Level 2, Dunvegan House,
215 Hastings Street
PO Box 740,
Napier 4140
New Zealand
www.nzta.govt.nz

20 December 2023

Hawke's Bay Regional Council

Attention: Brandon Baillie

Via email: brandon.baillie@hbrc.govt.nz

Dear Brandon

Further information request under Section 92(1) of the Resource Management Act (1991) (RMA)
Waikare Gorge Resource Consent Application APP- 128957

Thank you for your email dated 8 September 2023 in response to the further information that we provided in our letter of 8 August 2023. In your email you included a letter from PDP dated 5 September 2023 and a "traffic light" schedule tabulating the s 92 questions and responses.

You have requested further information on the following:

- Question 4 – Effects Management Hierarchy
- Question 8 – Fish Passage

You have also requested further clarification on the following:

- Question 9 – NES-F Regulations 42 and 43

This further information letter responds to each of those headings, with the request in italics and the response in standard text. The attached response incorporates content provided by our technical advisors. Attached please also find a revised Ecology Report (Appendix A) and a revised set of draft Conditions pertaining to ecology (Appendix B) to reflect the updates in the Ecology Plan.

Effects Management Hierarchy

4. The ecological assessment states the proposed offsets will result in a gain of ecological function however, it is unclear as to whether the ecological function gain would be a 'like for like'. It is understood that specific details will not be completely understood until a time that the detailed design is complete however, and to appropriately satisfy the requirements of the effects management hierarchy of the National Policy Statement for Freshwater Management (NPS-FM) 2020, ***please clearly outline the how the proposal addresses those matters set out in:*** *a. s3.22(3)(a)(i)-(iii) and the principles of Appendix 6 and 7 of the NPS-FM relating to wetlands; and b. s3.24(3)(a)(I – iii) and the principles of Appendix 6 and 7 of the NPS-FM relating to rivers.*

Comments:

The Multi-Criteria Analysis was undertaken on 20 March 2020 for the project. Nine criteria were used which included criteria around landscape which involved an assessment on biophysical features. There were three main alignment options – online option and two other options (the "Orange " option and the "White" option). The "White" option was selected as the preferred option to be taken through to the preliminary design.

It is noted that the MCA was undertaken prior to the National Policy Statement for Freshwater Management

(NPS-FM) 2020, and as a result the Effects Management Hierarchy per se was not used in the MCA. Nevertheless, as part of the route selection process, the preliminary design sought to avoid and minimise impacts on natural inland wetlands and rivers.

Weighing up all the constraints that the area imposed on the realignment, the "White" option was considered the most suitable.

So as to satisfy the effects management hierarchy[1] in the NPS-FM, a table assessing the proposal against Sections 3.22(3) and 3.24(3) of the NPS-FM is included in the revised Ecology Report (refer to section 6) in Appendix A.

Fish Passage

8. No eDNA information of the stream site selected for restoration was provided and HBRC's in house ecologist expressed concern that the waterfall in plate 3-37 of the Ecological Report may be an insurmountable barrier even for climbing elvers. ***Please undertake and provide to Council eDNA survey information in the location of the proposed stream restoration site****.*

If from the results of the eDNA survey show there is an absence, provide an assessment to determine an alternative stream site within the activity area better suited (containing existing eel population) for restoration.

Comments:

An eDNA survey was undertaken on 28 November 2023 at Site SEV3, using the standard 6-replicate sampling protocol, with analysis undertaken by Wilderlab. The results showed that only two species of fish were present upstream of this site, longfin and shortfin eels. This result was not unusual given the significant natural barrier to fish passage posed by the large waterfall downstream of this site where it flows into the Waikari River. Both species of eel are excellent climbers and therefore are able to access areas of habitat above barriers that will exclude the majority of fish species.

