

**BEFORE THE WAIPA DISTRICT COUNCIL AND WAIKATO REGIONAL
COUNCIL**

**TOKANUI HOSPITAL DEMOLITION, REMEDIATION AND LANDFILL
UPGRADES**

Under the

Resource Management Act 1991

In the matter of

resource consent applications by Toitū Te Whenua
Land Information New Zealand under section 88 of
the Act for demolition and remediation works, and
landfill upgrades, in respect of the former Tokanui
Hospital site

**OPENING LEGAL SUBMISSIONS ON BEHALF OF TOITŪ TE WHENUA LAND
INFORMATION NEW ZEALAND**

26 September 2025

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MAY IT PLEASE THE HEARING PANEL:

INTRODUCTION

1. These legal submissions support Toitū Te Whenua Land Information New Zealand's (**LINZ**) applications under section 88 of the Resource Management Act 1991 (**RMA**) for resource consents for demolition, removal, and remediation works at the former Tokanui Hospital site at 149 Te Mawhai Road, Tokanui (**Site**) (**Remediation Application**) and works to an existing closed landfill on the Site (**Landfill Application**) (together, the **Applications**). Together, the Applications relate to, and seek consents for, the **Project**.
2. In support of the Applications, these submissions:
 - (a) summarise LINZ's case;
 - (b) set out the background and context to the Applications, including outlining the engagement LINZ has undertaken;
 - (c) identify the statutory framework for the Panel's decision, including in relation to the section 104D 'gateway' test;
 - (d) address the evidence before the Panel regarding the positive and adverse environmental effects of the Project, highlighting the key issues for determination;
 - (e) outline the relevant national and regional regulations, policy and planning documents and other matters;
 - (f) address conditions;
 - (g) provide a brief assessment of the Project against Part 2 of the RMA; and
 - (h) introduce the witnesses who will give evidence of behalf of LINZ.

EXECUTIVE SUMMARY

3. The Tokanui Hospital is a 'deferred selection property' in the Ngāti Maniapoto Deed of Settlement (**Deed**) and forms part of the Maniapoto Settlement Claims Act 2022 (**2022 Act**), which gives effect to the Deed.

4. Under the Deed, Ngāti Maniapoto and the Crown have agreed to a process for the Site which details specific requirements for the demolition and remediation of the Site before it is offered to the Ngāti Maniapoto Post Settlement Governance Entity (**PSGE**), Te Nehenehenui Trust (**TNN**), for purchase.
5. The Project is unique in that no other property included in a Treaty settlement has required demolition and remediation on this scale nor has included a Crown commitment to undertake remediation in a Deed of Settlement. The Deed also acknowledges the presence of the existing disposal sites (landfill) on the Site and excludes the landfill from the scope of the demolition and remediation. However, the Deed states that the Crown must "*at all times*" maintain valid land use resource consents for the monitoring of those existing disposal sites as required.¹ The existing resource consents for those disposal sites expire in 2035.²
6. Since 2016, feedback from engagement with iwi and mana whenua hapū have been fundamental drivers of the Project, as demonstrated by the:
 - (a) early feasibility studies and options assessments undertaken;
 - (b) preparation of a Cultural Impact Assessment (**CIA**) in 2021 by the Tokanui Action Rōpū Block Limited (**TAR Block Limited**);
 - (c) incorporation of TNN's and mana whenua views in briefings to the Joint Ministers charged with making decisions on the Project;
 - (d) Waahi Tapu Investigation and Cultural Induction undertaken in February 2023 (**Waahi Tapu Pilot Trial**);
 - (e) draft Cultural Support Work Request outlining commitments to pre-start karakia and contractor cultural induction, as well as cultural monitoring during works in identified areas circulated to TNN and mana whenua in August 2025; and
 - (f) various submitter hui, emails and telephone calls LINZ has been involved in over the course of the Project (including right up until the hearing).

¹ [9.13.1(b)] of the Deed of Settlement Schedule: Property Redress (**Redress Schedule of the Deed**). See also Remediation of Former Tokanui Hospital Site Assessment of Environment Affects (**Remediation AEE**) at p4.

² [9.8.3] of the Redress Schedule of the Deed.

7. The Project's staging and sequencing has been deliberately designed and implemented to ensure technical inputs **follow and are shaped by** TNN's and mana whenua views, rather than the Project being retrofitted to incorporate TNN and mana whenua input.
8. This approach to engagement and Project design has led to an environmentally sound and future-focussed project with minimal adverse effects and a number of key positive effects, which has been reflected in the relatively small number of submissions received (compared to the groups and individuals that were notified).
9. The robustness of LINZ's Applications has also meant there is a high degree of alignment between LINZ's planner – Ms Emily Buckingham, Waipā District Council's (**WDC**) planner – Ms Hayley Thomas, and Waikato Regional Council's (**WRC**) planner – Ms Ceri Hills (and relevant experts) as to:
 - (a) the Project's ability to pass the section 104D 'gateway' test of the RMA;
 - (b) the level of effects (with the exception of Ms Thomas' views on cultural effects, discussed below), with a consensus that the technical effects of the Project will be no more than minor; and
 - (c) the Project's consistency with the relevant objectives, policies, objectives and other planning, policy and 'other' matters.
10. While LINZ acknowledges the cultural and tikanga concerns expressed by the individual mana whenua submitters in their written submissions – particularly around the Landfill Application – there are sound environmental reasons for progressing that Application³ and removal of that existing landfill is beyond the scope of this Project and the Applications.
11. Moreover, the upgrades enabled by the Landfill Application will have several environmental benefits, including water quality and ecological benefits, resilience and flooding benefits, improved Wharekōrino Stream (**Stream**) flow and fish passage, considerable reductions in the (already limited) leachate and riparian planting enhancements.⁴
12. The Remediation Application, too, carries significant benefits. Most critically, the works will enable the return of the Site to TNN in a remediated state (an

³ Noting existing capping and other issues associated with the existing closed landfill.

⁴ [107(c)] of Mr Bradley's evidence.

important aspect of Ngāti Maniapoto's settlement with the Crown) facilitating future developments and rural purposes.

13. Other benefits include environmental (aquatic and terrestrial ecological enhancements and reduced leaching of contaminants) and economic and social (associated with increases in local jobs and upskilling during the construction phase, and future employment and economic opportunities once the Site has been restored to a state where it is safe and suitable for use for agricultural, rural and other purposes) benefits, among others.
14. Nevertheless, the views and involvement of mana whenua and TNN are important and have informed both the Project's design in its earliest stages, as explained by Ms Kim Wepasnick, and more recent changes to the Project and its conditions. This includes:
 - (a) proposed amendments to conditions around Stream flows and damming/diversion timeframes, an expanded scope for cultural monitoring, fast-tracking the final design drawings for the replacement Culvert 3 to provide additional certainty, and additional riparian planting and plant pest removal;⁵
 - (b) the circulation of a draft Cultural Support Work Request in late August 2025 outlining commitments to pre-start karakia and contractor cultural induction and monitoring during works in identified waahi tapu areas, with an invitation to discuss and provide comment (TNN has expressed support for this document and LINZ is awaiting feedback from mana whenua hapū, including on who is the appropriate person or entity to provide those cultural work services⁶); and
 - (c) proposed amendments to condition 4 (WRC) and condition 6 (WDC) around cultural monitoring and a process for updating, finalising and implementing Phase 1 Cultural Management and Monitoring Plan (CMMP).
15. Overall, Ms Buckingham's view – supported by Dr Sean Finnigan's technical expert opinions – is that the effects of the Project will be less than minor and acceptable, and that LINZ will be able to work with TNN and mana whenua to reach a position whereby cultural effects of the Project will be appropriately

⁵ As set out in the 7 August 2025 "*Tokanui discussion document*", appended to Mr Bradley's evidence as **Appendix MB4**.

