Ngamanawa to reach a position of support for the version of the proposed conditions included as Appendix E to the Application lodged with the EPA (Agreed Conditions).
95. In their response, Ngāti Hangarau and Ngamanawa Incorporation reserved the ability to review any changes and/or amendments to the conditions from the version they were provided. The Applicant in the response to comments received, noted and agreed with the matters raised by Ngāti Hangarau and Ngamanawa Incorporation including:⁷⁰
- ... the right for Ngāti Hangarau and Ngamanawa to provide comment on any further changes to the proposed conditions or to appeal against the decision of the Panel.
96. No substantive issues have been raised in comments received and we note the consultation undertaken by the Applicant and the assessment of mana whenua effects detailed in the application. The Panel therefore accepts and relies on the Applicant's assessment and the comments of support from Ngāti Hangarau and Ngamanawa Incorporation. In this regard the Panel respects that the hapū are best placed to determine the impacts of the Scheme on them and whether the Application appropriately addresses the impacts – including whether their relationships with the affected area are appropriately recognised and provided for.
97. Where conditions have been amended from those previously presented through the application process, the Panel recognises the right of Ngāti Hangarau and Ngamanawa Incorporation to provide comment to the Panel as part of delivering this decision. However, the Panel notes that proposed conditions, including those relating to residual flows, generally address the mana effects identified in the Application. Moreover, they recognise and provide for the relationship between all mana whenua and the relevant area, which includes their role and entitlements as kaitiaki. In reaching these conclusions we have considered the matters raised in the correspondence discussed at paragraph 26 above.
98. **[Complete following comments]**
- In-stream effects (ecology, water quality and sediment effects)**
99. The nature of the Kaimai HEPS means there are several potential in-stream effects associated with the damming, diversion and discharge of the water. These effects primarily arise due to the direct physical effects of artificial structures, and the resulting modified flow regimes arising from the damming and diversion of water by the structures. The potential effects include:
- Reduced fish diversity and passage due to migration barriers;
 - Reduced habitat availability and quality due to modified flow regime;

⁷⁰ Manawa Energy – Kaimai HEPS - FTAA Application (FTAA-2502-1024) Comment Response

- Reduced biological health due to habitat availability and quality;
 - Reduced sediment transport due to barriers; and
 - Increased erosion due to modified flow and sediment regime.
100. The potential effects and their management have been comprehensively considered within the application documents including:
- Appendix H – Hydrology Assessment;⁷¹
 - Appendix I – Sediment Assessment;⁷²
 - Appendix J – Aquatic Ecology and Water Quality Assessment;⁷³
 - Appendix N – Native Fish Management Plan;⁷⁴ and
 - Draft Sediment Monitoring Plan.⁷⁵
101. The assessment of the existing in-stream environment, the magnitude of potential effects and their management has been undertaken in a comprehensive manner according to best practise. We were provided with no evidence to the contrary.
102. Indeed, detailed comments on in-stream issues were only received from two parties (the Bay of Plenty Regional Council (**Regional Council**)) and the Department of Conservation (**DOC**)). In both cases, there were no significant issues raised concerning in-stream issues, and both sets of comments were broadly supportive of the Application and the proposed management of in-stream effects. For example, the comments from the Regional Council include the following statements:
- “BOPRC considers that the application, including all supporting technical assessments, is complete and addresses all relevant effects”,⁷⁶ and
 - ‘We consider that the effects of the proposal can be appropriately managed through robust and outcome focussed consent conditions, subject to the refinements outlined above’.⁷⁷
103. Similarly, the comments from DOC included the following:⁷⁸
- Overall, the Department has minimal concerns regarding the proposed re consenting of the hydro scheme provided that the Applicant adequately implements the

⁷¹ Reconsenting of Kaimai Hydroelectric Power Scheme: Hydrology Report. Prepared by Tonkin & Taylor (July 2025). Provided as Appendix H to the substantive application.

⁷² Kaimai HEPS Consent Renewal: Sediment and Erosion Effects Assessment. Prepared by Tonkin & Taylor (September 2025). Provided as Appendix I to the substantive application

⁷³ Kaimai Hydro-Electric Power Scheme: Aquatic Ecology and Water Quality Assessment. Prepared by Greg Ryder Consulting (September 2025). Provided as Appendix J to the substantive application

⁷⁴ Manawa Energy Kaimai Hydro-Electric Scheme: Native Fish Passage Management Plan (Draft for Consultation). Prepared by Greg Ryder Consulting (September 2025). Provided as Appendix N to the substantive application

⁷⁵ Kaimai Hydro-Electric Power Scheme: Sediment Monitoring Plan. Prepared by Tonkin & Taylor (January 2026). Provided to the Panel on 23 January 2026.

⁷⁶ BOPRC Section 53 comments. Page 2

⁷⁷ BOPRC Section 53 comments. Page 9

⁷⁸ DOC Section 53 comments. Paragraph 5.1.

mitigations recommended in the Assessment of Environmental Effects and supporting ecology reports/management plans.

104. While not raising any substantive issues with the assessment and management of in-stream effects, the comments from the Regional Council and DOC sought amendments to the consent conditions proposed by the applicant. We address the changes to conditions sought in the relevant sections as we consider the key effects, their assessment and management.
105. As noted, other than the information provided by the Applicant, the Panel has received little comment on the assessment and management of the in-stream effects, and no evidence that challenges the findings of the Applicant's technical assessments. Therefore, we accept and rely on the Applicant's technical assessments, rather than repeating large volumes of text in our decision.

