Final Decision and Report of the Board of Inquiry into the New Zealand Transport Agency Transmission Gully Plan Change Request
Produced under Section 149R of the Resource Management Act 1991
BEFORE THE BOARD OF INQUIRY CONCERNING THE TRANSMISSION GULLY PLAN CHANGE REQUEST

IN THE MATTER of the Resource Management Act 1991 and the deliberations of a Board of Inquiry appointed under Section 149J of the Act to consider applications by New Zealand Transport Agency for changes to the Regional Freshwater Plan for the Greater Wellington Region

HEARING AT: Wellington on the following dates: 6, 7, 8, 11, 12 and 13 July 2011

APPEARANCES: J Hassan and N McIndoe for the New Zealand Transport Agency

S Bradley and A Camaivuna for the Director General of Conservation

T Bennion for Rational Transport Society Incorporated and P Warren

M Conway for Kapiti Coast District Council

P Milne – Legal advisor to the Board

REPRESENTATIONS: J Horne

K Brown

H Wooding for Kapiti Coast District Council

M J Mellor for Public Transport Voice
Board: Environment Judge Brian Dwyer (Chairperson)
Environment Commissioner Russell Howie (Member)
David McMahon (Member)
David Mitchell (Member)
Glenice Paine (Member)

FINAL DECISION AND REPORT OF BOARD OF INQUIRY UNDER SECTION 149R OF THE ACT
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1 INTRODUCTION AND BACKGROUND

1.1 THE PLAN CHANGE REQUEST AND THE MINISTER’S DIRECTION

[1] On 6 September 2010, the New Zealand Transport Agency (NZTA) lodged a request (Request) for changes to the Regional Freshwater Plan for the Wellington Region (the Freshwater Plan) with the Environmental Protection Authority (EPA).

[2] The Request sought changes to existing policies, the insertion of a new policy and two new definitions into the Freshwater Plan. NZTA indicated in the accompanying documentation that the changes were intended to better enable the consideration of future resource consents under the Freshwater Plan for NZTA’s Transmission Gully Project (TGP).

[3] When such a Request is lodged with EPA, s146 of the Resource Management Act 1991 (the Act)1 requires EPA to seek a direction from the Minister for the Environment (the Minister) under s147.

[4] Upon receipt of EPA’s recommendation on 10 September 2010, the Minister determined that this Request was a matter of national significance because it is part of a proposal of national significance and directed that it be referred to a Board of Inquiry (the Board) for a decision.

[5] Section 142(3) identifies the matters to which the Minister may have regard in determining whether or not a matter is or is part of a proposal of national significance. In accordance with s142(3) the Minister determined that:

- TGP has a long history of media and public attention, part of which relates to the potential environmental effects of the proposal;
- TGP involves the construction of a highway 27km in length. Construction will require earthworks, stream diversions, culverts and dams associated with construction activities. Multiple areas of land will need to be acquired by NZTA. The project is estimated to cost more than $1 billion dollars;
- TGP is a part of the Roads of National Significance identified in the Government Policy Statement on Land Transport Funding. State Highway 1 is a structure of national significance;
- The 27km highway which will result from TGP could result in some irreversible changes to the environment;

1 For the balance of this decision, where we refer to or quote sections of the Act we will simply use the section number with no reference to the Act. Where we refer to or quote sections of other Acts we will identify the Act in question.
• TGP is expected to provide an alternative route into and out of Wellington City. This is intended to improve route security, reduce existing congestion problems on State Highway 1 (SH1), improve access to key regional and inter-regional destinations, and improve safety. Thus the project can be seen as assisting the Crown in fulfilling its public health, welfare, security, or safety obligations or functions;

• TGP traverses the jurisdictions of four territorial authorities (Wellington City Council, Porirua City Council, Upper Hutt City Council, Kapiti Coast District Council) and is within the jurisdiction of Greater Wellington Regional Council (Greater Wellington);

• The network utility operation to which TGP relates extends to four territorial authorities. Also it is noted that TGP includes some local roads for which Porirua City Council will be the network utility operator.

1.2 THE ROLE OF THE BOARD AND PROCESSING HISTORY

[6] The Board is tasked with considering the Request in accordance with the provisions of s149P(6). The Board must consider all matters relevant to the Request, including the Request itself and its associated documentation, submissions and further submissions, as well as evidence, other reports and further information presented at the hearing.

[7] The decision of the Board must be made independently of EPA and the Minister. EPA has provided administrative support to the Board during the process of considering the adequacy of the information initially provided by the NZTA, notifying the plan change request, commissioning reports in terms of s42A and arranging and administering the hearing.

[8] The Board has also been supported by legal counsel to the Board (Mr P Milne) whose role was to provide advice to the Board. In addition, Mr J Kyle of Mitchell Partnerships Limited (Mitchell Partnerships) was appointed as an independent planner and has prepared s42A reports for the Board.

[9] In terms of s145(9), if the matter lodged with the EPA is a request for a change to a plan, clause 22 of Schedule 1 applies, except that every reference in that clause to a local authority must be read as a reference to EPA.

[10] On 23 September 2010, Greater Wellington provided the Board with initial comments on the Request.

[11] On 24 September 2010, the Board received a report from Mitchell Partnerships under s149(2)(b) on the adequacy of the information lodged with EPA by NZTA in support of its Request. On 6 October 2010, the Board asked for further information from NZTA. This information was received by the Board on 1 November 2010.

[12] One of the first tasks of the Board was to determine whether to accept or reject the Request, pursuant to s149M. Prior to making this particular decision, the Board consulted further with Greater Wellington as to its views on the Request.
On 29 October 2010, Greater Wellington provided the Board with further information to assist the Board in understanding:

- The values that are ascribed to the water bodies in Appendix 2B of the Freshwater Plan (being water bodies potentially affected by TGP), including its decision to include these water bodies and Policy 4.2.10 and Appendix 2 in the Freshwater Plan;

- The appropriateness of the Stream Ecological Valuation (SEV) as a tool to offset adverse effects on stream values in the Wellington Region. (A key feature of the Request was a proposal to include provision for offsetting adverse effects of TGP in the Freshwater Plan, including provision for application of SEV as part of that process.)

Greater Wellington was also commissioned by EPA, pursuant to s149G(3), to prepare a key issues report. The key issues report was provided to EPA on 17 November 2010 and dealt with:

- The non-complying activity status of reclamation activities in specified streams;

- Relevant provisions of the various Greater Wellington regional plans, including the Freshwater Plan;

- Relevant provisions of Greater Wellington’s operative and proposed Regional Policy Statements;

- Offsetting as an environmental management tool;

- A detailed summation and timeline of the discussions between NZTA and Greater Wellington in relation to the Request.

On 19 November 2010, the Board received a report from Mitchell Partnerships which addressed the adequacy of the further information provided, taking into account the key issues report prepared by Greater Wellington.

On 2 December 2010, NZTA provided amendments to the Request. This amended documentation included refinements to the Request which were deemed by NZTA to be appropriate in the light of the various reports received by the Board.

On 3 December 2010, the Board modified the Request pursuant to clause 24 of Schedule 1 in the manner shown in the amended information provided by NZTA on 2 December 2010. The Board then accepted NZTA’s modified Request in accordance with clause 25(2)(b) of Schedule 1.

On 7 December 2010, the Board served notice of its decision to accept the modified Request on NZTA and Greater Wellington, pursuant to s149M(4).