⁶ This confirmation is expected by 16 October 2025, as set out in **Appendix MB5** (16 September 2025 hui minutes), pre-circulated on 26 September 2025..

managed.⁷ In LINZ's view any remaining cultural effects can be appropriately dealt with through conditions. The latest conditions have been pre-circulated as **Appendix EB7** (WRC conditions) and **Appendix EB8** (WDC conditions). These versions adopt the Regional Council's formatting of conditions, providing manual tracked changes to clearly show LINZ's changes.

16. However, LINZ recognises that further changes are required, which it had hoped to complete in advance of the hearing. These changes are not substantive but rather are focussed on making the conditions clearer and more certain and ensuring that the management plans that are critical to implementation are set out in an effective manner. LINZ proposes to work on the conditions through the hearing, receive feedback from submitters, the Councils and the Panel, and then provide the Panel with an amended set of conditions – updated with input from the relevant experts and formatted to ensure the conditions are as streamlined as possible – with its written closing submissions.
17. The Applications:
 - (a) will achieve the sustainable management purpose of the RMA;
 - (b) are consistent with the objectives and policies of the relevant planning documents; and
 - (c) will appropriately avoid, remedy, or mitigate adverse effects on the environment.
18. For these reasons, the Applications should be granted.

BACKGROUND AND CONTEXT TO THE APPLICATIONS

19. LINZ is a government department responsible for geographical and land information, land titles, and the management of Crown property and land.
20. It is responsible for managing the Site on behalf of the Crown in the Treaty Settlements Landbank. Land held in the Landbank is Crown land which has been declared surplus and can be used as redress in Treaty of Waitangi Settlement claims.
21. The Tokanui Hospital is a 'deferred selection property' in the Deed and forms part of the 2022 Act, which gives effect to the Deed.

⁷ [60] of Ms Buckingham's evidence.

22. Under the Deed, and pursuant to a 2022 Memorandum of Understanding (**MoU**) between the Crown and TNN, Ngāti Maniapoto and the Crown have agreed to a process for the Site which details specific requirements for the demolition and remediation of the Site before it is offered to TNN for purchase. LINZ is responsible for delivering the Project.
23. No other property included in a Treaty settlement has required demolition and remediation on this scale nor has included a Crown commitment to undertake remediation in a Deed of Settlement. The Deed also acknowledges the presence of the existing disposal sites (landfill) on the Site and states that the Crown must "*at all times*" maintain valid land use resource consents for the monitoring of those existing disposal sites as required.⁸ The existing resource consents for those disposal sites expire in 2035.⁹

TNN and mana whenua engagement

24. As discussed in the evidence of Mr Matthew Bradley and addressed in detail in the Iwi Engagement Report attached to the two Assessments of Environment Effects (**AEEs**)¹⁰ (as well as the updated and finalised addendum to that Report dated 26 September 2025¹¹), extensive consultation has been undertaken over a number of years with Ngāti Maniapoto (including TNN and mana whenua hapū) as part of the Project. This engagement – recognised by TNN in its statement of evidence¹² – reflects the importance of the Site in the context of the Deed.
25. From 2016 on, engagement and consultation has included:
- (a) early (pre-Deed settlement) engagement with the pre-settlement iwi entity, the Maniapoto Māori Trust Board (**MMTB**) to inform the scope and delivery of the Project. This included early feasibility studies and options assessments obtained by LINZ;
 - (b) the preparation of a CIA in 2021 by TAR Block Limited, which was formed as the legal entity representative of TAR. TAR's membership comprises individuals from Ngāti Paretekawa, Ngāti Ngutu, Ngāti Paia and Ngāti Rahurahu.¹³ The CIA was obtained prior to the engagement of all specialist consultants on the Project to ensure cultural

⁸ [9.13.1(b)] of the Redress Schedule to the Deed. See also Remediation AEE at p4.

⁹ [9.8.3] of the Redress Schedule to the Deed.

¹⁰ Appendix D to the Remediation AEE and Appendix J.4 to the Landfill AEE.

¹¹ **Appendix MB1** (replacing the previous draft version of **Appendix MB1** appended to Mr Bradley's evidence.

¹² TNN's tabled statement dated 10 September 2025 at p1: the author acknowledges "*the applicant's willingness to engage with us and to provide additional information.*"

¹³ Page 4 of the CIA (Appendix B1 to the Remediation AEE and Appendix K1 to the Landfill AEE).

considerations were at the forefront of planning from the Project's outset;

- (c) ensuring, through an agreed process, that TNN's and mana whenua views on the Project were included in briefings to the Joint Ministers prior to the Joint Ministers' decision on the scope of the Project. Mr Bradley's evidence confirms that those preferences were supported by LINZ and agreed to by the Joint Ministers;¹⁴
- (d) a February 2023 Waahi Tapu Pilot Trial, which was led by TAR Block Limited with a scope that included information-gathering, identifying and mapping waahi tapu areas within the site, and reviewing sampling locations (to ensure identified locations are avoided during initial investigations), cultural induction protocols, a cultural monitoring workplan (including appointing Cultural Monitors Robert Te Huia and Niketi Toataua) and a cultural management plan. The report prepared following the Waahi Tapu Pilot Trial is attached to Mr Bradley's evidence as Appendix MB2;
- (e) a draft Cultural Support Work Request outlining commitments to pre-start karakia and contractor cultural induction, as well as cultural monitoring during works. This was circulated to TNN on 22 August 2025, who were supportive,¹⁵ and to submitters on 29 August 2025 with an invitation to meet and discuss;
- (f) various submitter phone calls and hui (described in Mr Bradley's evidence, summary statement and the Iwi Engagement Reports), with the most recent hui taking place on 16 September 2025 and follow-up phone calls and emails taking place in the week commencing 22 September 2025.

26. In short, engagement with and feedback from TNN and mana whenua hapū have been a central driver of the Project since the very beginning, and the Project's staging and sequencing has been deliberately designed and implemented to ensure technical inputs **follow and are shaped by** TNN and mana whenua views, not the other way around.

¹⁴ [65] of Mr Bradley's evidence.

¹⁵ [92] of Mr Bradley's evidence.

27. A consistent theme of the engagement undertaken throughout the Project has been a clear preference from mana whenua for the removal of the existing landfill on the Site and a lack of support for the Landfill Application.
28. While LINZ acknowledges the cultural and tikanga concerns expressed in this regard, as set out in the evidence of Ms Wepasnick and Mr Bradley:
- (a) removal of the existing landfill was never within the Project's scope,¹⁶ with the Deed explicitly acknowledging the Crown is not required to carry out demolition and remediation works *"in respect of the existing disposal sites and any new disposal site"*;¹⁷
 - (b) in 2022-2023 investigations into the extent and condition of the existing landfill were carried out considering the Crown's responsibility to manage the landfill *"at all times"*¹⁸ through which it was discovered that whilst the landfill generally complied with its consent requirements, there were minor issues (including capping issues);
 - (c) accordingly, in order to achieve maximum efficiencies, efficient use of taxpayer money, and a streamlined, *"holistic and proactive"*¹⁹ project, LINZ decided to integrate the demolition and remediation required to fulfill the Deed requirements with the upgrades to the existing landfill that were necessary to address the issues discovered during the 2022-20223 investigations;²⁰ and
 - (d) the upgrades to the existing landfill will have several environmental benefits, including water quality and ecological benefits, resilience and flooding benefits, improved Stream flow and fish passage, considerable reductions in the (already limited) leachate and riparian planting enhancements).²¹
29. Nevertheless, LINZ has taken on board the sentiments expressed by TNN and mana whenua submitters in their written submissions and has been working hard to address those concerns through amendments to the Project, conditions and through discussions with submitters.

¹⁶ [84] of Mr Bradley's evidence.

¹⁷ [9.13.1(a)] of the Redress Schedule to the Deed.

¹⁸ [84] of Mr Bradley's evidence; [9.13.1(b)] of the Redress Schedule to the Deed.

¹⁹ [30] of Ms Buckingham's evidence.

²⁰ [106]-[107] of Ms Wepasnick's evidence.

²¹ [107(c)] of Mr Bradley's evidence.