Fish Diversity and Passage

Effects assessment

106. The effects of the Kaimai HEPS on fish communities was the in-stream issue with the greatest amount of information provided by the applicant, was subject to comments from both the Regional Council and DOC and is a key area of interest for mana whenua as noted above.
107. The Aquatic Ecology report recognises that the Kaimai HEPs has “reduced the abundance and diversity of fishes in the Wairoa Catchment”⁷⁹. This effect is associated with multiple structures across multiple sub-catchments that affect both upstream and downstream fish migration. The combination of weirs, tunnels, dams, power stations and other water diversion structures mean it is now almost impossible for fish to reach the relatively unmodified headwaters of the upper Wairoa River Catchment.⁸⁰
108. While the effects of the Kaimai HEPS on the abundance and diversity is accepted, we note that the natural geology of the Wairoa Catchment would have reduced the diversity and abundance of native fish compared with other comparable sized river catchments. The presence of waterfalls, cascades and steep gradients would have reduced the type and number of fish that could reach the Wairoa River headwaters.⁸¹
109. The Aquatic Ecology report records the presence of 14 indigenous and six introduced fish species in the Wairoa Catchment⁸². However, only two species were found in the upper catchment (longfin tuna and rainbow trout) illustrating the effects of barriers to fish migration in the HEPS.

⁷⁹ Section 4.3.1.2 Appendix J.

⁸⁰ Section 4.3.1.2 Appendix J.

⁸¹ Section 3.5.4. Appendix J.

⁸² Section 3.5.3. Appendix J.

110. Longfin tuna caught in the mid to upper catchment were generally large adults and considered to pre-date the HEPS. Hence, they are described as a ‘relic’ population, with no recruitment and no future without improvements to fish passage.⁸³

Effects management

111. The Aquatic Ecology report states that Manawa Energy recognised that aspects of the Kaimai HEPS has impeded fish passage for native migratory fish species, and that the Applicant met with Ngamanawa Incorporation and Ngati Ranginui in 2021 about this issue⁸⁴.
112. Since this time, Manawa Energy has been working with mana whenua to understand native fisheries in affected catchments, and investigating and trialling initiatives to improve fish passage.⁸⁵ These initiatives have included:
- (a) An upstream trap and transfer system for elvers at Ruahihi Power Station operating since late 2021, with in excess of 80,000 elvers transferred upstream to date;⁸⁶
 - (b) An unsuccessful trap and transfer trial at the Mangakarengorengo River ford in 2021-2022 and 2023;⁸⁷ and
 - (c) A downstream trap and transfer scheme for adult tuna from the Ruahihi Canal (before the intake to the Ruahihi Power Station penstocks). For the latest migration season (September 2024 to May 2025), 84 longfin tuna and 22 shortfin tuna were successfully transferred downstream.⁸⁸
113. The Aquatic Ecology report states that Manawa Energy is committed to working with iwi to develop native fish passage, and trap and transfer efforts in the Wairoa Catchment.⁸⁹
114. The primary tool for managing fish passage effects proposed in the application is the development and implementation of a Native Fish Management Plan (NFMP). A Draft NFMP is provided with the application documents and required by consent condition 13.
115. The objectives of the draft NFMP are:⁹⁰

⁸³ Section 4.3.1.2 Appendix J

⁸⁴ Section 4.3.2.1 Appendix J

⁸⁵ Section 4.3.2.1. Appendix J

⁸⁶ Section 4.3.2.2. Appendix J

⁸⁷ Section 4.3.2.2. Appendix J

⁸⁸ Section 4.3.2.2. Appendix J

⁸⁹ Section 5.2.2.1. Appendix J.

⁹⁰ Section 2. Appendix N.

- (a) ensure that the Kaimai HEPS provides for the passive passage, where practicable, of native fish species upstream and downstream of the structures associated with the Kaimai HEPS;
 - (b) provide for the salvage of tuna entrained within the Ruahihi Canal and other areas identified through the Native Fish Management Plan;
 - (c) establish a framework for the monitoring of the success of any passage or salvage measures that are implemented; and
 - (d) establish the respective roles of the consent holder, and [*other parties*] in the implementation of the Native Fish Management Plan.
116. The NFMP repeats some of the relevant native fish information from the Aquatic Ecology report for context, and builds on, but it is not limited to the existing trap and transfer initiatives described above.
117. In addition to the NFMP, the Application proposes the retention of existing residual flows at three structures (Opuiaki Weir, Ngatuhua Weir and Mangakarengorengo Weir), and provision of new residual flows at three structures (Omanawa Weir, Mangapapa Weir and McLaren Falls Dam).
118. The residual flows are intended to have multiple beneficial effects to mitigate some of the impacts of the scheme and are discussed further below in the Aquatic Habitat section (eg paragraph 137). One of the benefits is to provide improved habitat for instream fish populations and to support passage of fish.⁹¹

Comments received

119. Comments on the NFMP and residual flows were received from both BOPRC and DOC.

Residual flows

120. The maintenance of existing residual flows and provision of additional residual flows was supported by both agencies. The BOPRC comments record that their ecology expert, Mr Hamill considers that “residual flows would improve in-stream environments across the relevant reaches”.⁹²
121. Similarly, the comments from DOC note that the additional residual flows at the three sites that had none is “anticipated to benefit freshwater values, by facilitating partial downstream passage for migrant eels, and by providing attractant flows for upstream migrant species”⁹³.

⁹¹ Section 5.2.1. Appendix J.

⁹² BOPRC Section 53 comments. Comment 1.2.

⁹³ DOC Section 53 comments. Para 3.8.

122. The comments from both agencies recognised the balance between providing residual flows for environmental reasons and the need for renewable energy generation.
123. Accordingly, both agencies support the provision of residual flows and the conditions that require them.^{94,95}

NFMP

124. The comments from the Regional Council and DOC both state that additional measures for fish passage are required as, even with the provision residual flows, barriers to fish migration will remain at multiple structures within the Kaimai HEPS.
125. The BOPRC notes that the Applicant has suggested conditions that a NFMP is developed and implemented in conjunction with mana whenua and state their support for this approach⁹⁶.
126. The comments from DOC also support the development of a NFMP and its proposed objectives⁹⁷, while providing commentary about some of the issues the NFMP will have to consider. While generally supporting the proposed approach, DOC recommends that there is a separate condition to require monitoring and reporting of the NFMP implementation and outcomes to Council (with a copy provided to DOC and mana whenua)⁹⁸. The purpose being to track effectiveness of the NFMP over time and provide for adaptive management to address fish passage matters that arise throughout the duration of the consent.
127. In addition, DOC also requests the ability to provide comments on the draft NFMP prior to certification by BOPRC and suggest a condition to provide for this⁹⁹.