As required by s149M(4)(b), Greater Wellington prepared the plan change in accordance with the Request. The merits of NZTA’s proposed plan change were not considered by Greater Wellington during this process. In preparing the plan change, the matters addressed by Greater Wellington included:
• If the plan change fits into the wider context of the Freshwater Plan;
• If the plan change is workable;
• If the plan change is *intra vires*;
• If any consequential changes are needed to the Freshwater Plan.

[20] Greater Wellington determined that no amendments were needed to the wording of the Request as accepted by the Board on 3rd December 2010. The Request was served on EPA by Greater Wellington on 24th December 2010. EPA gave public notice of the proposed plan change on 12 February 2011 with submissions to be lodged by 11 March 2011. Further submissions on the initial submissions were to be made by 26 April 2011.

1.3 THE REQUEST AS NOTIFIED

[21] The public notice was inserted into four major daily newspapers, being the New Zealand Herald, the Dominion Post, The Press, and the Otago Daily Times. In addition, a copy of the notice was published in two local weekly newspapers, the Kapi-Mana News (on Tuesday 15 February 2011) and the Kapiti Observer/Horowhenua Mail (on Thursday 17 February 2011). EPA was required to serve notice of the Request directly on owners and occupiers of the land to which the matter relates, and the land adjoining the land to which the matter relates. EPA considered that the land to which the matter relates was that land within and adjacent to the catchments of the Appendix 2B streams mentioned in the Request (the Horokiri, Ration and Pauatahanui streams).

[22] The Request sought to modify the policy framework of the Freshwater Plan to enable what NZTA contends to be a *more balanced* consideration of the management of the effects of TGP at the time resource consents are applied for. The Request did not seek to modify any of the objectives, rules or standards in the Freshwater Plan.

[23] The Request (at notification) proposed the following amendments to Policy 4.2.10 of the Freshwater Plan. (The proposed changes are shown in underlined text.)

*Regional Freshwater Plan Chapter 4 - General Objectives and Policies*

4.2.10 To avoid adverse effects on wetlands, and lakes and rivers and their margins, identified in Appendix 2 (Parts A and B), *(with the exception of the Transmission Gully Project and its effects on the Horokiri, Ration and lower Pauatahanui Streams where Policy 4.2.33A applies)*, when considering the protection of their natural character from the adverse effects of subdivision, use, and development. *For the avoidance of doubt Rule 50 applies to the Transmission Gully Project.*

*Explanation:* Wetlands, and lakes and rivers and their margins, are identified in Appendix 2 as having a high degree of natural character when assessed against the characteristics outlined in Policy 4.2.9.
The preservation of natural character in this policy is achieved by avoiding adverse effects. In this policy "to avoid adverse effects" means that when "avoiding, remedying or mitigating adverse effects", as identified in subsection 5(2)(c) of the Act, the emphasis is to be placed on avoiding adverse effects. "To avoid adverse effects" means that only activities with effects that are no more than minor will be allowed in the water bodies identified unless Policy 4.2.33A applies. Further elaboration of the meaning of "minor" is contained in Policy 4.2.33 (Policy 4.2.33A provides the approach to be considered in relation to the Transmission Gully Project that includes avoidance, remediation, mitigation or offsetting adverse effects). Activities can occur in the water bodies listed in Appendix 2 but the emphasis in this policy is on preserving the natural character of these water bodies.

In this context “To avoid…when considering” relates to consideration during the preparation of, variation to, or change to, district and regional plans, or the consideration of any relevant resource consent application.

The wetlands, rivers and lakes which are identified in Part A of Appendix 2 are to have their water quality managed in its natural state according to Policy 5.2.1. The wetlands, rivers and lakes that are identified in Part B of Appendix 2 are to have their water quality managed for aquatic ecosystem purposes according to Policy 5.2.6.

[24] The Request also proposed insertion of the following new Policy into the Freshwater Plan:

4.2.33A To allow adverse effects of the development of the Transmission Gully Project, which are more than minor, provided:

(1) Adverse effects are avoided to the extent practicable;
(2) Adverse effects which cannot be avoided are remedied to the extent practicable;
(3) Adverse effects which cannot be avoided or remedied are mitigated to the extent practicable;
(4) Adverse effects which cannot practicably be avoided, remedied or mitigated are offset.

Explanation: This policy recognises that the Transmission Gully Project is particularly important for enabling people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety. Accordingly, the adverse effects of aspects of the Project may be acceptable, even though they cannot be completely avoided, remedied, or mitigated. The policy creates a cascading hierarchy for the avoidance, remedying, or mitigation of adverse effects. However, the policy also provides that where none of these options are practicable, it may be appropriate to offset such effects.

In this context “offset” in clause (4) means taking action that will offset any adverse effects such as enhancing amenity, ecological, or recreational values on-site or elsewhere. Tools such as the “Stream Ecological Valuation” method...
may assist in evaluating the ecological offset ratio, which, based on measured values, sets the amount of offset required. Other ways of offsetting adverse effects are indicated in the second, third and fourth bullet points of Policy 4.2.36.

[25] The Request also proposed the following amendments to Policies 7.2.1 and 7.2.2 of the Freshwater Plan to exempt activities and structures associated with TGP from consideration under these policies. (The proposed changes are shown below in underlined text.)

Regional Freshwater Plan Chapter 7 - Use of the Beds of Rivers and Lakes and Development on the Floodplain

7.2.1 To allow the following uses within river and lake beds:

- structures or activities for flood mitigation or erosion protection purposes;
- structures for transportation and network utility purposes; or
- structures for activities which need to be located in, on, under, or over the beds of rivers and lakes; or
- structures for cultural harvest (e.g., pa tuna); or
- the maintenance of any lawful structure; or
- the removal of aquatic weeds from farm drains and urban drains for drainage purposes; or
- the extraction of sand, gravel, or rock; or
- the diversion of water associated with activities that are otherwise authorised; or
- the enhancement of the natural character of any wetland, lake or river and its margins;

provided that any adverse effects are avoided, remedied or mitigated and that the significant adverse effects identified in Policy 7.2.2 are avoided (unless the effects are of activities for the Transmission Gully Project and are addressed in accordance with Policy 4.2.33A).

Explanation: Policy 7.2.1 lists criteria for appropriate uses within the beds of rivers and lakes. "Uses" refers to those activities identified in subsections 13(1)(a), 3(1)(b), 13(1)(c), 13(1)(d) and 13(1)(e) of the Act. Structures or activities that do not meet the criteria listed in the policy are inappropriate. For example, any structure associated with a use that does not have to be located in or on the bed of a river or lake is considered inappropriate.

While a particular use of a river or lake bed may meet the criteria listed in the policy, it may need to comply with environmental controls, and is subject to
Policy 7.2.2. *The policy recognises that adverse effects of activities for the Transmission Gully Project can be considered according to Policy 4.2.33A.*

7.2.2 To not allow the use of river and lake beds for structures or activities that have significant adverse effects on:

- the values held by Tangata whenua; and/or
- natural or amenity values; and/or
- lawful public access along a river or lake bed; and/or
- the flood hazard; and/or
- river or lake bed or bank stability; and/or
- water quality; and/or
- water quantity and hydraulic processes (such as river flows and sediment transport); and/or
- the safety of canoeists or rafters;

*unless the structures or activities are for the Transmission Gully Project and addressed in accordance with Policy 4.2.33A.*

**Explanation:** This policy lists characteristics of rivers and lakes that should not be significantly affected by uses of river and lake beds which are identified as "appropriate" in the previous policy. "Uses" has the same meaning as in Policy 7.2.1.