30. For example, the 7 August 2025 "*Tokanui discussion document*",²² circulated to TNN following receipt of submissions:
- (a) proposed amendments to conditions:
 - (i) to ensure normal flows in the Stream would be maintained;
 - (ii) to reduce the temporary damming and diversion timeframes;
 - (b) explained that additional calculations had been undertaken following submissions to assess the effect of removing the existing impervious areas on the Site on the rate of stream base flows, and that these calculations demonstrated that "*the permanent works will not adversely affect the stream base flows and may, in fact, enhance them to a small extent*;"²³
 - (c) expanded the scope of cultural monitoring proposed to include all works in proximity to the Stream (in addition to waahi tapu areas), reflecting the importance of maintaining water quality and protecting taonga species;
 - (d) confirmed that the final design drawings of replacement Culvert 3 and the new daylighted stream section of the Stream that were previously going to be undertaken post-consent had been fast-tracked to provide additional certainty to TNN in relation to fish passage, ecological habitats and a more natural looking Stream. That design was completed and is addressed in Appendix SF7 to the evidence of Dr Finnigan; and
 - (e) confirmed that additional planting and weed removal within the riparian margin of the Stream between Culverts 2 and 3 were now being investigated as an opportunity for additional ecological enhancement, to improve indigenous habitat and further support indigenous biodiversity. That design was completed and is included in Appendix EB5 to the evidence of Ms Buckingham.
31. The "*Tokanui discussion document*" also responded to submitter concerns regarding the existing landfill, noting:

²² Appended to Mr Bradley's evidence as **Appendix MB4**.

²³ **Appendix MB4**, p2. See also **Appendix SF6** (FTL Memo dated 26 June 2025 on the effect of changes in impervious areas from hospital demolition works on stream flows).

- (a) *"Site-specific contaminated soil standards have been developed in collaboration/consultation with mana whenua"* which are more conservative than the Ministry for the Environment's (MfE's) rural residential standards and go beyond what is required under the Deed;²⁴
 - (b) while low-level contaminated soil²⁵ will be disposed of in the existing landfill, this will not pose a risk to groundwater and *"the most offensive materials, such as coal tar residues in the roading network and pockets of historic demolition waste, will be removed and disposed of off-site."*²⁶
 - (c) medical waste in Area F of the existing landfill will also be removed and disposed of offsite;²⁷ and
 - (d) the Crown will be responsible for monitoring and compliance of the upgraded landfill in perpetuity and will ensure the landfill remains suitable for a number of activities including agricultural/farming activities.²⁸
32. As a result of the comprehensive engagement and design work that has been undertaken:
- (a) TNN has confirmed it is *"comfortable that our concerns have been addressed or will be addressed through the imposition of consent conditions"* and is no longer pursuing its submission points;
 - (b) LINZ has had positive pre-hearing interactions with the other submitters²⁹, with Mr Gordon Thomson expressing *"general support"* for the Project,³⁰ and other submitters (including Ms Yvonne Waho and Mr Samuel Roa) conveying varying levels of understanding and acceptance for the Project, and appreciation for LINZ's post-submission engagement, while maintaining some reservations around engagement processes, cultural monitoring and representation;³¹ and
 - (c) it was agreed at the 16 September 2025 hui attended by LINZ, TNN representatives and mana whenua (including all submitters except Mr

²⁴ Appendix MB4, p3.

²⁵ Soil with low to moderate levels of lead, zinc and asbestos, as defined in the SSRA..

²⁶ Appendix MB4, p3-4.

²⁷ Appendix MB4, p4. See also Table 1, p4 of the Existing Disposal Site Repair and Upgrade Works Report (Appendix B to the Landfill AEE).

²⁸ Appendix MB4, p4.

²⁹ [129]-[130] of Mr Bradley's evidence: Nigel Ngahiwi was unable to be reached; however Mr Bradley's evidence describes the email communications and telephone attempts on 10 September 2025.

³⁰ [120] of Mr Bradley's evidence: Noting LINZ understands that Mr Thomson still has some specific concerns, including around truck movements and the inclusion of MMTB in the CIA.

³¹ [131]-[133] and [122]-[125] of Mr Bradley's evidence.

Nigel Ngahiwi) that mana whenua would liaise to discuss who would be the appropriate person and/or entity to provide cultural monitoring for the Project and would advise TNN and LINZ of the outcome of those discussions by 16 October 2025.³²

STATUTORY FRAMEWORK

33. The consents required for the Applications under the Waipā District Plan (**WDP**) and Waikato Regional Plan (**WRP**) are set out in the AEEs and repeated in the respective section 42A reports.
34. LINZ agrees with the section 42A authors Ms Thomas and Ms Hills as to the various consents required, noting the evidence of Ms Buckingham that:³³
- (a) she is comfortable with the revised grouping of activities proposed by Ms Hills, which does not affect activity status; and
 - (b) Ms Hills has confirmed that the part of her section 42A report which refers to consent being required under Regulation 45C(5) of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-F**) was an error.
35. In terms of 'bundling', there is agreement between LINZ and the Councils that:
- (a) the WRC components of the Remediation Application carry an overall activity status of **Non-complying**;³⁴
 - (b) the WDC components of the Remediation Application carry an overall activity status of **Discretionary**;³⁵ and
 - (c) the WDC components of the Landfill Application carry an overall activity status of **Non-complying**.³⁶
36. In terms of the WRC components of the Landfill Application, Ms Buckingham's evidence is that the overall status of the WRC Landfill Application is **Discretionary**. However, because Ms Hills has taken an overall bundled approach across the Applications, she has concluded that

³² See Item 3.0 of the 16 September 2025 "Hui minutes: Cultrual Support Work Request" appended to Mr Bradley's summary statement as **Appendix MB5**.

³³ [34]-[35] of Ms Buckingham's evidence.

³⁴ [29] of Ms Buckingham's evidence; [6.2] of the WRC s42A (combined) report at p28.

³⁵ [29] of Ms Buckingham's evidence; [6.2] of the WDC s42A (remediation) report at p170.

³⁶ [33] of Ms Buckingham's evidence; [6.2] of the WDC s42A (landfill) report p311.

the WRC components "*across both workstreams*" have an overall **Non-complying** status.

37. Counsel do not consider this to be the correct approach in light of the two separate Applications and the fact that "*the Remediation Application does not rely on the Landfill Upgrade Application*"³⁷, however it is immaterial given all planners agree that both Applications meet the section 104D 'gateway' test.

Section 104D 'gateway' test

38. Under section 104D a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that **either**:
- (a) "*the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies [ie any effects on a person who has given written approval to the application]) will be minor*" (limb 1); **or**
 - (b) "*the application is for an activity that will not be contrary to the objectives and policies of— (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity (...)*" (limb 2).
39. In this case:
- (a) Ms Buckingham and Ms Hills share the view that both limbs have been met in respect of both Applications; and
 - (b) Ms Thomas considers that the Remediation Application passes both limbs, however the Landfill Application does not pass the effects limb in light of indications from the submissions that cultural effects cannot be suitably avoided, remedied or mitigated to be acceptable.
40. It is unclear whether Ms Thomas still holds that view following TNN's statement of evidence, however the case law is clear that specific effects do not necessarily detract from an overall "*no more than minor*" finding. As explained by the Environment Court in *SKP*.³⁸

As will be seen from our later analysis of effects on the environment, there are some which individually can be described as more than minor, for instance in connection with visual amenity from certain properties, but the law is that the

³⁷ Executive Summary of the WRC s42A (combined) report at p5.

³⁸ *SKP Incorporated v Auckland Council* [2018] NZEnvC 81 at [49].

evaluation under this provision is to be undertaken on a "holistic basis, looking over the entire application and a range of effects",³⁹ not individual effects.