Applicant response to comments

128. The Applicant's response to comments acknowledged the generally supportive comments received from the Regional Council and DOC. In response to the DOC commentary on issues to be contained within the NFMP, the Applicant stated that the "NFMP is sufficiently robust and flexible to respond to any monitoring information that indicates that modification to passage at various structures are necessary and warranted in order to achieve the objective of the plan".¹⁰⁰
129. On the two substantive issues raised by DOC, the Applicant has recommended that the conditions include a reporting condition as suggested by DOC (condition 13.4), and

⁹⁴ BOPRC Section 53 comments. Comment 1.4.

⁹⁵ DOC Section 53 comments. Para 4.2.

⁹⁶ BOPRC Section 53 comments. Comment 1.7.

⁹⁷ DOC Section 53 comments. Para 3.9.

⁹⁸ DOC Section 53 comments. Para 4.7 and 4.8.

⁹⁹ DOC Section 53 comments. Para 4.9.

¹⁰⁰ Applicant response to comments. Para 23.

that DOC are provided with an opportunity to comment on the draft NFMP that is submitted for certification (condition 13.3).¹⁰¹

Panel findings

130. The Panel recognises that the assessment of fish diversity and passage issues relating to the Kaimai HEPS provided by the Applicant is comprehensive and supported by the comments received from the Regional Council and DOC.
131. The Panel agrees with the Applicant that the scope of the NFMP is sufficient to capture the issues raised by DOC in their comments.
132. The Panel welcomes that the Applicant has accepted DOC's suggestions on reporting for the NFMP, and providing an opportunity to comment on the draft NFMP. The Panel accepts the amended conditions to provide for this.

Aquatic habitat

Effects assessment

133. The Aquatic Ecology report describes that the diversion of flow by the Kaimai HEPS scheme has resulted in changes to wetted stream areas and subsequently reduced habitat availability for aquatic biota downstream of all structures.¹⁰²
134. The report describes a range of cascading effects linked to the changes in aquatic habitat, namely:
 - Channel constriction
 - Reduced water depth and width
 - Reduced instream velocities
 - Reduced habitat diversity
 - Consequential water quality impacts
 - Reduced diversity and abundance of macroinvertebrates
135. Stream reaches below structures that do not have residual flows provided currently rely on dam leakage, recharge from tributaries, groundwater recharge and periodic overtopping over structures to provide flow.¹⁰³ Three streams benefit from residual flows over the structures to provide flow (i.e., Opuiaki Weir, Ngatuhua Weir and Mangakarengorengo Weir).

¹⁰¹ Applicant response to comments. Para 27.

¹⁰² Section 3.2.4. Appendix J.

¹⁰³ Section 3.2.4. Appendix J.

136. The extent of habitat changes depends on whether residual flows are provided, with reductions in wetted channel width, channel constriction and terrestrial vegetation observed colonising channels where no residual flows are provided.¹⁰⁴
137. In contrast, the residual flows at the three structures provide continual, but reduced, flows and reduce the severity of the effects listed above. For example, channel constriction or terrestrial vegetation intrusion is not ‘notably apparent’ below the Opuiki and Ngatuhoa Weirs,¹⁰⁵ with no difference in water quality above and below structures¹⁰⁶ and healthy macroinvertebrate communities present.¹⁰⁷
138. The only location with residual flows where potential issues were identified is the Mangakarengorengo Weir, where elevated temperatures were recorded. However, this issue is likely to be related to catchment land use issues rather than the HEPS, and monitoring is proposed to confirm that the residual flow is suitable to protect aquatic communities from elevated water temperatures.¹⁰⁸
139. While the absence of residual flows downstream of structures is a key factor in changes in habitat quality and associated effects, the Aquatic Ecology report records that some structures have other confounding issues that influence habitat quality. For example, bedrock and large boulders limit habitat quality and macroinvertebrate communities below the Mangaonui Weir¹⁰⁹ and Matariki Dam.¹¹⁰ The habitat limiting factors that are present at each location have informed the proposed new residual flows described below.

Effects management

140. The Aquatic Ecology report provides clear evidence that the three existing residual flows reduce the severity of effects on habitat quality, water quality and macroinvertebrate communities. The benefits of the residual flows are relied on to support their proposed continuation into the future.
141. The provision of three new residual flows is proposed by the Applicant based on the assessment of the likely benefits described in the Aquatic Ecology report, namely:
- (a) McLaren Falls Dam (150 L/sec) to support fish passage and provide water quality benefits;¹¹¹

¹⁰⁴ Section 4.2.2.1. Appendix J.

¹⁰⁵ Section 4.2.2.2. Appendix J.

¹⁰⁶ Section 4.1.2.2. Appendix J.

¹⁰⁷ Section 4.2.2.2. Appendix J.

¹⁰⁸ Section 4.2.2.3. Appendix J.

¹⁰⁹ Section 4.2.2.4. Appendix J.

¹¹⁰ Section 4.2.2.6(ii). Appendix J.

¹¹¹ Section 5.2.1.1. Appendix J.

- (b) Omanawa River Weir (150 L/sec) to support waterfall function, river biota and water quality;¹¹² and
- (c) Mangapapa River Weir (100 L/sec) to support aquatic habitat, river ecosystem and fish passage.¹¹³

142. While residual flows are possible at other locations, the potential benefits are limited by the small stream or catchment size (e.g., Tauwharawhara Stream weir¹¹⁴ or Awakotuku Stream Weir¹¹⁵) or other factors that are likely to limit the magnitude of benefits (e.g. the bedrock habitat at Manganui Weir and Matariki Dam mentioned previously).