When a new use of any river or lake bed is considered, due regard must be had to avoiding, remedying, or mitigating adverse effects on these characteristics.

In the context of this policy deciding on what are “significant adverse effects” is in part a value judgement which will be determined by the decision makers on resource consents, i.e., Regional Councillors or Hearing Commissioners. When deciding whether an adverse effect is significant or not, decision makers will have regard to:

- the significance of any values identified; and
- the scale/magnitude of any adverse effects on the values identified; and
- the reversibility of any adverse effects on the values identified; and
- any other relevant provisions in the Plan.

*Reference in the policy to “the Transmission Gully Project and adverse effects that would otherwise be significant” recognises that these potential effects shall be addressed through Policy 4.2.33A.*
The Request also proposed to insert the following two new definitions into the Freshwater Plan:

“Transmission Gully Project” is a strategic transport route running from MacKays Crossing to Linden and the term includes works associated with the implementation of that project.

“Stream Ecological Valuation” (SEV) is a tool to assist in evaluating the ecological offset ratio, which, based on measured values, sets the amount of offset required.

1.4 RELATIONSHIP OF THE REQUEST TO THE TRANSMISSION GULLY PROJECT

NZTA has indicated that this Request will be followed at a later date by applications for regional resource consent(s) and Notices of Requirement (NoR) to designate the TGP route in terms of relevant district plans, which are necessary to consent TGP under the Act. The consents required will include land use consents under s13 to carry out activities within waterways and consents to dam and divert and discharge to water. There are also likely to be applications for regional land use consents for earthworks.

Reclamation activities which involve the water bodies of significance listed in Appendix 2 to the Freshwater Plan are non-complying activities. Pursuant to s104D, consent may only be granted for a non-complying activity where either the effects of the activity are likely to be no more than minor or the activity will not be contrary to the objectives and policies of the relevant plan. NZTA is concerned that some policies in the Freshwater Plan require adverse effects to be avoided. It contends that this may provide a potential barrier to the grant of consents for reclamation activities associated with TGP which are likely to have more than minor adverse effects on the environment and which may also be considered contrary to the objectives and policies of the Freshwater Plan.

Accordingly, a key aspect of the Request was the proposal by NZTA to change the requirement for simple avoidance of adverse effects presently provided for in Policy 4.2.10 of the Freshwater Plan to provide for remedy, mitigation and offsetting of such effects where avoidance is impracticable or where it would impose significant costs to TGP. The centrepiece of the Request in that regard was the insertion of proposed Policy 4.2.33A which sought to establish a cascading regime of measures to allow adverse effects of TGP on water bodies which were more than minor. The cascade proposed in Policy 4.2.33A was that:

- Adverse effects are to be avoided to the extent practicable;
- Adverse effects which cannot be avoided are to be remedied to the extent practicable;

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• Adverse effects which cannot be avoided or remedied are to be mitigated to the extent practicable;

• Adverse effects which cannot practicably be avoided, remedied or mitigated are to be offset.

[30] We will address the cascading management regime and the concept of offsetting in detail in this decision.

1.5 THE HEARING PROCESS

[31] On 8 February 2011, the Board issued details of hearing procedures, which outlined the way the hearing was to be conducted. This included information on the timetable for reports and evidence exchange, evidence requirements, and the proposed hearing order and time limits and protocols. This note of procedures was available to the public on EPA’s website.

[32] A summary of the process is as follows:

• NZTA evidence was lodged on 5 May 2011 and was made available to the public on the EPA website;

• Submitter evidence was lodged with EPA on 24 May 2011 and was made available to the public on the EPA website;

• Expert witness conferencing was undertaken by the various expert planning witnesses involved in the hearing on 15 June 2011. A joint statement by the witnesses issued from that caucus and was circulated to parties;

• A site visit was undertaken by the Board on 28 June 2011;

• Further witness conferencing was undertaken by the expert ecological witnesses involved in the hearing on 1 July 2011. A joint statement by the witnesses issued from that caucus and was circulated to parties;

• The Board pre-read all evidence, reports and supplementary comments that were presented at the hearing;

• The hearing commenced on 6 July 2011 and ran for 6 days closing on 13 July.

2 STATUTORY REQUIREMENTS AND CONTEXT

2.1 THE RESOURCE MANAGEMENT ACT 1991

[33] Plan change requests to a regional plan are prepared and considered under a framework provided by the Act. We briefly describe that framework.

[34] Pursuant to s149P(6), in considering this change to the Freshwater Plan, the Board must apply clause 10(1) and (3) of Schedule 1 as if it were a local authority, may exercise the powers under s293 as if it were the Environment Court and must apply
sections 66 to 70B and 77A to 77D as if it were a regional council. We will address those requirements to the extent they are applicable in the Evaluation section of this Decision and Report.

[35] Section 30 identifies the functions of regional councils under the Act\(^3\) and again we will address the relevant provisions in the Evaluation section of this Decision and Report.

[36] Section 32 requires that before adopting any objective, policy, rule or other method, both the local authority\(^4\) and the person requesting a plan change must carry out evaluations considering alternatives, benefits and costs. Again we will address the relevant provisions in the Evaluation section of this Decision and Report.

[37] We are required to consider the Request in terms of Part 2. Part 2 sets out the purpose and principles of the Act in sections 5, 6, 7 and 8.

[38] Section 5 requires us to make an overall broad judgement, which allows for the comparison of conflicting considerations, the scale of them and their relative significance or proportion in the final outcome.

[39] Sections 6, 7 and 8 of the Act set out principles to be applied in achieving the purpose of the Act. The principles contained in sections 6, 7 and 8 of the Act are subordinate to the overall purpose of the Act. Each plays a part in the overall consideration of whether the purpose of the Act has been achieved in a particular situation.

[40] Once again, we will address all of the relevant provisions in the Evaluation section of this Decision and Report.

2.2 NATIONAL POLICY STATEMENTS

[41] In achieving the purpose of the Act and in accordance with s67(3) the Freshwater Plan must give effect to any relevant national policy statements (NPS) and any New Zealand coastal policy statement. There are three NPS that have been gazetted to date and one coastal policy statement as listed below:

- National Policy Statement on Electricity Transmission (NPS(ET));
- National Policy Statement for Renewable Electricity Generation (NPS(REG));
- New Zealand Coastal Policy Statement (NZCPS);
- National Policy Statement for Freshwater Management (NPS(FM)).

[42] Our consideration as to whether the Request gives effect to any relevant NPS or NZCPS is undertaken in the Evaluation section of this Decision and Report.

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\(^3\) Which apply to the Board in this instance.

\(^4\) Or in this case the Board.
A Proposed National Policy Statement on Indigenous Biodiversity (NPS(IB)) was released in January 2011, with submissions closing on 2 May 2011. The relevance of this proposed NPS is also addressed in the Evaluation section of this Decision and Report.

### 2.3 REGIONAL POLICY STATEMENTS

There are operative and proposed regional policy statements for the Wellington Region. The operative Regional Policy Statement (RPS) was made operative in May 1995. A proposed RPS was notified in March 2009, with a revised version following Greater Wellington’s decisions on submissions released in May 2010. A total of nine appeals, covering a broad range of matters, have been lodged with the Environment Court on the proposed RPS.

When determining the Request, the Board is required to consider if it gives effect to the operative RPS pursuant to s67(3)(c), and to have regard to the proposed RPS pursuant Section 66(2)(a). An analysis of these issues is included in the Evaluation section of this Decision and Report.