It is however noted that SEV3 is no longer the preferred stream offset site, with an alternative location now identified on King's Creek immediately downstream of site SEV5 (see details in the Ecology Report). This new site is located within a block of land that is to be purchased by Waka Kotahi and also contains areas of wetland habitat that are proposed to be used as offset sites. Because of this the previous references to SEV3 have been removed from the report, but the data gathered for this site can be provided in a separate memo for completeness.

NES-F Regulation 42

9. The application information states Regulation 42(1 – 3) of the National Environmental Standards for Freshwater (NES-F) 2020 are rules applicable to the proposal however, it is unclear as to whether conditions (4 – 5) would be complied with. ***Please confirm how the conditions under Regulation 42(4 – 5) would be complied with in regard to all relevant activities****. If conditions 42(4 – 5) are not able to be complied with, the activity would therefore be considered a Non-Complying Activity in accordance with Regulation 54.*

NES-F Regulation 43

10. The application information states the proposal is for construction, operation, maintenance and improvement of the state highway and associated infrastructure of State Highway 2. No assessment has been made to confirm whether or not maintenance of the proposal would comply with the conditions of Permitted Activity Regulation 43 or Restricted Discretionary Activity Regulation 44? ***Please confirm compliance with conditions of the relevant Regulation****. If conditions for either Regulation 43 or Regulation 44 are unable to be complied with, resource consent would be required in accordance with Regulation 54 for a Non-Complying Activity.*

Comments:

NES-F Regulations 42 and 43 are not applicable to this Project as they concern works associated with wetland utility structures.

A wetland utility structure is defined as:

(a) a structure placed in or adjacent to a wetland whose purpose, in relation to the wetland, is recreation, education, conservation, restoration, or monitoring; and
(b) for example, includes the following structures that are placed in or adjacent to a wetland for a purpose described in paragraph (a):

(i) jetties:
(ii) boardwalks and bridges connecting them:s
(iii) walking tracks and bridges connecting them:
(iv) signs:
(v) bird-watching hides:
(vi) monitoring devices:
(vii) maimai

This Project involves the construction of a road and its associated infrastructure, none of which falls within the definition above. For this reason Regulations 42 and 43 are not relevant for this consent application.

Revised Conditions

Given that further ecological assessments have been undertaken, the conditions pertaining to ecology have been updated and are set out below:

	Design
12	During detailed design, consider further measures to minimise direct impact on natural wetlands e.g. further minimise drainage and infilling of wetlands.
13	Permanent culverts shall incorporate fish passage to ensure that the upstream or downstream passage of fish is not constrained.
14	If the survey referred to in Condition 10 above confirms the presence of native bats in the area, the permanent lighting fixtures for the project will incorporate the use of shields and specific wavelengths that are designed to minimise any adverse effects on bats.

21	**Wetlands** The EMP shall include a description of (a) Construction methods to minimise potential effects on wetlands (b) Design details including: a. Identifying suitable site/s for wetland restoration; b. Planting type and location; c. Proposed fencing requirement; and **d.** Opportunities to consider further measures to minimise direct impact on natural wetlands (see Condition 12).

A full set of draft Conditions (including the revised Ecology conditions is attached in Appendix B).

I trust that the additional information requested by Council under s92 RMA has now been provided. Much of the requested information was not able to be supplied at the time due to the sensitivities around landowner agreements and access to properties.

Please can you proceed with the notification process as requested in our lodgement letter.

Yours sincerely

Richard Shaw
Principal Planner, Poutiaki Taiao | Environmental Planning
Transport Services

Email: richard.shaw@nzta.govt.nz
Phone: 03 964 2809
Mobile: 021 910 745

Appendix A: Revised Ecology Report

Appendix B: Revised Consent Conditions (dated 14/12/23)

SH2-Waikare Gorge Realignment - Proposed Resource Consent Conditions

Updated 14 December 2023

The table below defines the acronyms and terms used in the conditions.