Comments received

- 143. Comments on the aquatic habitat effects and residual flows were received from both the Regional Council and DOC.
- 144. The comments from the Regional Council state that the proposed increases in residual flows are expected to improve thermal and habitat conditions.¹¹⁶ The comments from DOC are primarily focussed on the native fish aspects of the residual flows, but comment on benefits to freshwater values.¹¹⁷
- 145. As mentioned previously, both agencies support the existing and proposed residual flows and consider they represent a balance of environmental considerations and the need for renewable electricity generation.
- 146. The Regional Council raised concerns about the temperature monitoring in the Mangakarengorengo River, with the conditions placing responsibility on BOPRC to determine if changes are required. The Regional Council considers that the conditions should place this responsibility on the consent holder, and that the Regional Council's role is to certify any responses to the monitoring.¹¹⁸

Applicant response to comments

- 147. The Applicant's response to comments acknowledged the generally supportive comments in relation to the residual flows.
- 148. The Applicant has not expressly addressed the Regional Council concern about a potential response to temperature monitoring, but stated that no changes are proposed to

¹¹² Section 5.2.1.7. Appendix J

¹¹³ Section 5.2.1.8. Appendix J

¹¹⁴ Section 5.2.1.4. Appendix J.

¹¹⁵ Section 5.2.1.6. Appendix J

¹¹⁶ BOPRC Section 53 comments. Comment 2.3.

¹¹⁷ DOC Section 53 comments. Para 3.8.

¹¹⁸ BOPRC Section 53 comments. Comment 2.5.

the condition as suggested (condition 14.2).¹¹⁹ Their view is the current condition requires the Applicant to provide recommendations should a monitoring report require it, and for the Regional Council to determine if the recommendations are suitable.

Panel finding

149. In the absence of evidence or comments to the contrary, the Panel agrees that the proposal to maintain existing, and provide three new residual flows within the scheme is an appropriate approach to reduce the aquatic habitat related effects of the Scheme.
150. The Panel agrees with the Applicant that condition 14.2 puts the responsibility for temperature recommendations on the Applicant, with Regional Council's role to review and determine if such recommendations are appropriate.

Sedimentation and erosion

Effects

151. The Sediment Report provides an assessment of the erosion and sediment processes within the Scheme, including an excellent set of images illustrating the historical context and construction of some of the structures in the scheme.¹²⁰
152. The assessment found that in most cases the Scheme is not resulting in erosion effects in the Wairoa Catchment.
153. Nevertheless, the assessment recorded that the Scheme is resulting in reduced sediment delivery and flow into reaches downstream of structures. The Report estimates between 10,000 and 20,000 t/year of sediment is trapped by the structures in the Scheme.¹²¹ This is estimated to be up to 50% of the sediment load of the lower Wairoa River.
154. The reduced sediment and flow contributes to channel contraction in some rivers where residual flows are not provided, and colonisation of riverbeds with terrestrial vegetation as described in the Aquatic Ecology Report (e.g. Mangapapa River¹²²).
155. While most of the river reaches below structures are bedrock dominated, which do not required sediment loads to maintain form and function, reaches of the Wairoa River and Omanawa River are alluvial in nature, and require sediment to maintain channel form and function¹²³.
156. While bank erosion was observed in the Omanawa River, the report recognises there is a lack of quantitative evidence of the effect of reduced sediment loads on the two

¹¹⁹ Applicant response to comments. Table 3-1 (Page 92)

¹²⁰ Section 2.4. Sediment Assessment.

¹²¹ Section 4.3 Sediment Assessment.

¹²² Section 5.2 Sediment Assessment.

¹²³ Section 5.5 Sediment Assessment.

alluvial rivers. In particular, any changes in the Wairoa River attributable to the Scheme may be difficult to detect due to the tidal environment and the recovery from the Ruahihi Canal collapse in 1982.¹²⁴

157. Given this limitation, the Report proposes a Sediment Monitoring Plan to investigate channel instability issues downstream of the HEPS Scheme. The Draft Sediment Monitoring Plan was provided by the Applicant on 23 January 2026 after being discussed at the Applicant’s briefing on the 20 January 2026.¹²⁵
158. The draft plan repeats some of the content of the Sediment Report to provide context, before stating the objective of the Plan as to “monitor any long-term changes in sediment continuity in the Wairoa and Omanawa Rivers that may be a result of the continued operation of the Kaimai HEPS.”¹²⁶
159. The Plan outlines the methodology, which involves using the nearby Kopurererua River as a control to assist with differentiating between Scheme and non-Scheme related geomorphic changes in the Omanawa and Wairoa Rivers.¹²⁷

Effects management

160. No effects management is proposed at this stage due to the absence of evidence to guide what would be appropriate management. The Draft Sediment Management Plan provides for reporting, including identification of issues and recommendations for management if the monitoring identifies adverse changes because of the HEPS. Potential mitigation or management options are presented, but are theoretical at this stage, and should be linked to the results of the monitoring.¹²⁸

Comments received

161. Comments from NZTA supported the inclusion of the Sediment Monitoring Plan to identify and mitigate any geomorphic effects in the Wairoa River related to the nearby SH29.¹²⁹
162. The comments from the Regional Council recorded that the proposed Sediment Monitoring Plan is appropriate and robust in terms of monitoring¹³⁰. However, the Regional Council notes that the Plan does not specify any next steps should the monitoring indicate adverse geomorphic trends attributable to the Scheme¹³¹ and

¹²⁴ Section 5.5 Sediment Assessment.

¹²⁵ Minute 6 of the Kaimai HEPS Expert Panel. 30 January 2026.

¹²⁶ Section 3. Sediment Monitoring Plan

¹²⁷ Section 3.3. Sediment Monitoring Plan

¹²⁸ Section 6. Sediment Monitoring Plan.

¹²⁹ NZTA Section 53 comments. Comment 2.7.

¹³⁰ BOPRC Section 53 comments. Comment 3.1.

¹³¹ BOPRC Section 53 comments. Comment 3.2.

recommends conditions that include a mechanism to require an appropriate management response if required.

163. A similar suggestion is contained in the comments from DOC, which recommends “that a condition of consent is included to ensure that the recommendations of the monitoring plan are carried out by the Consent Holder, of monitoring results demonstrate it is required”.¹³²

Applicant response to comments

164. The Applicant’s response states that it is not appropriate or feasible to identify triggers or definitions of adverse effects in the Sediment Monitoring Plan (or conditions).¹³³ Based on the evidence of their experts, the Applicant considers that it is not appropriate for the conditions to direct a management response at this stage as the management response may require new infrastructure, variations to the consent or a new consent.