41. When viewed in context – including the purpose of the Project (in terms of the Deed), the extensive engagement undertaken by LINZ, the position of TNN, the conditions proffered by LINZ and the consensus between all planners and technical experts regarding the level of *all other* effects – taking a holistic approach the adverse effects of the Project are no more than minor and thus meet limb 1 of the section 104D gateway test.
42. In any event, as above nothing turns on this as there is agreement between all planners that both the Remediation Application and the Landfill Application satisfy the section 104D gateway test.⁴⁰

Sections 104, 105 and 107

43. Section 104(1) provides that when considering applications for resource consent and any submissions, the decision-maker must, subject to Part 2 of the RMA, have regard to:
 - (a) any actual and potential effects on the environment of allowing the activity;
 - (b) any relevant provisions of statutory planning documents; and
 - (c) any other matter the decision-maker considers relevant and reasonably necessary to determine the application.
44. When considering discharge permits, section 105 requires that regard must be had to the following three matters:
 - (a) the nature of the discharge and the sensitivity of the receiving environment;
 - (b) LINZ's reasons for the proposed choice; and
 - (c) alternative methods of discharge and any other receiving environment.
45. For the reasons set out in the AEEs and WRC section 42A (combined) report, adequate regard has been had to:⁴¹

³⁹ The footnote from the *SKP* decision reads: "See for instance *Cookson Road Character Preservation Society Inc v Rotorua District Council* [2013] NZEnvC 194 at [46] and subsequent paragraphs."

⁴⁰ [59] of Ms Buckingham's evidence.

⁴¹ [8.2] of the Remediation AEE at p79 and [8.2] of the Landfill AEE at p71; [4.1.1.1] and [10.4.8] of the WRC s42A (combined) report at p19-20 and p56 .

- (a) the nature of the discharge and the sensitivity of the receiving environment;
 - (b) LINZ's reasons for the proposed choice; and
 - (c) alternative methods of discharge.
46. Section 107 relates to restrictions on the grant of certain discharge permits where there is a discharge of contaminants. Ms Buckingham and Ms Hills agree that granting the Applications is not precluded by section 107 matters.⁴²

EFFECTS ON THE ENVIRONMENT

47. Under section 104, the Panel is to have regard to any actual and potential effects on the environment of allowing the activity, while section 5(2)(c) also refers to "*avoiding, remedying, or mitigating any adverse effects of activities on the environment*" as part of the sustainable management purpose of the RMA.
48. The AEEs, supplementary materials provided in response to section 92 requests and the expert evidence for LINZ extensively consider the environmental effects of the Applications.
49. There is a high level of agreement between the technical experts as to effects. There is also agreement between the planners that the adverse effects of the Project will, following implementation of appropriate mitigation and conditions, be appropriately and sufficiently minimised⁴³ such that consent can be granted, noting:
- (a) Ms Thomas' view (in the WDC section 42A (remediation) report) that although "*the proposed remediation of the site and the works required to undertake this will have effects on the environment*", LINZ has "*provided management methodologies to minimise the effects as much as practicable*" and – subject to conditions relating to management plans – "***the environmental effects will be suitably mitigated***",⁴⁴
 - (b) Ms Thomas' view (in the WDC section 42A (landfill) report) that "*Regarding the physical environmental effects (...) While I consider the effects of enhancing the state of the existing landfill will be positive, the*

⁴² [10.4.8] of the WRC s42A (combined) report at p56-57.

⁴³ Subject to Ms Thomas' view on cultural effects, addressed below.

⁴⁴ [10.30] of the WDC s42A (remediation) report at p179.

*works themselves are not without environmental effects. However, with the appropriate management and monitoring in place, **suitable mitigation will be provided to ensure the physical environmental effects are avoided, remedied or mitigated;***⁴⁵ and

- (c) Ms Hills' view (in the WRC (combined) section 42A report) that *"If the recommended conditions are adhered to the effects on the environment and cultural concerns should be **no more than minor**".*⁴⁶

(emphasis added)

50. Accordingly, this section addresses:

- (a) the positive effects of each Application;
- (b) briefly, the adverse effects of each Application, focussing on any areas of disagreement between the technical experts; and
- (c) cultural effects in the context of both Applications.

Remediation Application

Positive effects

51. The Remediation Application will have significant positive effects. Firstly, and most importantly, the activities are needed in order to convert the Site into a condition suitable to be offered to TNN in accordance with the Deed.⁴⁷ This is an important aspect of Ngāti Maniapoto's settlement with the Crown in respect of historical grievances and will enable a positive future for the Site, enabling future developments and rural purposes.⁴⁸

52. In addition:

- (a) the works will remove the risks and obstructions posed by abandoned buildings and structures, many of which contain asbestos and lead-based paint and pose health and safety and environmental risks;⁴⁹

⁴⁵ [10.27] of the WDC s42A (landfill) report at p320.

⁴⁶ [10.2.9] of the WRC s42A (combined) report at p48.

⁴⁷ [107(b)] of Mr Bradley's evidence; [10.32] of the WDC s42A (remediation) report at p180.

⁴⁸ [107(e)] of Mr Bradley's evidence; [61(a)] of Ms Buckingham's evidence; [11.22] of the WDC s42A (landfill) report at 330; [6.2] of the Remediation AEE at p58; [10.32] of the WDC s42A (remediation) report at p180.

⁴⁹ [107(a)] of Mr Bradley's evidence; [61(a)] of Ms Buckingham's evidence; [6.2] of the Remediation AEE; [10.32] of the WDC s42A (remediation) report at p180.

- (b) the removal of unused and deteriorating infrastructure and the removal of contaminated soil will facilitate a more efficient use of this substantial land resource that is currently underutilised;⁵⁰
- (c) the removal of structures will also enable a return to *"a more natural state"*, which WRC Scientist-Wetlands, Ms Kaitlin Morrison, agrees is a *positive move*;⁵¹
- (d) the removal depths greatly exceed those recommended by soil scientists (for agricultural purposes) and LINZ specialist consultants and therefore provide greater assurances regarding the ability to redevelop the Site without encountering abandoned infrastructure;⁵²
- (e) water flow and fish passage will be improved through removing the road embankment crossing the Stream and Culvert 2;⁵³
- (f) the works will have a small benefit for shallow groundwater flows to the Stream *"as a result of an approximately 5.1% decrease in impervious areas within the hospital site"*;⁵⁴
- (g) the already low risk of heavy metals leaching from contaminated soils will be further reduced due to their transfer and encapsulation within the disposal site;⁵⁵
- (h) enhanced riparian planting will improve water quality, increase indigenous biodiversity⁵⁶ and *"enhance[e] the currently degraded NIW margin area around the Wharekōrino Stream and increase overall availability of enhanced habitats within the site"*;⁵⁷
- (i) there will be an increase in local jobs and economic activity during the works period, along with associated flow-on social and economic (including upskilling) benefits for the local community, in particular noting the Site will be remediated to a state where it can be used for future purposes including rural and agricultural purposes (a shared benefit with the Landfill Application).⁵⁸

⁵⁰ [6.2] of the Remediation AEE at p58; [10.32] of the WDC s42A (remediation) report at p180.

⁵¹ [10.2.3] of the WRC s42A (combined) report at p45.

⁵² [107(f)] of Mr Bradley's evidence.

⁵³ [61(d)] of Ms Buckingham's evidence; [145] of Dr Finnigan's evidence; [6.2] of the Remediation AEE at p58; [10.32] of the WDC s42A (remediation) report at p180.

⁵⁴ [118] of Dr Finnigan's evidence.

⁵⁵ [119] of Dr Finnigan's evidence.

⁵⁶ [61(d)] of Ms Buckingham's evidence; [6.2] of the Remediation AEE at p58.

⁵⁷ [10.2.3] of the WRC s42A (combined) report at p45.

⁵⁸ [61(e)] of Ms Buckingham's evidence; [6.2] of the Remediation AEE at p58; [10.32] of the WDC report at s42A (remediation) report at p180.