### 2.4 OTHER MATTERS

Section 66(2)(c)(i) requires that when preparing or changing a regional plan a board must have regard to any management plans or strategies prepared under any other Act.

The Wellington Regional Land Transport Strategy (WRLTS) 2010 – 2040 is a statutory document that guides the development of the region’s transport system including public transport, roads, walking, cycling and freight for the next ten years and beyond. The WRLTS is addressed in the Evaluation section of this Decision and Report.

The Department of Conservation has prepared a Conservation Management Strategy (CMS) for the Wellington Region which contains a section on the Pauatahanui Inlet. The relevance of the CMS is addressed in the Evaluation section of this Decision and Report.

Section 66(2A) requires us to take into account any planning document recognised by an iwi authority that has been lodged with the Council. Greater Wellington has advised that there are no planning documents recognised by iwi authorities that have been lodged with it relating to the area traversed by TGP.

Section 67(4) provides that a regional plan must not be inconsistent with any other identified instruments including (inter alia) any other regional plans. We will address that matter in the Evaluation section of this Decision and Report.
3 OVERVIEW AND PRE HEARING INFORMATION

3.1 OVERVIEW OF THE TRANSMISSION GULLY PROJECT

[51] TGP will provide an inland alternative road link to the coastal route of the existing SH1 between MacKays Crossing and Linden. It is approximately 27 km long and passes mostly through farmland, regional parks and rural residential areas, with some areas of scrub and forest towards the southern end of the route.

[52] TGP is part of the Wellington Northern Corridor between Levin and Wellington which is recognised as nationally and regionally important in the Government Policy Statement on Land Transport Funding 2009/10 – 2018/19 (GPS), issued by the Minister of Transport pursuant to s84 of the Land Transport Management Act 2003. The GPS details the Government’s desired outcomes and funding priorities for the use of the National Land Transport Fund to support activities in the land transport sector.

[53] In the GPS the Government has listed seven Roads of National Significance (RoNS) as a statement of national road development priorities. Identified as a RoNS within the Wellington Region is:

Wellington Northern Corridor (Levin to Wellington) – SH1

[54] TGP comprises one section of the Wellington Northern Corridor.

3.2 NZTA’S REASONS FOR THE PLAN CHANGE REQUEST

[55] NZTA prepared a document titled Reasons for the Request (December 2010) which accompanied the Request.

[56] NZTA advised that if it ultimately constructs TGP, it will seek to avoid adverse effects on waterways wherever practicable. Where this is not practicable, measures to remedy, mitigate or offset any potential or actual adverse effects will be employed with a priority of remediying then mitigating. Offsetting of adverse effects would be undertaken only where avoiding, remedying or mitigating of such effects are impracticable.

[57] Given that Policy 4.2.10 seeks to avoid adverse effects on natural character values of these waterways (with no provision for remedy or mitigation of adverse effects) there is concern held by NZTA that TGP may be unable to meet this policy of avoidance or that the policy may necessitate uneconomic engineering responses to providing crossings for the Appendix 2B waterways.

[58] By way of example, Rule 50 of the Freshwater Plan (as it relates to reclamation activities) could trigger a requirement for non-complying activity resource consents to be obtained for TGP. NZTA is concerned that any reclamation activity necessitated by TGP might (through the decision making process on the resource consents) be deemed to be contrary to the policies within the Freshwater Plan, in particular Policy 4.2.10. If such activity was also found to have more than minor
effects on the environment then s104D of the Act would preclude the grant of consent to TGP.

[59] NZTA relevantly outlined in its Reasons for Request document that:

The NZTA’s objective for the Plan Change is to allow greater flexibility for implementation of the Transmission Gully Project in a manner that is environmentally appropriate in the circumstances. The Plan Change does not propose a fundamental review of the Objectives, Policies and Rules of the Freshwater Plan. The proposed Plan Change ...would not alter the objectives or rules of the Freshwater Plan, but rather would modify the policy framework to give the NZTA more options for implementing the Transmission Gully Project in a way which is consistent with the objectives of the Freshwater Plan and the purposes and principles of the RMA.\(^5\).

[60] NZTA suggests in the Reasons document that some of the policies in the Freshwater Plan currently allow little flexibility in the development of resource management solutions to environmental effects and this lack of flexibility could add significantly to the cost and uncertainty of TGP.

[61] The Reasons document also notes that the Request is a response to the current tension between:

- The avoidance or protectionist approach to adverse effects of some of the policies of the Freshwater Plan;
- Recognition within the Proposed Regional Policy Statement (Proposed RPS) of the importance of regionally significant infrastructure which is defined in a way which would include the Transmission Gully Project.

### 3.3 NZTA’S SECTION 32 ANALYSIS

[62] NZTA advised that the:

…resource management issue which the Plan Change seeks to address is to set a mechanism in place whereby, if avoidance of adverse effects cannot practicably be achieved, there is the option to remedy, mitigate or offset effects.\(^6\).

[63] NZTA identified in its s32 analysis five options\(^7\) to address the perceived lack of flexibility in the Freshwater Plan, being:

- Option 1 - Relying on the existing policy framework – i.e. the do nothing option;

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\(^5\) NZTA Reasons for Request, December 2010, pg 1.


\(^7\) NZTA section 32 Report, December 2010, pg 16.
• Option 2 - Changing the activity status of matters covered in Rule 50 to discretionary;

• Option 3 - Inserting a definition of reclamation which would exclude culverts;

• Option 4 - Create a new policy for avoiding, remedying, mitigating or offsetting effects relating to TGP;

• Option 5 – Create a new policy for Pauatahanui and Horokiri/Ration Streams.

NZTA provided an evaluation of the above options against the requirements of section 32 and concluded that Option 4 (creation of a new policy for avoiding, remedying, mitigating or offsetting effects relating to TGP):

• Is the most appropriate for achieving the objectives in the Freshwater Plan, in relation to the other options.

• Is a method of clearly managing the policy tension between support for the Transmission Gully Project in the RPS and the RLTS, and the “avoidance” required by Policy 4.2.10.

• Is issue specific – it does not widen the issue to activities other than the Transmission Gully Project itself and it therefore ‘ring fences’ the change to the three streams that the Transmission Gully Project traverses. Policy 4.2.10 relates to all water bodies included in Appendix 2 of the Freshwater Plan and for those water bodies unaffected by the Transmission Gully Project the policy remains unaffected.

• There is no change to Rule 50. A “for the avoidance of doubt” qualification has been added to the policy to explicitly state that the rule still applies to the Transmission Gully Project in relation to the three streams affected.

• Can be relatively easily inserted with limited impact on other plan provisions.

• Can proceed in 2010. Waiting until a full scale review of the Regional Plans means that there will be delay and uncertainty to implementing the Transmission Gully Project.

• Will realise the socio-economic benefits to the wider community earlier (if all consents are granted) from the Transmission Gully Project component of the Strategic Transport Network.

3.4 THE VALUES OF THE APPENDIX 2 WATERWAYS

Appendix 2 of the Freshwater Plan identifies that a number of water bodies throughout the Wellington Region have a high degree of natural character. In addition to the protection of natural character, Appendix 2B identifies water bodies which are to be managed for aquatic ecosystem purposes.