Panel finding

165. The Panel shares the Regional Council’s concerns regarding the need for the sediment monitoring report to be responded to when it identifies concerns. Otherwise, there is a risk that this is just requiring monitoring for its own sake. The Panel also understands the Applicant’s concerns regarding the uncertainty around what responses may be required. Accordingly, the Panel has included condition 12.4, which requires the consent holder to consider and respond to any recommendations to address adverse effects identified in the monitoring report. The response is to be provided to the Regional Council with the monitoring report and will detail the reasons for the consent holder’s response. For the avoidance of doubt a response to a recommendation could be that further steps/actions are not necessary or justified.

Natural Character, Landscape and Visual effects

166. The Scheme is located within an area that exhibits several natural character, landscape and visual values. The Application includes an assessment by Boffa Miskell of these values and the effects of the Scheme on them.¹³⁴ The assessment divides the Scheme into 5 river “reaches” and evaluates them separately. In addition, the assessment considers the Scheme’s lakes.
167. In terms of natural character, the assessment considers the environment ‘upstream’ and ‘downstream’ of the relevant diversions and structures. This gives a picture of the

¹³² DOC Section 53 comments. Comment 4.4.

¹³³ Applicant response to comments. Para 30

¹³⁴ Application, Appendix L.

Scheme's effects on the receiving environment. For example, in relation to the Mangakarengorengo River reach the Application states:¹³⁵

Upstream of the Mangapapa Weir, the Mangapapa River has a 'moderate-high' level of natural character. The natural character of the river is attributed to continuous indigenous vegetation along stream gullies and margins, limited modifications to instream geomorphology, proximity to SNAs and protected conversation areas and limited human modification. The river also has areas of soft substrate riverbed, moderate macroinvertebrate health and good water quality.

However, the Mangapapa River (immediately downstream of the Mangapapa Weir) does not receive any residual flows. The riverbed predominantly consists of hard substrate, has a low level of macroinvertebrate health and is impacted by the presence of invasive species. The areas adjacent to the river consist of a mix of indigenous vegetation, pasture and exotic weed species (such as pines and willows). Despite the above, limited access to the area ensures a sense remoteness can be experienced, and a range of indigenous freshwater species have been identified in the river below the Matariki Dam.

168. Statements such as this are consistent with the Panel's observations during the Site Visit.

169. Boffa Miskell summarises the effects on natural character, taking into account the proposed additional residual flows, as follows:¹³⁶

The primary effects on natural character resulting from the Scheme are associated with the structures, their intake to the various power stations and resultant reduction in water flows as well as the creation of the three lakes and canal systems. The ongoing water takes will continue to have adverse effects on natural character downstream of the weirs and takes, however the continued management of the Scheme in accordance with the conditions of consent will overall maintain the same level of effects on the existing natural character identified in this report. This includes the additional proposed residual flows which will increase the level of natural character but not to an extent whereby the characteristics and qualities inherent in the overall river systems would be improved.

170. Overall Boffa Miskell evaluates the effects on natural character of the lakes as "very low". In terms of the Scheme's effects on the River Reaches, taking into account the proposed consent conditions, Boffa Miskell concludes as follows:¹³⁷

- (a) Ōmanawa River Reach: Low – moderate adverse on immediate section of reach below Scheme structures. Low adverse on reach overall.
- (b) Opuiaki River Reach: Low – moderate adverse on immediate section of reach below Scheme structures. Low adverse on reach overall.
- (c) Mangapapa River Reach: Low
- (d) Mangakarengorengo River Reach: Low – moderate adverse on immediate section of reach below Scheme structures. Low adverse on reach overall.
- (e) Wairoa River Reach: Low – moderate adverse on immediate section of reach below Scheme structures. Low adverse on reach overall.

¹³⁵ Application, p103.

¹³⁶ Application, Appendix L, p88-89

¹³⁷ Application, Appendix L, p 79.

171. The Boffa Miskell assessment also evaluates landscape and visual effects relating to the Scheme's major built elements and associated activities. It concludes that:

... the implementation of the Kaimai HEPS has brought about modifications to the physical landscape (primarily landform and indigenous vegetation clearance) and the landscape character across parts of the foothills of the Kaimai Ranges. The structural alterations are primarily represented by the presence of in-stream weirs, dams and associated structures, tunnels, above-ground pipes, canals, retaining walls, and buildings. Furthermore, the Scheme has resulted in the creation of three new water bodies: Lake McLaren, Lake Matariki, and Lake Mangaonui.

While there are localised low-moderate adverse effects associated with the Mangapapa Intake, Ōmanawa Weir, Ruahihi Power Station (and penstocks) and diversion structures, due to their scale in relation to the more natural indigenous character of the landform and river elements, the overall effects generated by the scale and form of all scheme components and modifications are considered to be low, taking into account the scale and varied landscape character of the area.

172. Again, this assessment was consistent with the Panel's observations of the Scheme during the Site Visit.

173. No parties raised any issues in terms of natural character, landscape and visual effects in their comments. Notably the Regional Council and mana whenua did not raise any issues in this regard.

174. Accordingly, the Panel accepts the Applicant's assessment of effects and, subject to the proposed conditions (including the residual flows) concludes these effects will be appropriately addressed.

Recreation

175. The Scheme both limits and allows for recreational activities, as explained in the Application.¹³⁸ The affected catchment offers opportunities for active recreation such as fishing, walking/tramping, cycling, kayaking, rafting and swimming, and more passive activities such as picnicking. The Scheme structures can directly and indirectly limit these activities, including by reducing water flows. However, in some respects the Scheme enables these activities by, for example, providing roads or creating water bodies such as lakes.

176. Appropriately, the assessment of effects on recreation has considered the recreational opportunities that were available prior to the Scheme. This takes into account the physical challenges of access to some of the catchment.