Potential adverse effects

53. In the vast majority of areas, there is agreement between expert witnesses for LINZ (Ms Buckingham and Dr Finnigan) and the section 42A report authors (Ms Hills and Ms Thomas) that the adverse effects of the Remediation Application will be acceptable.
54. For Ms Hills, whose report does not differentiate between the effects resulting from the Landfill Application and those resulting from the Remediation Application, this includes in respect of:
- (a) the effects of any discharges to land and water including groundwater, which she considers can be sufficiently managed with **no more than minor** effects, based on the expert input of Mr Joshua Evans;⁵⁹
 - (b) the effects of proposed earthworks on water quality, air quality and sediment discharge, which she considers will be **no more than minor**, based on the expert input of Mr Kerry Pearce;⁶⁰
 - (c) effects on freshwater from the proposed works near the Wharekōrino Stream and in proximity to natural inland wetlands, which she considers will be **no more than minor**, based on the expert input of Mr Joshua Smith and Ms Morrison;⁶¹
 - (d) effects on terrestrial ecology, which she considers will be **less than minor**, based on the expert input of Mr Dutton;⁶²
 - (e) effects on hydrology and groundwater dewatering, which she considers will be **minimal, if not negligible**, based on the expert input of Dr Sung Soo Koh;⁶³
 - (f) effects on archaeology, which she considers will be **no more than minor** provided the recommended conditions are adhered to;⁶⁴ and
 - (g) effects of climate change, with Ms Hills concluding she does not consider it likely that there will be any such effects of concern.⁶⁵

⁵⁹ [10.2.1] of the WRC s42A (combined) report at p42-44.

⁶⁰ [10.2.2] of the WRC s42A (combined) report at p44.

⁶¹ [10.2.3] of the WRC s42A (combined) report at p44-45.

⁶² [10.2.4] of the WRC s42A (combined) report at p45-46.

⁶³ [10.2.5] of the WRC s42A (combined) report at p46-47.

⁶⁴ [10.2.7] of the WRC s42A (combined) report at p48.

⁶⁵ [10.2.8] of the WRC s42A (combined) report at p48.

55. Ms Thomas finds that environmental effects in respect of noise, dust, vibration, traffic, erosion and sediment control will be acceptable⁶⁶ and further notes that WDC's Development Engineer, Ms Jane Zhang, concurs with the findings of the Fraser Thomas Limited (**FTL**) *Flood Risk & Mitigation Assessment* (Appendix M to the Remediation Application).⁶⁷
56. Ms Buckingham's evidence, informed by the expertise of Dr Finnigan and the other technical experts who provided input to the Remediation AEE, is that the activities associated with the Remediation Application will **have less than minor and acceptable** actual and potential effects on the environment.⁶⁸
57. Notwithstanding the consensus as to level of effects, Mr Paul Gibbins (WDC's contaminated soils consultant) raised some technical matters⁶⁹ that Dr Finnigan has responded to in his evidence.⁷⁰ These technical matters are not expanded on in these legal submissions, except to reiterate the agreement between the planners and experts that the effects of the Remediation Application are acceptable and it is appropriate to grant consent.
58. To illustrate this point, Dr Finnigan adds:⁷¹

Collectively, these [remediation] works should ensure that the post-remedial human health and environmental effects of the contaminated soils on-site contained in the Disposal Site are less than minor – you could eat at least 25% of your produce intake on this land (...) or grow animal fodder crops or graze animals on this land without adverse effects on human and animal health and on crop growth and crop and animal edibility, while any leaching from the deposited soils is unlikely to have any adverse effects on the environment.

Effects raised by submitters

59. In light of TNN's confirmation that they are no longer pursuing their submission points, this section focusses only on effects raised in the written submissions of the individual mana whenua submitters (noting no written evidence or statements have been pre-circulated by those individual submitters).

⁶⁶ [10] of the WDC s42A (remediation) report at p174; [10] of the WDC s42A (landfill) report at p315.

⁶⁷ [10.24] of the WDC s42A (remediation) report at p178.

⁶⁸ [60] of Ms Buckingham's evidence.

⁶⁹ Appended to the WDC s42A (remediation) report at p244.

⁷⁰ [163]-[168] of Dr Finnigan's evidence.

⁷¹ [99] of Dr Finnigan's evidence.

60. In response to Mr Ngahiwi's, Mr Roa's and Ms Waho's concerns about effects on Stream flows, Dr Finnigan's evidence is that *"Baseflows are estimated to increase by up to 5%, while low flows will be maintained in the stream during the works, with "pump-overs" only required for short periods of time (maximum 2-4 weeks and typically less)"* and that effects on Stream flows will be monitored.⁷²
61. In response to Ms Waho's concerns about effects on wetlands and aquifers, Dr Finnigan's evidence is that:
- (a) the Project (including the Draft Demolition, Deconstruction and Remediation Management Plan (**DDRMP**)) has been designed *"to minimise damage to the wetland[s], while any damaged vegetation areas will be reinstated post-works"*;⁷³
 - (b) the demolition and remediation works will not affect groundwater aquifers in the area and in fact are expected to benefit shallow groundwater flows to the Stream;⁷⁴ and
 - (c) the works will also decrease the already low risk of heavy metals leaching from contaminated soils (as set out above),⁷⁵ noting leachate concerns are dealt with further in relation to the Landfill Application (below).
62. In response to Mr Thomson's concerns about traffic, noise and air quality (dust) effects, Dr Finnigan's evidence is that:
- (a) *"there will be no or very few vehicle movements associated with the transfer of low-moderate level contaminated soil from the hospital to the landfill"* which are *"expected to have a **less than minor** effect on the public road network"*;⁷⁶
 - (b) standard dust control measures will be used, dust is expected to be *"very minor"* and asbestos will be managed by industry standard procedures;⁷⁷ and
 - (c) works will be undertaken in accordance with the relevant noise standards and resource consent conditions and any vibration effects

⁷² [142] of Dr Finnigan's evidence.

⁷³ [115] and [117] of Dr Finnigan's evidence.

⁷⁴ [118] of Dr Finnigan's evidence.

⁷⁵ [119] of Dr Finnigan's evidence.

⁷⁶ [150] of Dr Finnigan's evidence.

⁷⁷ [103] of Dr Finnigan's evidence.

will be limited to the duration of construction works and controlled by relevant measures.⁷⁸

63. In response to Ms Waho's concerns about potential erosion and sedimentation effects from earthworks and cleanfill, Dr Finnigan's evidence is that *"potential adverse erosion and sedimentation effects are appropriately managed through best practice erosion and sediment controls as proposed in the draft ESCP."*⁷⁹

Landfill Application

Positive effects

64. The Landfill Application will result in a significant improvement from the status quo, enabling the existing landfill to be repaired and upgraded which will decrease leaching from the landfill (*"somewhere in the range of 72-92%"*⁸⁰) and, in turn, improve water quality and ecological outcomes for the adjoining Wharekōrino Stream.⁸¹
65. Partial daylighting of the Stream will also have benefits for the Stream's water quality, ecology, amenity and fish passage.⁸² Riparian planting (including natives) will provide further Stream enhancement.⁸³
66. Dr Finnigan's evidence is that the proposed landfill capping and groundwater intercept trench will mean that *"The capping works are expected to significantly reduce the amount of rainfall that infiltrates through the landfill cap, while groundwater passage through existing landfilled material should virtually be eliminated."*⁸⁴
67. Flooding and inundation risk (as well as subsequent leaching into the Stream) will be *"significantly"*⁸⁵ reduced through the removal of material from Areas A2 and H, installing a toe bund and capping upgrades to all disposal areas.⁸⁶ The removal of Culvert 3 (and its replacement with a shorter new culvert) will also provide benefits in terms of mitigating flood risk.⁸⁷

⁷⁸ [104]-[105] of Dr Finnigan's evidence.

⁷⁹ [153] of Dr Finnigan's evidence.

⁸⁰ [12] of Dr Finnigan's evidence. See also [127]-[128] of Dr Finnigan's evidence.

⁸¹ [107(c)] of Dr Finnigan's evidence; [4] and [61(b)] of Ms Buckingham's evidence.

⁸² [4] and [41] of Ms Buckingham's evidence.

⁸³ [52] of Ms Buckingham's evidence.

⁸⁴ [127] of Dr Finnigan's evidence.

⁸⁵ [12] of Dr Finnigan's evidence.

⁸⁶ [6.12] at Tokanui Landfill Upgrade Assessment of Environmental Effects (**Landfill AEE**) at p61; Evidence of Dr Finnigan at [11(a)] and [11(g)].