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8 NZTA section 32 Report, December 2010, pg 35.
[66] In its Reasons for the Request, NZTA has provided information to quantify and assess the significance of the values that exist within the Appendix 2B water bodies that will be affected by TGP. This information is in the form of a technical report prepared by Boffa Miskell Limited (the Boffa Miskell report) that is attached as Appendix F to the Reasons for the Request. Appendix F is referred to and summarised on page 15 of the Reasons for the Request.

[67] The Boffa Miskell report provides a description of the ecosystem values in the relevant waterways listed in Appendix 2B. It also evaluates the ecological value and significance of those streams including an assessment of the ecological aspects of their natural character, and sets out a brief summary of the potential adverse effects of TGP on these features.

[68] The Boffa Miskell report observes that the Horokiri catchment exhibits high ecological values and is of regional significance. The upper and middle portion of the Pauatahanui catchment is assessed as being more modified and therefore has a reduced degree of natural character insofar as this is derived from its ecological values. The lower Pauatahanui catchment is assessed as retaining a relatively high degree of regionally significant ecological and biodiversity value. The lower catchments of the Ration Stream are also considered to be of high value given the presence of important fauna species.

3.5 GREATER WELLINGTON REGIONAL COUNCIL OFFICERS’ REPORT

[69] On 8 February 2011, the Board requested that officers of Greater Wellington prepare a report pursuant to s42A. This was provided to the Board in April 2011 and responded to 11 questions posed by the Board.

[70] On 11 May 2011, the Board requested Greater Wellington address two further questions in an additional s42A report. These questions were:

- Are the values of the waterways to which the plan change relates, such that there could be situations where avoidance is the only appropriate method of managing effects to ensure the purpose of the Act is achieved? If so, which waterways contain such values?

- Does the proposed wording of the policies within the plan change allow the consent authority to determine that, due to the value of a body of water, avoidance is the only appropriate method of managing effects to ensure the purpose of the Act is achieved?

[71] In response to the first question, the report concluded:

Given the nature of the identified values of the Horokiri, Ration (Little Waitangi), and Pauatahanui Streams and Duck Creek and current information, it is unlikely that there will be an occurrence where the avoidance of adverse effects is the only appropriate action. It is, however, conceivable that in the light of more detailed information it could be the case that at particular sites within
these streams avoidance of adverse effects may indeed be the only appropriate option.

[72] In response to the second question the report stated that:

*It appears that policy 4.2.33A would not provide for avoidance exclusively in all circumstances or based solely on the values of a water body, as it incorporates the concept of practicability as a matter for consideration.*

### 3.6 MITCHELL PARTNERSHIPS S 42A REPORT

[73] The Board requested Mitchell Partnerships to prepare a report pursuant to s42A. The report was prepared on the basis of information available prior to the hearing, including submissions made at that time but prior to further submissions being available. The report was posted on the EPA website.

[74] This report included a description of the background to the Request, the statutory requirements and context, a summary of the information provided in the Request, details of consultation with Greater Wellington, a summary of and response to issues raised by submitters and an evaluation of the Request against the relevant statutory tests. This evaluation resulted in the authors of that report suggesting some changes to the wording of the proposed plan change. In particular the authors suggested changing the approach in proposed Policy 4.2.33A from one that *allows* adverse effects to one that *manages* adverse effects. The authors also suggested limiting the provisions of proposed Policy 4.2.33A to the three Appendix 2B streams that will be affected by TGP and ensuring that the consequential amendments to policies 7.2.1 and 7.2.2 are limited to those same three Appendix 2B streams identified in proposed Policy 4.2.33A.

[75] Following the exchange of applicant and submitter evidence, Mitchell Partnerships prepared a supplementary s42A report, taking into account the further submissions, evidence and other information that has been lodged with the Board since completion of the initial report. This report was lodged with the Board and posted on the EPA website on 30 June 2011.

### 3.7 LEGAL ADVICE TO THE BOARD REGARDING ENVIRONMENTAL OFFSETS

[76] The Board sought comment from Mr Milne, as to issues relating to environmental offsetting under the Act. Mr Milne provided a memorandum addressing this issue on 11 May 2011. A Board minute dated 12 May 2011, including Mr Milne’s advice, was issued to all submitters and further submitters on the Request.

[77] We have factored this advice and the case law discussed in it, into our discussion of environmental offsets in the Evaluation section of this Decision and Report.
4 SUMMARY OF SUBMISSIONS

4.1 SUBMITTERS
[78] The Request documentation was able to be viewed from the EPA website, EPA Head Office, the Christchurch and Auckland offices of the Ministry for the Environment, the Greater Wellington Regional Council, the Kapiti Coast District Council and the Porirua, Hutt, Upper Hutt and Wellington City Councils. Submissions closed on Friday 11 March 2011.

[79] In total, 39 submissions were received. Of these submissions, 24 opposed the Request and nine supported it. Remaining submissions were either neutral, or in partial support and/or opposition. Two late submissions were received by email on 13 and 15 March 2011. The Board agreed to accept these late submissions9.

[80] A summary of submissions was prepared by Mitchell Partnerships and made available on EPA’s website on 2 April 2011. Any person representing a relevant aspect of public interest or who had an interest in the Request greater than the general public and the local authority had the opportunity to make a further submission. Further submissions closed on 26 April 2011. Four further submissions were received in response to issues raised in the original submissions.

4.2 MATTERS RAISED IN SUBMISSIONS
[81] The primary matters raised by submitters can be summarised as follows:

- **Environmental Effects on Important Streams**
  A concern frequently raised in the submissions and further submissions was that the Request, if accepted, would result in significant adverse environmental effects on the streams which are affected by the Request specifically the Horokiri, Ration and Pauatahanui Streams. Some submitters were concerned that acceptance of the Request would allow adverse environmental effects to occur, including habitat loss and decline of threatened species. Submitters suggested that a number of endangered species would be adversely affected by the Request including native freshwater fish (specifically the Shortjawed Kokopu and Giant Kokopu), native birds which use the corridor from Kapiti Island to the Tararuas and endangered frog species (including the Tree Frog). A number of submitters stated that the streams have been identified and listed in Appendix 2 and 3 of the Freshwater Plan for good reasons and the existing protection afforded to them is both appropriate and necessary.

- **The Justification for Exceptions to the Existing Provisions of the Freshwater Plan is Inappropriate or Inaccurate**
  Another common issue raised in submissions was a claim that the Request had not been adequately justified by NZTA. A number of submitters suggested that TGP is unlikely to improve the well-being of communities and that the

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9 Documented in the Board minute titled Late Submissions and dated 23 March 2011.
protection of the important streams is more important than TGP. Many submitters expressed their belief that rail is a preferred option to provide the transportation benefits NZTA suggest accrue from the constructed TGP.

- **Impacts Extend Beyond Instream Values**
  Another issue submitters commonly raised was a suggestion that the impacts of changing the Freshwater Plan provisions as proposed will affect more than just the three streams specifically identified (being the Horokiri, Ration and Pauatahanui Streams).

  Some submitters contended that there are likely to be impacts on drinking water, recreation, shallow aquifers, water flow, flooding and on the ecosystems and endangered flora and fauna surrounding and depending on the life supporting capacity of these streams, including values at Pauatahanui Inlet. Two submitters also noted that the local community has been undertaking works to restore/improve the values of the Pauatahanui Inlet and suggest that allowing the Request would provide for activities that would undermine these efforts.