177. The Application summarises the effects on recreation as follows:¹³⁹

The Scheme has maintained and enhanced public access to recreation opportunities in the Kaimai catchment by providing and maintaining roads to the upper catchment, providing vehicle access to Ngatuhua Lodge and its nearby waterbodies, and to Waitaia Lodge and Lake Mangaonui. Access options to rivers affected by diversions was largely limited prior to the Scheme, and remains so now. Public access is provided to the Ruahihi Canal for walking and angling.

¹³⁸ Application, Appendix M.

¹³⁹ Application, Appendix M, 7-8.

River extent has been reduced via diversions and the formation of lakes. Most diversions have had minimal effect on pre-existing recreation opportunities (largely because they had, and have, very poor or no access), apart from at the Opuiaki River which previously supported a trophy rainbow trout fishery, albeit also with limited access. Lakes Mangaonui and McLaren are popular recreation destinations. Recreation values downstream of the McLaren Falls have been maintained via recreation flow releases for white water kayaking and rafting. Releases affect swimming options downstream at the Poripori Swimming Holes, but other locations remain accessible, including immediately upstream of Poripori. Non-release days provide relatively safe and predictable swimming options at most times.

This assessment finds that while the development and operation of the Kaimai HEPS has had some adverse effects on recreation opportunities in parts of the catchment, the Scheme has also created and maintained new recreation opportunities and access. The predictable operation of recreation releases for commercial and recreational white water activities on the Mangapapa River downstream of McLaren Falls is an advantage for white water kayakers and rafters. Controlled generation flows also support predictable swimming options at Poripori and other sites downstream of the Power Station. New recreation opportunities have been created for the Ngatuhua and Waitaia Lodges – as well as road access to them – and at Lake McLaren and the Ruahihi Canal.

178. The reference to “recreation releases” is a reference to the planned and scheduled release of water from Lake McLaren into the Mangapapa River, enabling white water kayaking and rafting. The Applicant has committed to continuing this and a condition has been included accordingly (Condition 9.6).
179. In their comments on the Application, both the Kaimai Canoe Club and Kaituna Rafting Ltd supported the continuance of the recreational releases, emphasising the significant value of the Wairoa River for whitewater activities and recreation generally. For example, the Canoe Club noted the investment that has been made to improve access to the River around the Ruahihi Power Station, and states that:

The Wairoa River is widely recognised as one of Aotearoa New Zealand’s premier whitewater training and competition venues. The controlled releases provide consistent, high-quality flows that support a broad range of users—from recreational paddlers to elite athletes. ...

Beyond high-performance sport, the releases enable the running of slalom competitions, extreme races, club events, and informal paddling sessions. They also support participation from those who travel from across the country, often planning long weekends or holiday trips around the scheduled flows. Importantly, the releases also allow non-experts to experience the Wairoa River through guided rafting and river-bug activities, broadening community engagement and fostering appreciation for this special environment.

These recreational opportunities have not diminished over time; if anything, their significance has grown. The Wairoa River is a cornerstone of the paddling community, and the scheduled releases are fundamental to its ongoing use and value. Their inclusion in the consent conditions is therefore essential to us and to the many individuals and organisations who rely on them.

180. Kaituna Rafting echoed these points, noting that:

The Wairoa river is an amazing piece of whitewater and is renowned New Zealand wide & even globally as one of the premier hard grade 5 rafting runs. ...
The Wairoa is also the only rafting available in the Tauranga region, and is a major draw card for whitewater enthusiasts. We love seeing all the locals swimming and sunbathing on the banks and in the lower water holes of the river as we cruise past as well. The river is an asset to the region and stat quo should remain the same.

181. The Canoe Club raised an issue with the wording of the condition providing for recreational releases to ensure that they “are to be provided for a minimum of six hours, rather than a maximum of six hours, within the 10am to 4pm window”. In its response the Applicant proposed an amendment to address this.
182. The Panel agrees with the Applicant’s assessment of effects on recreation and considers that the benefits for recreation need to be maintained. In this regard these benefits go some way to support granting the resource consents. Accordingly, the Panel has included a condition requiring the current levels of access to be (at least) maintained, but subject to any modifications that may be reasonably required to ensure the safe and efficient operation of the Scheme.

Positive effects

183. In addition to the recreational benefits the Scheme creates significant positive effects.
184. The positive effects are largely derived from the electricity generated by the Scheme, enabling the recipient people and communities to provide for their social, cultural and economic wellbeing. While it may be possible that this energy could be generated from other sources (eg solar, wind) the Scheme is existing infrastructure and offers a source of electricity that is “controllable” and less dependent on changeable environmental factors.
185. The Application describes the Scheme’s positive effects primarily in terms of economic benefits.¹⁴⁰ In the Panel’s view, the benefits are broader because of the dependence people and communities have on the availability of reliable electricity supply. This includes, as recent global events have illustrated, the positive effects of reducing reliance on fossil fuels for energy. Moreover, given the nature of the source of the electricity, enabling the Scheme to continue will assist in efforts to reduce greenhouse gas emissions.

STATUTORY PLANNING DOCUMENTS

186. The Panel must take into account (amongst other matters) the relevant aspects of Part 6 of the RMA, including section 104. This, in turn requires the Panel to have regard to the relevant provision of statutory planning documents.
187. The Application provides an assessment the proposed resource consents against the statutory planning documents, which appears to have been generally accepted by the parties that provided comments. Notably, in its comments on the Application, the Regional Council recorded that:

4.1. BOPRC agrees that the planning instruments, statutory assessment, and iwi and hapū management plans identified in the application are relevant.

¹⁴⁰ Application, at 132-133.

4.2. Since the time of lodgement, several new and amended National Policy Statements have come into effect. BOPRC have considered all those relevant, and is satisfied that the application is not contrary to the national direction they set.