⁸⁷ [122] of Dr Finnigan's evidence.

68. By enabling on-site disposal of contaminated soils, the Landfill Application will also reduce the need for vehicle movements offsite and associated vehicle emissions.⁸⁸
69. Both Ms Hill and Ms Thomas conclude that overall, the landfill proposal will put the existing landfill in an improved condition.⁸⁹

Potential adverse effects

70. As with the Remediation Application, in the vast majority of areas, there is agreement between expert witnesses for LINZ and the section 42A report authors that the adverse effects of the Applications will be acceptable. Dr Finnigan's evidence is that the landfill repair and upgrade works:⁹⁰

*will ensure that the Disposal Site is **upgraded to a high standard** and will effectively **eliminate the risk of Culvert 3 failure**, whilst **significantly reducing landfill flooding risks**, and further **reducing potential human health and environmental risks**. These risks are **already low**, and in relation to **leachate volumes**, boron and other contaminant levels, are all estimated to **decrease further, by somewhere in the range of 72-92%**, with these reductions taking between just over one month [to] seven years to be reflected in stream water quality improvements.*

(emphasis added)

71. Dr Finnigan considers the works "*will go a long way to making the landfill safe and secure for many decades into the future. Without them, there are significant environmental risks (...)*"
72. Ms Hills for WRC does not differentiate in her overall findings between the Landfill Application and the Remediation Application. That is, her conclusions cited above also apply to the Landfill Application.
73. Ms Thomas finds that, with the exception of the cultural effects (addressed further below), provided appropriate management and monitoring is in place, the physical environmental effects will be avoided, remedied or mitigated.⁹¹

Cultural effects

74. TNN represents and acts on behalf of Maniapoto⁹² as:

⁸⁸ [107(d)] of Mr Bradley's evidence; [61(c)] of Ms Buckingham's evidence.

⁸⁹ [10.2.9] of the WRC s42A report at p48; [10.22] of the WDC s42A (landfill) report at p319.

⁹⁰ [12] of Dr Finnigan's evidence.

⁹¹ [10.27] of the WDC s42A (landfill) report at p320.

⁹² "*Maniapoto*" is defined in section 13 of the 2022 Act, which refers to Schedule 1 of the 2022 Act.

- (a) the PSGE under the 2022 Act; and
 - (b) the iwi authority for the purposes of the RMA.
75. Submissions on the Project were received from TNN and six individuals with affiliations to Ngāti Huiao, Ngāti Ngutu, Ngāti Paia, Ngāti Paretekawa, Ngāti Rahurahu and Mangatoatoa Marae. The majority of submissions received do not differentiate between cultural effects associated with the Remediation Application and those associated with the Landfill Application, therefore this section addresses cultural effects of the Project in the round.
76. Following detailed engagement processes (outlined above and addressed more substantially in the AEE and its appendices, and in Mr Bradley's evidence) TNN filed a statement of evidence on 10 September 2025 stating:⁹³

We appreciate the applicant's willingness to engage with us and to provide additional information.

Subject to the following statement, we are now comfortable that our concerns have been addressed or will be addressed through the imposition of consent conditions.

As a result, we will not be pursuing our submission points further. Rather than withdrawing the submissions, we will leave the points 'live' to ensure that the appropriate conditions can be imposed as deemed necessary by the Hearings Commissioners.

While we are satisfied that our technical concerns have been addressed, we defer to mana whenua as kaitiaki of the area to address any cultural concerns, noting the significant progress that has been made in terms of the cultural support proposed for the project. A hui is planned for 16th September 2025 and TNN have assessed the planned cultural support measures. At this stage, we are satisfied that the measures proposed address our concerns, while acknowledging that this does not predetermine any final outcome.

77. Mr Bradley addresses engagement with the submitters, including the 16 September 2025 hui and subsequent discussions with the submitters, in his evidence and in the final version of the addendum to the Iwi Engagement Report (**Appendix MB1**). LINZ understands that the submitters' remaining cultural effects relate to:

⁹³ [1] of TNN's evidence.

- (a) **engagement processes** (and follow-up actions), including:
 - (i) the exclusion of hapū and whānau with ahi kaa and ancestral ties to the area, and related breaches of Te Tiriti o Waitangi;⁹⁴
 - (ii) inadequate and/or non-transparent processes for identifying, protecting or mitigating known and recorded sites of significance;⁹⁵ and
 - (iii) failing to incorporate recommendations from the CIA into the Applications;⁹⁶ and
- (b) **metaphysical and/or tikanga effects**, including:
 - (i) ensuring the relationship of mana whenua and its whenua, awa, waahi tapu and taonga is recognised and provided for, including through kaitiaki monitoring;⁹⁷
 - (ii) upholding and maintaining the cultural and spiritual significance of the Wharekōrino Stream;⁹⁸
 - (iii) contravention of Te Mana o te Wai and the rights, responsibilities and kaitiakitanga of mana whenua;⁹⁹
 - (iv) effects on the mauri of the Wharekōrino Stream and breaches of tikanga Māori through alteration of the Stream's flow, discharge of stormwater and leachate and disturbance of groundwater;¹⁰⁰ and
 - (v) the *"transfer of contamination from Pokuru to Tokanui and then offer it back"*.¹⁰¹

Engagement processes

78. The level of engagement required will, for the most part, be determined by context.¹⁰² Iwi and hapū do not have a veto, but engagement with iwi and hapū can provide confidence that the directions in sections 6(e) 7(a) and 8 have been discharged.¹⁰³

⁹⁴ Nigel Ngahiwi; Niketi Toataua; Samuel Roa.

⁹⁵ Niketi Toataua.

⁹⁶ Yvonne Waho, noting Mr Bradley's summary statement which details his most recent interaction with Ms Waho in which she expressed appreciation for LINZ's post-submission engagement.

⁹⁷ Gordon Thompson, Nigel Ngahiwi; Yvonne Waho.

⁹⁸ Gordon Thompson, Nigel Ngahiwi; Yvonne Waho.

⁹⁹ Nigel Ngahiwi; Samuel Roa

¹⁰⁰ Nigel Ngahiwi; Yvonne Waho

¹⁰¹ Samuel Roa

¹⁰² *McCallum Brothers Ltd v Auckland Council* [2024] NZEnvC 75 at [317].

¹⁰³ *Re Ngā Kaitiaki o Te Awa o Ngaruroro* [2022] NZEnvC 227 at [438]–[439].

79. As noted earlier, and as Mr Bradley's evidence details, LINZ has consulted extensively with TNN and mana whenua hapū. The Environment Court has found that it is appropriate for an applicant to engage with the PSGE or iwi authority as the iwi / hapū representative.¹⁰⁴

- *When an iwi or hapu has a formal management body, such as a trust board, a marae committee, or something similar it is entirely appropriate that an applicant and a local authority should consult that body as the iwi/hapu representative.*
- *Unless there is some extraordinary factor plainly signalling that the processes of that body are dysfunctional and cannot be relied upon, the responses given by it should be accepted as authoritatively speaking for the iwi or hapu.*
- *It is human nature that in any organisation there will be dissenting views which remain after decision-making processes have concluded. That can be so even where, as is the custom for Māori organisations, the objective is consensus rather than a majority decision.*
- *The fact that individuals express dissent with an announced decision does not mean that the applicant or a local authority, or this Court, cannot rely upon the decision announced by those whose positions appear to entitle them to announce it.*

80. In this case, even if LINZ had not undertaken such extensive engagement at a hapū, marae and whānau level, it would be reasonable for the Panel to find that TNN represents the interests of hapū.

81. LINZ is entitled to have relied on the fact of Maniapoto having an established representative entity in TNN. Courts, local authorities, consent applicants and others must be able to rely on engagement with, and the views of, a mandated entity such as TNN. There will always be different views within iwi and hapū, and the mandated entity must be able to represent the views of Maniapoto.¹⁰⁵

82. Moreover, it was entirely reasonable for LINZ to have:

- (a) relied on TNN's views as to which hapū representatives should be engaged with for the purposes of preparing the CIA;

¹⁰⁴ *Te Pairi v Gisborne District Council* EnvC Wellington W93/2004, 22 December 2004 at [46]. Cited with approval in *Wairoa District Council v Hawkes Bay Regional Council* [2010] NZEnvC 420 at [59].