Abbreviation/Term	Meaning/Definition
CEMP	Construction and Environmental Management Plan
Consent Holder	NZ Transport Agency Waka Kotahi
Construction Works	Activities undertaken to construct the Project
Council	Hawke's Bay Regional Council
EMP	Ecological Management Plan
ESCP	Erosion and Sediment Control Plan
Manager Compliance	Hawke's Bay Regional Council Manager Compliance
Project	The construction, operation, maintenance and improvement of the state highway and associated infrastructure of State Highway 2
Project Representative	The person or persons appointed by the Requiring Authority to be the main and readily accessible point of contact for persons wanting information about the Project or affected by the Construction Works
RMA	Resource Management Act 1991
SMP	Stormwater Management Plan

No.	Proposed conditions
	General
1	Except as provided for in the conditions below and subject to final design, the Project shall be undertaken in general accordance with the following plans and information submitted with the application in March 2023: • General Arrangement Plans - WGR-PLA-GEM-00-DRG Sheet Nos 0001-0010 (Rev F) • Stormwater Drawings - Culverts, swales and stormwater treatment facilities – WGR-DES-DNG-00-DRG Sheet Nos 0001 - 0031 (Rev D). • Structure Drawings - Bridges and underpasses (excluding Waikare Gorge Bridge) - Structures WGR-PLA-STR-00-DRG Sheet Nos 00046-00060. Where there may be contradiction or inconsistencies between the application and any further information provided by the applicant, the most recent information applies. Where there may be inconsistencies between information provided by the applicant and conditions of the consent, the conditions apply.
	Notification
2	The consent holder shall provide the Manager Compliance a minimum of at least ten working days' notice prior to Construction Works commencing. **Advice Note:** Notifications shall be emailed to [insert email] and include the Authorisation Number and the name and phone number of a Project Representative responsible for the proposed works.
	Pre-construction site meeting
3	The consent holder shall arrange and conduct a pre-construction site meeting prior to any work authorised by this consent commencing on site and invite, with a minimum of 5 working days' notice, the Manager Compliance and iwi (Ngāti Pāhauwera and Maungahururu Tangitū Trust). Attendees on behalf of the consent holder shall include the Project Representative and appropriate representation from the contractor undertaking the works. **Advice Note:** In the case that any of the invited parties, other than the Project Representative and contractor, does not attend this meeting, the consent holder will have complied with this condition, provided the invitation requirement is met.
	Management Plan Certification and Amendments
4	(a) The following management plans shall be prepared prior to the start of Construction Works. • Construction and Environmental Management Plan (CEMP) • Erosion and Sediment Control Plan (ESCP) • Ecology Management Plan (EMP) • Stormwater Management Plan (SMP).

No.	Proposed conditions
	(b) The listed management plans shall be provided to the Council for certification that they meet the relevant requirement of this resource consent, at least 20 days prior to the start of Construction Works. If 20 working days have passed since the Management Plan has been provided to the Council and no response has been received, the Management Plan shall be deemed to be certified. (c) The management plans listed above shall be appropriately aligned and linked, including to the Landscape Management Plan prepared in accordance with conditions of the designation, so that collectively the management plans support integrated management and mitigation of effects of the Project.
5	If any material changes are proposed to the certified management plans, the consent holder may request amendments to the certified management plans by submitting the amendments in writing for the certification of the Manager. If no comments are received on an amended management plan within 5 working days, then the amendment is deemed to have been certified and the consent holder may implement the plan or the amendments. The amendments sought shall not be implemented until the amended management plan has been certified. Minor administrative amendments to the certified management plans may be made without further submission to the Manager.
	Construction and Environmental Management Plan
6	A Construction and Environmental Management Plan (CEMP) shall be prepared prior to the start of Construction Works. The purpose of the CEMP is to set out the management procedures and construction methods to be undertaken to avoid, remedy or mitigate any adverse effects associated with Construction Works as far as practicable. The CEMP shall include details of the following: (a) Roles and responsibilities of key personnel responsible for compliance with consent conditions (b) Proposed construction methodology and programme (c) Proposed location and layout of main construction yards, including location of hazardous materials storage and refuelling activities (d) Dust control (e) Construction traffic management (f) Spill response and other incident management procedures (g) Procedures for unexpected discovery of contaminated material.
	Erosion and Sediment Control Plan
7	An Erosion and Sediment Control Plan (ESCP) shall be prepared prior to the start of Construction Works in accordance with the Hawke's Bay Waterway Guidelines – Erosion and Sediment Control[1]

[1] Hawke's Bay Waterway Guidelines – Erosion and Sediment Control. HBRC Plan Number 4109. April 2009. Hawke's Bay Regional Council. 101 pp.