188. The Panel also generally accepts the Applicant and Regional Council’s assessment, for the reasons that follow.

National Environmental Standards for Freshwater

189. The Panel accepts the Applicant’s conclusion that the activities associated with the Kaimai HEPS do not trigger any resource consent requirements under the National Environmental Standards for Freshwater. In this regard the Panel required more detail in relation to various natural and constructed wetlands mentioned in the Application.¹⁴¹ The Applicant’s response of 4 February 2026 satisfies the Panel that the Application states correctly that:¹⁴²

The take, use, damming, diversion or discharge of water for the operation or maintenance of specified infrastructure is provided for as a permitted activity under Regulation 46, and in the event that there are any natural inland wetlands within 100 m of these activities it is considered that the relevant permitted activity conditions can be met (i.e. there will be no discharge of sediment or debris into any natural inland wetland and no discharge will cause broader adverse effects on a natural inland wetland after reasonable mixing).

National Policy Statement for Renewable Energy Generation

190. The National Policy Statement for Renewable Energy Generation (**NPS-REG**) is of particular importance for the Application. It was amended in December 2026, with the amendments having effect from 15 January 2025. Accordingly, the Applicant provided an updated assessment of the Application against the NPS-REG as part of its response to comments.

191. The Panel agrees that Application is consistent with the objective and policies of the NPS-REG.

192. The single objective of the NPS-REG has been expanded with stronger direction – from a narrow “enable and manage effects” objective to a system-wide, resilience- and climate-driven objective with explicit cultural and wellbeing outcomes. The Panel agrees that the ongoing operation of the Kaimai HEPS supports the objective by ensuring:¹⁴³

... the provision of national, regional and local benefits (both social and economic) through enabling controllable, secure and reliable electricity supply from renewable electricity generation activities, and through working towards New Zealand’s emission reduction target and emissions reduction plan under the Climate Change Response Act 2002. As noted by NZIER, the Scheme does this by supporting the maintenance of New Zealand’s electricity generation capacity without resulting in the emission of greenhouse gases or reliance on finite resources or imported fuels.

¹⁴¹ Minute 6 of the Kaimai Hydro-electric Power Scheme Expert Panel, 30 January 2026

¹⁴² Application, p 201.

¹⁴³ Statement of Evidence of Richard Turner, 12 February 2026, [24]-[25].

...that the Scheme is operating safely, efficiently and effectively while managing adverse effects which may arise from the scheme. ...

193. Overall, the amended and new policies also use more directive language. The ongoing operation of the Scheme is also consistent with, or gives effect to, the NPS-REG policies because, amongst other things, it will:
- (a) recognise and provide for the reduction in greenhouse gas emissions, electricity system security and resilience, and social, economic and cultural wellbeing (Policy A);
 - (b) recognise and provide for the need to avoid “where practicable, any overall or cumulative losses of REG capacity and output from a region or district or existing REG assets and activities” (Policy B). It does this while addressing adverse effects through the addition of new residual flows (Policy F);
 - (c) take into account the outcomes of engagement with tangata whenua, and recognise and provide for Māori interests, including through opportunities for “tangata whenua involvement where REG assets and activities may affect a site of significance or issue of cultural significance to Māori” (Policy E);
 - (d) enable the “efficient operation and maintenance of existing REG assets and activities” (Policy G); and
 - (e) supports long life operation, re-consenting certainty and future proofing for existing REG (Policy H).

National Policy Statement for Freshwater Management 2020

194. The National Policy Statement for Freshwater Management 2020 (**NPS-FM**) was also amended in December 2025, with the amendments having effect from 15 January 2026.
195. The panel agrees with the Application’s conclusion that “the continued operation, use and maintenance of the Kaimai HEPS can occur in a manner that is consistent with the NPS-FM”.¹⁴⁴ This is the case given the conditions that will, amongst other things, improve freshwater habitat quality, address potential sedimentation effects and better enable fish passage.
196. The fish passage aspects of the NPS-FM are particularly relevant in this case. The Panel notes that the proposed effects management is focussed on this issue and reducing the severity of the impacts of the Scheme on the movement of fish through the catchment.

Bay of Plenty Regional Policy Statement

¹⁴⁴ Application, 206.

197. The Application records that the Bay of Plenty Regional Policy Statement (**RPS**) does not contain any zoning or overlays that apply to the Kaimai HEPS within the context of the Wairoa River Catchment. The Kaimai HEPS is, however, considered regionally significant infrastructure under the definitions of the RPS. It further states that there are no statutory acknowledgements identified in the RPS that are applicable to the Kaimai HEPS.¹⁴⁵
198. Overall, the ongoing operation of the Scheme is not inconsistent with, or gives effect to, the relevant objectives and policies of the RPS. In this regard, the Panel generally adopts the Applicant’s assessment.¹⁴⁶

Bay of Plenty Regional Natural Resources Plan

199. The Bay of Plenty Regional Natural Resources Plan (**Regional Plan**) contains several objectives, policies and a rule that we must consider. The Panel agrees with the consideration of objectives and policies provided in the Application and statement of support from Bay of Plenty Regional Council on the application of objectives and policies. No dissenting comments were received. The Panel adopts the Applicant’s assessment.
200. As noted earlier the Regional Plan classifies the Application as a controlled activity under Rule WQ R20(47C). This classification is consistent with the relevant objectives and policies that recognise the importance of the Scheme and its on-going operation, but subject to the appropriate management of its effects on the environment. In this regard, the matters of control are lengthy and extensive.

Part 2, Resource Management Act 1991

201. The Application provided an assessment of Part 2 RMA matters, including consideration of sections 5, 6 and 7. The consideration provided a broad assessment of matters canvassed and its applied correlation as part of the Kaimai HEPS activity. We note that, the reference to Part 2 of the RMA excludes section 8 of the RMA (taking into account the principles of the Treaty of Waitangi/te Tiriti o Waitangi). However, section 7 of the FTA requires the Panel to “act in a manner that is consistent with... the obligations arising under existing Treaty settlements.
202. No comments were received to the contrary by any party. The Panel notes the level of engagement offered and undertaken with mana whenua entities. The Panel has no reason to differ from the assessment and consideration provided, and accepts this assessment. The Panel also, in its consideration as detailed above, has considered Treaty settlement obligations in regard to this Application.

¹⁴⁵ Application, 30.

¹⁴⁶ Application, 206-212.