- **Impacts of the Transmission Gully Project**
  A number of submitters raised concerns relating to the construction and implementation of TGP. These include altering the rural landscape and the amenity of the local environment, including Queen Elizabeth Park, Battle Hill Farm Forest and Belmont Regional Park. Other potential impacts identified within submissions also arise from the implementation of TGP and relate to the encouragement of dispersed development and increased traffic movements.

- **The Protection Afforded by the Freshwater Plan is Appropriate**
  Generally, those submitting on this topic raised the issue that if the construction of TGP is to cause adverse effects on the environment, then the obstacles to this should not be removed from the Freshwater Plan. Some submitters noted that if anything is to change, the protection afforded by the Freshwater Plan should be increased. A number supported their submission with alternative plan provisions to help achieve increased protection of the values associated with the water bodies in question.

- **Offsetting**
  It was contended by a number of submitters that offsetting is an inappropriate way of managing the values of Appendix 2B streams. It was suggested by these submitters that adequate offsetting could not be undertaken within the region. They therefore suggest that offsetting has the potential to degrade important values in the region.

  Two submitters also questioned the use of SEV as a tool for assisting offsetting including concern that the application of this tool has the potential to be inconsistently applied and confusing to those applying it.

  One submitter suggested that offsetting should not be limited to TGP and should be applied in other circumstances within the region. Another submitter
supported the hierarchy within proposed Policy 4.2.33A which lists offsetting as the last management option.

One submitter was not opposed to offsetting provided it adopted a robust methodology for calculating biodiversity losses and gains and a no net loss outcome was achieved.

- **The Plan Change may set a Precedent**
  Some submitters contended that, if accepted, the Request could potentially create a precedent for other infrastructure projects by government agencies or departments. The concern expressed was that environmental protection requirements will be able to be sidestepped by those pursuing projects which are deemed to be of regional or national significance. It was suggested by some submitters that this is an adverse outcome as environmental degradation can be avoided through appropriate and environmentally sensitive development.

- **Relevant Planning Documents**
  A number of submitters suggested that the proposal is contrary to Part 2 of the Act, the operative and proposed RPS, the Freshwater Plan and the NZCPS and/or that NZTA has not properly considered the CMS.
  
  It was submitted that the Request is inconsistent with the operative RPS, specifically Policies 2 and 3 in Chapter 14. In this regard it has been suggested that the Request and the project proper do not align with the operative RPS views on transport fuels, renewable energy, sustainable transport and dispersed development.
  
  A number of submitters also suggest that the Request is contrary to NZCPS, including but not limited to Policies 11, 22 and 23 and that necessary regard has not been given to the CMS particularly with respect to the values of the Pauatahanui Inlet.

- **Part 2 of the Act**
  Some submitters expressed concerns that the proposal does not protect the natural character of the coastal environment or the streams and wetlands that TGP will affect as required by Part 2 of the Act. They suggest that TGP will adversely affect significant habitats of indigenous fauna. In addition they argue that TGP does not represent an efficient use of natural and physical resources because it will encourage a project that will generate additional traffic which is not an efficient use of energy, will generate further greenhouse gas emissions and runs counter to facilitating the increased use of renewable energy.

- **Importance of the Project**
  Submitters in support of the Request generally contended that the changes will remove barriers to the benefits arising from implementation of TGP. On the whole, they supported amendments to the Freshwater Plan if the amendments will assist in ensuring that TGP proceeds.

[82] In addition to the issues raised above, a number of submitters raised issues such as:
• Seismic Concerns;
• Oil Consumption / Climate Change / Global Warming;
• Alternative Transport;
• Alternative Routes;
• Project Economics;
• Project Details;
• Coastal Matters;
• The Appointment of the Board.

[83] Although some of these matters may possibly be relevant to future resource consent and NoR applications, it is not necessary for us to make findings on these matters to determine this Request which is driven by a perceived requirement for there to be greater policy flexibility in considering a specific project. We will address all of the relevant issues in this decision.

5 NZTA’S CASE

5.1 EVIDENCE & SUBMISSIONS

[84] NZTA (represented by Mr J Hassan and Ms N McIndoe) circulated its evidence in support of the Request on 5 May 2011. Evidence for NZTA was given by:

• Mr C Nicholson – traffic engineer employed by NZTA as Principal Project Manager for TGP;
• Dr V Keesing – an ecologist;
• Mr L Daysh – a planner.

[85] Mr Nicholson provided an overview of NZTA and its statutory role and functions throughout New Zealand. He confirmed the importance of TGP as a route of national and regional significance and provided some detail about the project, the likely construction works and the consents likely to be required. Mr Nicholson discussed the benefits that would be derived from the implementation of the project and provided an overview of the consenting strategy for TGP. He explained the reasoning behind the Request and responded to a number of the matters raised in submissions and the s42A reports.

[86] Dr Keesing provided a description and assessment of the ecological significance of the streams that will be affected by works associated with TGP. He explained that the project will cross water bodies within the catchments of Te Puka Stream, Wainui Stream, Horokiri Stream, Ration Stream, Pauatahanui Stream, Duck Creek, Cannons Creek and a small tributary of Porirua Stream. He noted that three of these streams are listed in Appendix 2B of the Freshwater Plan as having high
natural character. He concluded that while the Ration Stream (other than in its coastal reach) does not warrant its identification as being of significance under the Freshwater Plan, the Horokiri and the lower Pauatahanui Streams do have significant ecological values which warrant their protection under the Freshwater Plan. With regard to the other streams that will be crossed by TGP, Dr Keesing concluded that both Duck Creek and Te Puka Stream also have high ecological and natural character values and noted that these streams are currently not provided any special protection under the Freshwater Plan.

[87] Dr Keesing also provided a description of the anticipated effects of TGP construction and operation on all of the streams and concluded that some 10,000m of stream length would be adversely affected by construction activities. He observed that this would lead to potentially significant and unavoidable impacts on freshwater habitats and fauna. There would also be an unavoidable increase in sediment transported from the construction activities through to the Porirua Harbour. Dr Keesing also considered the severity of the likely effects against the mitigation and/or offsetting measures that could be imposed via the management regime proposed by the Request. He concluded that there would be a neutral or positive outcome on natural character and habitat quantity for all of the aquatic ecosystems affected by TGP.

[88] Dr Keesing provided a detailed commentary around the concept and use of offsetting and the methodology that is employed through the use of the SEV method. He explained the purpose and use of SEV as well as identifying its potential shortcomings. He then provided an assessment of the efficacy of SEV for TGP using a test case scenario. The SEV system established that enhancement of 26,504m of stream length is required to offset the changes and losses to some 10,000m of stream length. Dr Keesing concluded that the use of offsetting has the potential to lead to better management of those waterways impacted by TGP.

[89] Dr Keesing responded to issues raised by submitters and the s42A reports. He concluded that the concept of no net loss which had been raised by some witnesses as part of any offsetting process does not need to be included in the Request. He stated that this is too complicated for inclusion in the Freshwater Plan, particularly in the field of ecological values. He also noted that the Act does not require a no net loss approach to be adopted to environmental compensation. In response to changes suggested in the initial Mitchell Partnerships s42A report (to Policies 4.2.33A, 7.2.1 and 7.2.2 in particular), Dr Keesing did not agree that the Request should be limited to the three streams listed in Appendix 2B. He stated that the management cascade of avoid, remedy, mitigate, offset is appropriate for all of the water bodies that would be potentially affected by TGP, and that cascade of measures proposed in the Request is a system that is more likely to result in ecological benefit than simple avoidance, as all of the streams along the route have current water and habitat quality issues related to catchment land use.