No.	Proposed conditions
	The purpose of the ESCP is to set out the design and management principles that will be adopted to minimise sediment discharge from earthworks associated with the Construction Work and to protect waterbodies. The ESCP shall include, but is not limited to, the following: (a) The design criteria and dimensions of erosion and sediment control measures. (b) Final Plan(s) identifying: i) The locations of waterways. ii) Staging sequence of erosion and sediment control measures. iii) The boundaries and area of catchments contributing to stormwater treatment facilities. iv) The locations of all specific points of discharge to the environment. (c) Methods for treatment of sediment-laden stormwater run-off prior to any discharge off-site. (d) Rainfall response and contingency measures including procedures to minimise adverse effects in the event of heavy rainfall events and/or the failure of any key erosion and sediment control structures. (e) Maintenance, monitoring and reporting procedures and frequency. (f) Procedures for removal of erosion and sediment control measures upon completion of the Construction Works. (g) Timing and frequency to review the effectiveness of the ESCP, and to amend it as required.
8	All key erosion and sediment control measures, including diversion channels shall be in place prior to any in stream works (excavation and construction) commencing within the stream channel.
	Stormwater Management Plan
9	A Stormwater Management Plan (SMP) for the permanent stormwater management system shall be prepared prior to the start of Construction Works in accordance with the Hawke's Bay Waterway Guidelines – Stormwater Management[2] The purpose of the SMP is to set out the design elements to avoid, remedy or mitigate adverse stormwater discharge effects as far as practicable. The SMP shall include, but is not limited to, the following: (a) Attenuation design for the stormwater treatment facilities. (b) Final cross-drainage culvert design, including erosion protection and debris capture. (c) Fish passage provision. (d) Plant species for swales and stormwater treatment facilities which take into account a range of climate conditions. (e) Accessibility for inspection and maintenance.

[2] Hawke's Bay Waterway Guidelines - Stormwater Management. HBRC Plan Number 4104. May 2009. Hawke's Bay Regional Council. 202 pp.

No.	Proposed conditions
	Ecological Management
	Pre-construction baseline surveys
10	**Bats** An acoustic survey for long-tailed bats shall be undertaken prior to the start of Construction Works. The purpose of the survey is to confirm the presence (or otherwise) of long-tailed bats. The findings will inform the development of measures to be undertaken during construction to mitigate the effect of construction activities and permanent works on long-tailed bats. The survey area shall include potential bat habitat in Waikare Gorge, Pohatanui Stream/King's Creek and the exotic trees at the northern extent of the Project.
11	**Lizards** A survey for indigenous geckos and skinks shall be undertaken prior to the start of Construction Works. The purpose of the survey is to confirm the presence (or otherwise) of lizards. The findings will inform the development of measures to be undertaken during construction to mitigate the effect of construction activities and permanent works on lizards. The survey area shall include potential lizard habitat in the kanuka shrubland of Waikare Gorge and tributaries, and areas of weedfield.
	Design
12	During detailed design, consider further measures to minimise direct impact on natural wetlands e.g. further minimise drainage and infilling of wetlands.
13	Permanent culverts shall incorporate fish passage to ensure that the upstream or downstream passage of fish is not constrained.
14	If the survey referred to in Condition 10 above confirms the presence of native bats in the area, the permanent lighting fixtures for the project will incorporate the use of shields and specific wavelengths that are designed to minimise any adverse effects on bats.
	Ecological Management Plan
15	An Ecological Management Plan (EMP) shall be prepared prior to the start of Construction Works. The purpose of the EMP is to set out the management procedures and construction methods to be undertaken to avoid, remedy, mitigate and offset adverse effects associated with Construction Works on the terrestrial and aquatic ecology as far as practicable. The EMP shall include details of the following: 1. Findings of the pre-construction baseline surveys 2. Methods for the management of effects on fauna a. Bats