PART F: PRINCIPAL ISSUES IN CONTENTION AND KEY FINDINGS

203. The Panel has had difficulty in identifying “issues in contention” given the broad support for the Application expressed in comments. We assume that this is a result of the effort made by the Applicant to engage with other parties and address their concerns. Nevertheless, the FTAA requires the Panel to state what issues are in contention.
204. As discussed below, an issue was raised in comments from the Regional Council and DoC as to the appropriate response should sediment monitoring identify any adverse effects. In our view, the Applicant’s response does not adequately address this issue, and we have proposed amended conditions accordingly.
205. While not contested in comments, the Panel perceives (based on the matters addressed in the Application) that the following were key issues raised in that engagement.

Residual flows

206. The residual flows are proposed to address physical and cultural effects of the structures on the streams and rivers. On the other hand, the residual flows can be seen as a ‘loss’ in potential electricity generation. Accordingly, a balance needs to be struck in terms of the number and volume of residual flows. The general consensus between the parties that provided comments was that the Applicant had proposed an appropriate balance. The Panel accepts this position, which is supported by the technical evidence explaining the benefits of the proposed residual flows and the economic disbenefits.

Provision for fish passage

207. The Applicant proposed a NFMP, which has been subject to supportive comments from the Regional Council and DOC. The details of the NFMP are yet to be finalised, but we recognise the objectives of the Plan are to reduce fish passage effects arising for the HEPS on the native fish populations in the Wairoa River. The detail of the NFMP will be developed with mana whenua to build on existing management of fish passage, will be reviewed by DOC and certified by the Regional Council. The Panel is supportive of the collaborative approach to manage fish passage effects arising from the HEPS.

PART G: CONDITIONS

208. The Application included a set of proposed conditions that the Applicant has updated through the course of this decision-making process, including as part of its response to comments.
209. The Panel proposed several modifications to these conditions, that were circulated to Ministers and parties for comment in accordance with section 70 and 71 of the FTAA on 24 April 2026. By way of a summary, these modifications address the following matters:

- (a) Requiring the current nature and scope of public access (as described in the Application) to be maintain, subject to operational and safety requirements.
- (b) Redrafting to ensure that the definition of “emergency conditions” is a condition of consent (rather than an advice note).
- (c) Requiring the sound warning before a recreational discharge to ensure the public have sufficient time to vacate the affected area.
- (d) Requiring the consent holder to respond to any recommendations to address adverse effects in the sediment monitoring report. This addresses the concerns of the Regional Council and DoC, and provides flexibility to the consent holder given the uncertainty as to what the outcome of the monitoring will be. It also ensures that any issues are brought to the attention of the Regional Council which may, if appropriate, seek to review the consent conditions (as noted in an amendment to condition 1.13(a)).
- (e) Clarifying that if a hapū entity entitled to be part of the Mana Whenua Kaitiaki Rōpū decides not to join, or to leave, the Rōpū, the Consent Holder must consult with that entity in accordance with the relevant consent conditions.

210. The Ministers responded on [complete].

211. [Comments were received by [insert] on [5 May]]. The Applicant responded to comments from the parties on 11 May 2026.

212. The Panel has considered the comments when preparing the final set of conditions (Appendix A). [Key issues/matters to note]

PART H: OVERALL EVALUATION

213. We have considered the Application and all advice, reports and other information received, in accordance with section 81(2)(a) FTAA.

214. We have applied the provisions of Schedule 5 in the manner required by section 81(2)(b) FTAA.

215. Applying the relevant statutory considerations, the Panel has decided that consent should be granted subject to the attached conditions for the reasons set out above. Notable point of alignment with the statutory considerations include:

- (a) The Scheme is indisputably “infrastructure” as defined and will each generate significant regional (if not national) benefit as a vital source of electricity from a renewable source. Moreover, it generates significant positive effects in terms of enabling social, economic and cultural wellbeing, and the benefits associated with reliance on renewable electricity sources;
- (b) The Scheme has been operating in some configuration for at least 50 years – relying on consistent river flows in the catchment, and the fall between the

diversion points and the various power stations, to generate renewable electricity. It is not feasible to relocate or modify the Scheme to avoid or mitigate any potential effects on the environment;

- (c) Extensive and seemingly effective engagement with potentially affected parties, including a wide range of groups representing tangata whenua interests. This engagement has taken into account the relevant relationships (including tikanga-based relationships) that the groups have with the area and each other and, where relevant, the Treaty Settlement arrangements;
- (d) The Scheme has low-moderate effects on the natural character of the waterbodies, and its continued operation, use and maintenance will not result in any further loss in natural character than what is currently provided. The provision of residual flows in the Mangapapa River, Omanawa River and downstream of the McLaren Falls Dam will assist in improving natural character in part;
- (e) The existing residual flows within Opuiaki River, Ngatuhoa Stream and Mangakarengorengo River provide some habitat for passage for kōkopu and tuna species (and invertebrate communities), however, broader habitat is limited given the geology and topography of the catchments. The additional residual flows will improve passage for indigenous freshwater species within the Wairoa River Catchment, along with the continued implementation of a trap and transfer program and modifications to structures (as part of a Native Fish Management Plan), will further enhance indigenous habitats and ecosystems in the catchment;
- (f) The continued operation, use and maintenance of the Scheme will not alter existing access to the various waterbodies within the Scheme;
- (g) Based on the technical assessments a range of measures are proposed (and embodied in conditions) to avoid, remedy or mitigate potential adverse effects from the operation of the on the environment (consistent with national and regional statutory planning documents);
- (h) The Application represents an appropriate balance between the benefits of the Scheme and its adverse effects on the environment, including mana whenua effects; and
- (i) These various measures will also enable Manawa Energy to continue to operate the Scheme in a manner that provides an essential utility service to the wider community.

PART I: FINAL DECISION

216. We have considered the Application and supporting information, and the comments received on it and on the draft conditions. We thank all those who commented for their contributions.

217. For the reasons set out above, we have determined to grant the Application subject to the conditions attached as Appendix A to this Decision.

Decision, dated [xx] May 2026

Gerald Lanning (Chair)

Martin Neale

Reginald Proffit