¹⁰⁵ See for example the discussion in *Director-General of Conservation v Taranaki Regional Council* [2019] NZEnvC 203 at [380]–[389].

- (b) then rely on the views of the mana whenua tasked with providing the CIA (TAR) as to who else should be engaged with; and
 - (c) finally, proceed to engage with those identified hapū, marae and whānau individuals,
- as it did in this case.¹⁰⁶

Metaphysical / tikanga effects

83. The Panel should apply the Māori terms and concepts in the RMA according to tikanga Māori.¹⁰⁷ Assessing cultural effects may involve identifying with care:¹⁰⁸

- (a) the tikanga concepts that are engaged by the factual situation;
- (b) any relevant kōrero tuku iho and related mātauranga; and
- (c) any similar situations that have occurred within the iwi, hapū or whānau.

84. The Panel will need to consider and weigh the evidence of TNN and the individual submitters, noting TNN's stated deference to the mana whenua hapū submitters on cultural effects. The following case law principles are relevant to the Applications:¹⁰⁹

- (a) Tangata whenua are best placed to identify the effects of the Applications on the physical and cultural environment valued by them.¹¹⁰
- (b) The effects must be supported by probative evidence,¹¹¹ and:¹¹²

(...) a generalised claim by an iwi that a place is a taonga will be adversely affected by a proposal and therefore violates their tikanga, will rarely be sufficient. (...)

¹⁰⁶ Iwi Engagement Report Former Tokanui Psychiatric Hospital Demolition and Remediation Project (**Iwi Engagement Report**) at p16.

¹⁰⁷ *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whaia Maia Ltd* [2020] NZHC 2768, [2021] 3 NZLR 352 at [64]; *McCallum Brothers Ltd v Auckland Council* [2024] NZEnvC 75 at [60].

¹⁰⁸ See for example *McCallum Brothers Ltd v Auckland Council* [2024] NZEnvC 75 at [159]–[168].

¹⁰⁹ The guidance that the courts have given about the approach to considering and weighing mana whenua evidence was summarised in *McCallum Brothers Ltd v Auckland Council* [2024] NZEnvC 75 at [164]. Not all points are relevant to these circumstances where any differences are intra-iwi rather than inter-iwi.

¹¹⁰ *SKP Inc v Auckland Council* [2018] NZEnvC 081 at [157], upheld on appeal and endorsed by the High Court in *Tauranga Environmental Protection Society Inc v Tauranga City Council* [2021] NZHC 1201, [2021] 3 NZLR 882 at [66].

¹¹¹ *Te Rūnanaga o Ngāti Whātua v Auckland Council* [2023] NZHC 3794 at [183].

¹¹² *Ngāti Whātua Ōrākei Whai Maia Limited v Auckland Council* [2025] NZEnvC 228 at [50] having earlier referenced the same quote from the High Court in *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whai Maia Limited* [2020] NZHC 2768, at [183].

- (c) The strong directions of sections 6(e), 7(a) and 8 of the RMA must be *"borne in mind"*.¹¹³ Where iwi or hapū state that a specific outcome is required to meet those strong directions in accordance with tikanga Māori, the Panel must meaningfully respond. For instance, the Panel may make evidential findings about tikanga-based rights, powers and/or authority insofar as that is relevant to discharge the obligations in sections 6(e), 7(a) and 8.¹¹⁴
- (d) The Panel should consider sections 6(e), 7(a) and 8 of the RMA, in a way that *"recognises the separate and distinct identities of iwi and hapū rather than treating all Māori as one entity"*.¹¹⁵
- (e) The well settled 'rule of reason approach' set out in *Ngāti Hokopū* should be used to assess the credibility and reliability of evidence. The Panel can consider, amongst other things:¹¹⁶
- *whether the values correlate with physical features of the world (places, people);*
 - *people's explanations of their values and their traditions;*
 - *whether there is external evidence (e.g Maori Land Court Minutes) or corroborating information (e.g waiata, or whakatauki) about the values. By 'external' we mean before they became important for a particular issue and (potentially) changed by the value-holders;*
 - *the internal consistency of people's explanations (whether there are contradictions);*
 - *the coherence of those values with others;*
 - *how widely the beliefs are expressed and held.*

¹¹³ *McGuire v Hastings District Council* [2002] 2 NZLR 577 (PC) at [21].

¹¹⁴ See generally *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whāia Maia Ltd* [2020] NZHC 2768, [2021] 3 NZLR 352. More recently commented on in *Te Rūnanga o Ngāti Whātua v Auckland Council* [2024] NZHC 3794 at [151] and [212]–[213], *Ngāti Whātua Ōrākei Whāia Maia Ltd v Auckland Council* [2025] NZEnvC 228 at [42]–[43] and *McCallum Brothers Ltd v Auckland Council* [2024] NZEnvC 75 at [169]–[170]. While those decisions concern inter-iwi disputes, the general principles may assist in respect of any intra-iwi or hapū differences.

¹¹⁵ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 93 at [129].

¹¹⁶ *Ngāti Hokopū ki Hokowhitu v Whakatāne District Council* (2002) 9 ELRNZ 111 (EnvC) at [53]. This rule of reason approach has been cited with approval in various High Court decisions including: *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whāia Maia Ltd* [2020] NZHC 2768, [2021] 3 NZLR 352 at [116]–[117]; and *Poutama Kaitiaki Charitable Trust v Taranaki Regional Council* [2020] NZHC 3159, (2020) 22 ELRNZ 202 at [106]–[108]; *Raikes v Hastings District Council* [2022] NZHC 3075, (2022) 24 ELRNZ 598 at [120].

- (f) Once it has assessed the cogency of the evidence, the Panel may need to assess whether the evidence illustrates adverse effects which are incapable of being adequately mitigated or remedied.¹¹⁷
- (g) If the considered, consistent and genuine view of tangata whenua is that the Applications will result in significant adverse effects it is not open to the Panel to decide otherwise.¹¹⁸ However, if there are differing views within an iwi or hapū the Panel will need to determine which evidence it prefers.¹¹⁹
- (h) Metaphysical effects must still be tested in accordance with the rule of reason approach.¹²⁰ Biophysical effects may provide a useful indicator of metaphysical effects but are not essential to establish a metaphysical effect.¹²¹

85. As set out above, and in the evidence of Mr Bradley, LINZ has provided TNN and submitters with a draft Cultural Work Support document for comment, which addresses pre-start karakia, contractor cultural induction, and monitoring during works in identified waahi tapu areas. TNN has expressed support for this document, and LINZ is awaiting feedback from mana whenua hapū, including on who is the appropriate person or entity to provide those cultural work services.¹²²

86. In the meantime, as discussed below the amended conditions proposed by LINZ will require LINZ to:

- (a) invite TNN and/or mana whenua to appoint a cultural monitor to undertake cultural monitoring (with an advice note clarifying that TNN may choose to defer to iwi / hapū) (WRC condition 4¹²³); and
- (b) invite TNN and/or mana whenua to review and recommend updates to the Phase 1 Cultural Management and Monitoring Plan (**CMMP**), and:

¹¹⁷ *Te Rūnanga o Ngāti Whātua v Auckland Council* [2024] NZHC 3794 at [188] and [214].

¹¹⁸ *Tauranga Environmental Protection Society Inc v Tauranga City Council* [2021] NZHC 1201, [2021] 3 NZLR 882 at [65]. The facts of that case (a large new transmission line pole would be constructed right next to the Marae, and avoidance policies in the planning documents) can be distinguished from the circumstances here. In *Kaikōura and Hurunui Landowners Association Inc v Minister of Fisheries* [2022] NZHC 2677 at [101]–[102] the Court refers to the *Tauranga* decision as an example of where the views of tangata whenua may be determinative in some contexts.