No.	Proposed conditions
	b. Birds c. Lizards d. Fish 3. Methods to mitigate the loss of indigenous terrestrial vegetation 4. Methods to mitigate or offset the loss of water courses and riparian vegetation 5. Methods to mitigate or offset the loss of natural wetlands 6. Proposed planting zones and layouts, species, sizing 7. Proposed pest plant and animal management. The EMP shall be appropriately aligned and linked to the Landscape Management Plan prepared in accordance with conditions of the designation, and the Stormwater Management Plan prepared in accordance with Condition 9, so that collectively the management plans support integrated management and mitigation of effects of the Project. The specific methods for the management of effects on fauna may be included within the overarching EMP, or as separate management plans for certification.
	Fauna
16	**Bats** If the survey referred to in Condition x above confirms the presence and habitat for bats, the EMP (or specific plan) shall include proposed approaches to the management of potential effects on bats and habitat type including: a. Identifying roost trees; and b. Methods for discouraging bats to settle prior to felling of trees.
17	**Birds** The EMP (or specific plan) shall include proposed approaches to the management of potential effects on indigenous birds specific to species and habitat type including constraints on vegetation clearance during nesting, particularly during spring.
18	**Lizards** If the survey referred to in Condition 10 above confirms the presence and habitat for indigenous lizards, the EMP (or specific plan) shall include a description of the proposed methodology for pre-construction salvage and release, or other methods to manage potential effects on indigenous lizards. If a wildlife authority has been granted under the Wildlife Act 1953 with respect to lizards, this condition shall no longer apply.
19	**Fish** The EMP (or specific plan) shall include proposed methods for the capture and relocation of indigenous fish from areas where works will be undertaken within a watercourse, and construction methodologies including: a. The location and extent of the stream area to be fished;

No.	Proposed conditions
	b. The methods to be used for fish capture and release; c. Timing restrictions for new culvert installation to occur outside of spawning season; and d. Construction methods to allow fish passage upstream and downstream during the construction period.
	Freshwater and terrestrial vegetation
20	**Riparian and terrestrial vegetation** The EMP shall include a description of the proposed freshwater and terrestrial vegetation, including confirmation of: a. The location and extent of the planting areas and stream restoration sites; **b.** The type of planting and planting ratios. Plants are to be indigenous and where possible, locally sourced.
21	**Wetlands** The EMP shall include a description of (a) Construction methods to minimise potential effects on wetlands (b) Design details including: a. Identifying suitable site/s for wetland restoration; b. Planting type and location; c. Proposed fencing requirement; and **d.** Opportunities to consider further measures to minimise direct impact on natural wetlands (see Condition 12).
22	**Integrated planting plan** The EMP shall include a detailed planting plan. This plan shall include: a. Maps showing the proposed areas for wetland and terrestrial planting; b. A list of suitable eco-sourced indigenous plant species for each area; c. Details of the size, spacing and total number of species to be planted in each area; **d.** Details of site preparation and ongoing maintenance works to support a high survivability rate for plantings.
23	**Pest plant and animal management** The EMP shall include methods to control pest plants and animals during establishment of the proposed wetland and terrestrial planting areas. This shall include: a. Methods to control pest animals to minimise potential damage to planting areas for a five year duration following completion of construction ; and **b.** Methods and a proposed schedule to control specified pest plant species within the Project area (e.g. cleaning construction

No.	Proposed conditions
	equipment coming on to site, replanting exposed areas, weed control for a five year duration following completion of construction).