[90] Dr Keesing assessed the interaction of the streams with the coastal marine area. He stated that all of the streams affected by the project discharge into the Porirua Harbour, with the exception of the Te Puka Stream and Wainui Stream. These streams discharge into the coastal marine area north of Paekakariki. Dr Keesing said that the key effect in this regard is potential sedimentation of Porirua Harbour.
He stated that sedimentation effects are being considered by NZTA and will be addressed when applications are lodged for TGP’s substantive consents.

[91] Mr Daysh provided a detailed description of the Request. He discussed the relevant statutory criteria, including a description and assessment of the relevant planning and policy instruments and other relevant matters (e.g. the WRTLS). He concluded that the Request would better enable Greater Wellington to carry out its responsibilities relating to the strategic integration of infrastructure with land use. Mr Daysh considered that the Request is consistent with the relevant regional policy documents including the operative and proposed RPS. He contended that the Request is entirely consistent with the WRTLS. He considered that the Request would implement the relevant objectives in the Freshwater Plan and is the most appropriate in s32 terms.

[92] Mr Daysh responded to issues raised by submitters and to the matters raised in the s42A reports. In summary, he disagreed with those submitters who opposed the concept of the Request, or considered it to be unnecessary. He also disagreed that the Request will create a precedent for other large scale or national projects. Mr Daysh discussed what is meant by the phrase to the extent practicable as it appears in the Request and compared it to the phrase best practicable option which is used in the Act.

[93] Mr Daysh agreed in part with the initial Mitchell Partnerships s42A report relating to recommended changes to Policy 4.2.33A and the definition of TGP. He supported the change from allow to manage in Policy 4.2.33A recommended by Mitchell Partnerships. He advised that it is NZTA’s intention to create a resource management framework to address adverse effects arising from the construction and implementation of TGP, rather than to create a presumption that effects should always be allowed. Mr Daysh also agreed that the definition of TGP would benefit from the addition of a map to the Freshwater Plan. In addition, he recommended amending the definition to include recognition that activities associated with TGP will occur in proximity to the alignment indicated in that map.

[94] Mr Daysh did not agree that application of Policy 4.2.33A should be limited to the Appendix 2B waterways affected by TGP, as suggested in the Mitchell Partnership’s report. His view was that it is appropriate that this policy applies to all streams within the footprint of the project. Mr Daysh referred to the evidence of Dr Keesing which provided an assessment of the values within the streams affected by TGP. Mr Daysh considered that it is appropriate to apply a consistent management regime to the effects on all streams potentially affected by TGP. He noted that Dr Keesing supported this in his evidence.

\[\text{Para [74] above.}\]
Counsel commenced their case by advising that NZTA has the objective set out in the Land Transport Management Act 2003 namely, to undertake its functions in a way that contributes to an affordable, integrated, safe, responsive and sustainable transport system.

Counsel submitted that TGP is a critical section of the SH1 RoNS for the Wellington Northern Corridor. It is a part of the programme to upgrade this essential route and is identified in the GPS. At a regional level it is part of the Western Corridor Plan that is included in the WRLTS. It links to the motorway to the south at Linden and to the upgraded SH1 MacKays Crossing to the north. It has been recognised as a proposal of national significance by the Minister.

Benefits of the project were identified by Counsel as improved route security and safety, reduced journey times, increased reliability of journey travel times and enhanced amenity values for coastal communities along the existing SH1 corridor.

Counsel advised that some of the resource consents required for TGP will be non-complying under the Freshwater Plan. They contended that because Policy 4.2.10 requires the avoidance of any adverse effects that are more than minor on certain water bodies there is a risk that consideration of the merits of anticipated TGP resource consent applications could be precluded under s104D. Some effects of TGP will inevitably be more than minor and TGP could arguably be said to be contrary to the restrictive policy in the Freshwater Plan thereby failing the test of s104D RMA. If that was the case resource consents for TGP could not be granted. A plan change to avoid this possibility and allow consideration of TGP is requested accordingly.

The plan change initially requested by NZTA was to provide for a preferentially cascading framework that managed any adverse effects of TGP by, firstly avoiding, then remediying, then mitigating and finally offsetting those effects. It was to stand in the Freshwater Plan as a separate policy applying only to TGP as Policy 4.2.33A. Consequential changes to Policies 4.2.10, 7.2.3 and 7.2.3 were also proposed so that they would not remain contradictory to the new policy.

In closing submissions, Counsel suggested a remodelled form of the plan change that revisited the concept of cascading management of effects and the separate identification of offsetting of effects. Because steps to offset effects of the project could be said to mitigate or remedy those effects it would be more appropriate to prefer avoidance of the effects where practicable and then to remedy or mitigate them, accepting that offsetting of effects is a recognised form of remedy or mitigation. They said that new policy should apply to all streams affected by the project and should address all effects; minor ones, significant ones and those less than minor. We will address the specifics of the remodelled plan change in the Evaluation section of this Decision and Report.

NZTA was jointly represented by Mr Hassan and Ms McIndoe, both of whom presented various parts of their submissions at different times. For the sake of convenience we refer to counsel jointly in summarising their submissions.
Consequential amendments and explanations for Policies 4.2.10, 7.2.1 and 7.2.2 were also submitted. Counsel said the changes would not alter any objectives or rules of the Freshwater Plan.

A definition of TGP was provided with reference to a map of the project. Initially a definition of SEV was also suggested but that was not pursued because that process was still evolving and other methodologies are available.

Counsel addressed the topic of whether there should be some stop mechanism in the Freshwater Plan to protect vulnerable or irreplaceable natural values. They submitted that Greater Wellington had identified that it is unlikely there will be an occurrence where the avoidance of adverse effects is the only appropriate action, although on a detailed examination that might be the appropriate response at particular sites. They contended that none of the water bodies affected by TGP require avoidance of adverse effects to maintain their current values. They said therefore there was no need for a stop provision.

Consultations with Te Runanga O Toa Rangatira (Ngati Toa) had been undertaken and were ongoing. Counsel submitted there were no issues that could not be resolved that were evident at this stage and that it is not unusual for a Memorandum of Understanding to take some time to finalise.

Counsel canvassed the statutory criteria and framework for the plan change and the Board’s functions, duties and powers. They referred us to the relevant policy and planning documents and tested the proposal against the requirements of s32. They submitted that the plan change, as amended, was the most appropriate method for meeting the provisions of the Act. They said that there was no issue as to scope in the Board accepting the revised version of the plan change.

After reading the evidence and hearing opening submissions for NZTA, the Board had issued a minute identifying three issues it considered were important as well as four questions for parties’ consideration. We will address those issues and questions elsewhere in this decision however we record Counsels’ pertinent comments on those matters, as follows:

- They agreed that offsetting was a means of remedying or mitigating effects. They also submitted that the proposed plan change as amended recognised the normal step of seeking to avoid effects before remedying or mitigating them without the inflexibility of a cascade regime. It retained the scheme of the Act. They submitted the definition of TGP with reference to a plan would be adequate.

- They submitted there was a need to change the Freshwater Plan and that the amended plan change was appropriate. They said that with the plan change all options, including avoidance, are available to deal with effects of TGP. A consideration of alternatives has been undertaken and the amendments now proposed are a result of that continuing process. They submitted that the Request is consistent with the NPS(FM), does not detract from the ability for the Freshwater Plan to give effect to the NZCPS and implements the objectives of
the Regional Plan. They submitted that the amended form of the Request is the appropriate form of the changes proposed.