¹¹⁹ See for example *Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council* [2019] NZEnvC 196, (2019) 21 ELRNZ 539 at [86], [100], [103] and [156] where there were differing views within Ngāti Awa. The factual findings of the Environment Court have not been disturbed on appeal.

¹²⁰ *McCallum Brothers Ltd v Auckland Council* [2024] NZEnvC 75 at [86].

¹²¹ *McCallum Brothers Ltd v Auckland Council* [2024] NZEnvC 75 at [85]; *Wakatu Inc v Tasman District Council* [2012] NZEnvC 75, [2012] NZRMA 363 at [32]–[33].

¹²² This confirmation is expected by 16 October 2025, as set out in **Appendix MB5**.

¹²³ **Appendix EB7**.

- (i) if recommendations are given LINZ must:
 - (1) consider and incorporate the recommendations in an updated CMMP; or
 - (2) otherwise explain why the recommendations have not been incorporated; and
 - (ii) in any case, finalise and implement the CMMP.
- (WDC conditions 6A-6D)¹²⁴

87. In summary, LINZ is aware of the cultural concerns raised by submitters, including in the CIA, and has responded to those concerns through:

- (a) engagement processes;
- (b) the Waahi Tapu Pilot Trial;
- (c) the draft Cultural Work Support document;
- (d) the *Tokanui Discussion document*; and
- (e) conditions 4 (WRC) and 6A-6D (WDC),

such that the cultural effects raised have been sufficiently addressed through the Project.

88. The Panel must now decide, in the circumstances of this case, within the RMA framework, and on the probative evidence before it, whether it considers the cultural effects have been addressed.

REGULATIONS, POLICY AND PLANNING DOCUMENTS AND OTHER MATTERS

89. The consent authority is directed by section 104 to have regard to relevant provisions of certain statutory planning documents.

90. Ms Buckingham, Ms Hills and Ms Thomas agree on the policy documents that are relevant to the Project. These are:

- (a) National Policy Statement for Freshwater Management 2020 (**NPS-FM**);

¹²⁴ **Appendix EB8.**

- (b) National Policy Statement for Indigenous Biodiversity (**NPS-IB**);
- (c) National Policy Statement on Highly Productive Land (**NPS-HPL**);
- (d) NES-F;
- (e) National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health (**NES-CS**);
- (f) Waikato Regional Policy Statement;
- (g) Waikato Regional Plan; and
- (h) Waipā District Plan.

91. In addition, all agree that the following Iwi Management Plans and specific settlement legislation are also relevant to the Applications:

- (a) Ko Tā Maniapoto Mahere Taiao - Maniapoto Environmental Management Plan;
- (b) Te Rautaki Taiao A Raukawa - Raukawa Environmental Management Plan;
- (c) Tai Tumu, Tai Pari, Tai Ao – Waikato-Tainui Environmental Plan;
- (d) Waikato-Tainui Raupatu (Waikato River) Settlement Claims Act 2010;
- (e) Nga Wai o Maniapoto (Waipa River) Act 2012; and
- (f) Te Ture Whaimana o Te Awa o Waikato – Vision and Strategy for the Waikato River.

92. Overall:

- (a) Ms Buckingham concludes that the Applications are consistent with all the relevant policy, statutory, and other documents.¹²⁵
- (b) Ms Thomas finds that the Applications are not contrary to the objectives and policies of the District Plan,¹²⁶ and are consistent with the instruments of national direction¹²⁷ and the Remediation Application is consistent with Iwi Management Plans.¹²⁸ In respect of the Landfill Application and Ko Tā Maniapoto Mahere Taiao, she notes that "*While*

¹²⁵ [70]-[83] of Ms Buckingham's evidence.

¹²⁶ [14.5] of the WDC s42A (remediation) report at p201; [11.22] of the WDC s42A (landfill) report at p330.

¹²⁷ [14.6] of the WDC s42A (remediation) report at p201; [12] of the WDC s42A (landfill) report at p330.

¹²⁸ [14.7] of the WDC s42A (remediation) report at p201; [12] of the WDC s42A (landfill) report at p330.

the outcome of the works, being the enhancement of the existing landfill, aligns with the aspirations sought by Ko Tā Maniapoto Mahere Taiao, it is not clear that the works and retention of contaminated material on site is appropriate."¹²⁹

(c) It is unclear whether Ms Thomas retains this view following receipt of TNN's statement of evidence, and what is meant by "*appropriate*", however:

- (i) that the works sought by the Project align with Ko Tā Maniapoto Mahere Taiao does not appear to be in dispute; and
- (ii) in terms of the "*retention of contaminated material on site*", as discussed in Ms Buckingham's evidence.¹³⁰

- (1) the only additional material proposed to be added to the existing landfill (beyond what is already in there – and again noting removal of that landfill was never within the Project's scope) is soil from the Site;
- (2) with reference to Dr Finnigan's evidence, that soil contains low to moderate levels of contaminants (mainly lead, zinc and asbestos), which has been tested and shows a low potential for soil contamination to affect surface and groundwater; and
- (3) no material derived from the human body (which is understood to be the most offensive material from a TNN tikanga / cultural effects perspective) has been identified in the closed landfill, other than isolated medical waste which will be removed and disposed of off-site;

(d) Ms Hills finds that that the Applications are not contrary to or inconsistent with any relevant policy, statutory, or other documents.¹³¹

CONDITIONS

93. Section 108 provides that the consent authority may impose conditions on resource consents (if granted).

¹²⁹ [13.8] of the WDC s42A (landfill) report at p337.

¹³⁰ [84]-[85] of Ms Buckingham's evidence.

¹³¹ [12] of the WRC s42A Report at p58-59.

94. Ms Buckingham's evidence addresses the key differences between the Councils' condition sets and LINZ's position,¹³² and specific changes are proposed in **Appendix EB7** and **Appendix EB8**.
95. As discussed, LINZ intends to provide a final set of conditions with closing submissions. Overall, the proposed conditions will appropriately avoid, remedy and mitigate any adverse effects.

PART 2 RMA ASSESSMENT

96. Following the reasoning of the Court of Appeal in *R J Davidson Family Trust v Marlborough District Council*¹³³ and the Supreme Court's findings in *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency*¹³⁴, it is unnecessary to refer to Part 2 in respect of the Application as the relevant plan provisions have given effect to Part 2.
97. Nevertheless, it is respectfully submitted that the Applications will achieve the sustainable management purpose of the RMA, and are consistent with sections 6 and 7, for the reasons as set out in the AEEs.¹³⁵ Ms Thomas "*generally adopt[s]*" LINZ's Part 2 assessment set out in the AEEs¹³⁶ and Ms Hills considers that "*the site remediation works to return the site to vacant land and the landfill upgrade proposals are consistent with the relevant Part 2 matters of the RMA.*"¹³⁷

LINZ WITNESSES

98. The witnesses for LINZ are as follows:
- (a) Matthew Bradley – Project overview and engagement;
 - (b) Kim Wepasnick – Project design and delivery;
 - (c) Dr Sean Finnigan – Engineering, contaminated land and environmental effects; and
 - (d) Emily Buckingham – Planning.

¹³² [112]-[132] of Ms Buckingham's evidence.

¹³³ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316 at [71].

¹³⁴ *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26 at [106]-[107].

¹³⁵ [10.0] of the Remediation AEE at p88; [10.0] of the Remediation AEE at p80.

¹³⁶ Before proceeding to "*provide the additional commentary below*", stepping through her assessment of adverse environmental effects; [4.6] of the WDC s42A (remediation) report at p45; [4.6] of the s42A (landfill) report at p25.

¹³⁷ [11] of the WRC s42A (combined) report at p57.

99. The Panel has confirmed it does not have any questions for the other technical experts who provided input to the Applications of AEEs.¹³⁸

DATED this 26th day of September 2025

David Allen / Esther Bennett

Counsel for LINZ

¹³⁸ Being Kendall Leitch / Nicola Pyper – ecology, Hannah Mueller – Bat Management, Charlotte Lockyer – hydrology, Dave Bull – site specific remediation, LJ Jansen – acoustics, Michael Hall – transport and Danielle Trilford – archaeology.