- In reference to Section 10 of the Freshwater Plan, Counsel submitted that Para 10.4(1) which anticipates that the natural character of the water bodies listed in Appendix 2B will be preserved, could be achieved by the plan change. In any event they said that provision is not a policy to be delivered.

[107] Counsel reiterated that a specific stop provision on the effects management regime is not required because the amended plan change allows for all options to manage effects. If particular natural values are very important then a consent authority can require adverse effects to be avoided. Similar reasoning was used to oppose a provision in the policy advocated by the Director General of Conservation, requiring avoidance of effects where vulnerable or irreplaceable indigenous biodiversity is present.

[108] Counsel submitted that overall the effectiveness, efficiency, benefits and costs of the Request had been thoroughly debated during the hearing. They detailed the sequence of arguments that support this view and sought that the Request as now amended, be approved.

6 SUBMITTERS IN OPPOSITION

6.1 ISSUES RAISED BY SUBMITTERS’ PRESENTATIONS

[109] A variety of issues had been raised by submitters in opposition to the Request who appeared before us. These issues were summarised earlier\(^\text{12}\). In addition the following issues were raised or developed during the hearing:

- The approach to offsetting proposed in the Request is inappropriate;
- There has been an inadequate assessment of the implications of the Request in regards to the requirements of statutory documents;
- Waterway and estuarine values have not been given enough weight in the Request;
- The planning assessment undertaken by NZTA was inadequate;
- There are numerous freshwater values to be identified and managed;
- Peak oil diminishes the viability of TGP; and
- The cost-benefit analysis process is challenging.

\(^{12}\) Para [81] above.
6.2 EVIDENCE AND SUBMISSIONS OF OTHER PARTIES

The following parties presented evidence and submissions:

- The Director General of Conservation (Director General) (represented by Ms S Bradley and Ms A Camaivuna) provided evidence from:
  - Dr G Ussher - an ecologist who gave evidence regarding biodiversity;
  - Mr S Ericksen - a planner;
  - Ms H Kettles - an ecologist who gave evidence regarding estuarine ecology;
  - Ms N Bott - an ecologist who gave evidence about the ecological values of catchments likely to be affected by TGP.

- Kapiti Coast District Council (KCDC) (represented by Mr M Conway) provided evidence from:
  - Ms E Thomson - a planner.

- Appropriate Technology for Living, Public Transport Voice; Rational Transport Society and Paula Warren (represented by Mr T Bennion) presented a joint case and provided evidence from:
  - Ms P Warren - a policy analyst with botanical, ecological and resource management expertise or experience;
  - Mr T Jones - who addressed matters of sustainable energy;
  - Dr M Pickford - an economic researcher;
  - Mr K Wood - a retired engineer.

- Royal Forest and Bird Protection Society of NZ Inc (Forest and Bird) provided evidence from:
  - Dr R Bellingham - a planner and ecologist.

We briefly summarise the evidence given by these witnesses and the submissions presented by the parties who called evidence.

The Director General of Conservation

Dr Ussher is experienced in the application of biodiversity offsetting in New Zealand. He considered that the way NZTA intends to use offsetting is not in accordance with best practice and recommended amendments to the proposed approach including the removal of reference to the SEV method from the Request. Dr Ussher addressed the following topics:

- The international and New Zealand context for biodiversity offsetting;
- The application of biodiversity offsetting in New Zealand;
• Internationally accepted principles governing biodiversity offsetting;
• The mitigation hierarchy and limits to offsetting;
• Key points to consider for the application of biodiversity offsetting to ecological values that may be impacted by TGP and arising from the Request;
• The appropriateness of the use of the SEV tool as a means of determining the quantum and type of biodiversity required to be offset to achieve no-net-loss of ecological values;
• A memorandum dated 5 May 2011 prepared by Mr Milne for the Board; and
• Suggested amendments to the wording of the proposed plan change.

[112] In summary, Dr Ussher contended that the application of proposed Policy 4.2.33A would underestimate the biodiversity loss arising from construction activities associated with TGP and would not result in a no-net-loss outcome. He considered that further amendments should be made to the Request, to ensure that both in-stream values and downstream effects of TGP are appropriately managed.

[113] Ms Kettle’s evidence was directed at:
• Values of estuaries and in particular the Pauatahanui Inlet;
• Potential impacts of TGP on estuary values (especially Pauatahanui Inlet), particularly sedimentation, contamination and eutrophication.
• Restoration of estuary values;
• The NZCPS;
• NZTA evidence relating to estuary values;
• Managing potential effects.

[114] In summary, Ms Kettles deposed that estuaries are highly productive ecosystems and that estuarine values are high and worthy of protection. She discussed biodiversity values specific to the Pauatahanui Inlet and said that the Pauatahanui Inlet comprises 65% of the entire Porirua Harbour estuary, which is the largest of the 52 estuaries in the lower North Island. Ms Kettles stated that estuaries act as sinks for sediments, contaminants and nutrients flowing in from streams leading from the surrounding catchments. She noted that the Pauatahanui Inlet has already been significantly adversely affected by sediment and that contaminants associated with roading are a threat to the Inlet estuary. She also noted that TGP may increase nitrogen levels in the Inlet, facilitating the eutrophication process.

[115] Ms Kettles considered that the Request is contrary to a number of specific policies in NZCPS. She addressed the evidence of Dr Keesing. It was Ms Kettles’ evidence that effects on estuarine values should not be facilitated or condoned but that estuarine values should be enhanced. Accordingly, she contended that the proposed method of managing adverse effects contained in the Request needs to be revised as, in its proposed form, the Request would enable significant adverse
effects including through sedimentation. Ms Kettles noted that given the linkages between effects on freshwater and the coastal environment, an integrated approach is the only sensible way to manage the effects of TGP. She expressed the opinion that assessing and addressing adverse effects under the Freshwater Plan requires an assessment of the effects of TGP on the coastal environment including Pauatahanui Inlet.

[116] Ms Bott noted that all of the streams that would be affected by TGP are listed as significant indigenous ecosystems and habitats with significant indigenous biodiversity values in Appendix 1, Table 16, of the Proposed Regional Policy Statement. She detailed the ecological values of the Porirua Harbour and Wainui Stream catchments and discussed the importance and vulnerability of these ecological values. Ms Bott considered that enabling adverse effects to be remedied, mitigated or offset instead of avoided, reduced the protection provided to these values, which is inconsistent with the intention of including them in the Freshwater Plan in the first place. Ms Bott explained why she considered that a precautionary approach should be adopted to management of these values.

[117] Ms Bott also undertook an assessment of the ecological significance of the eight water bodies to identify the potential effects of TGP. She commented on the appropriateness of the cascading hierarchy contained in the Request as a way to manage these potential effects.

[118] In summary, Ms Bott expressed a preference for protecting ecological values through avoidance. She indicated that if off-setting is to be used, it should be based on the principle of no-net-loss or like for like. She discussed appropriate management approaches for each of the water bodies, dependent on their ecological values and noted that this may require additional investment and more innovative construction practices to ensure only minor effects result from TGP.

[119] Mr Ericksen addressed various issues, summarised as follows:

- The Request does not take into account the downstream effects of TGP. Regional councils are required to achieve the integrated management of natural and physical resources. An approach that accounts for downstream effects is required by the guiding national policy documents. Accordingly an inappropriately limited approach has been taken in assessing the implications of the plan change.

- The NZCPS should be considered now and considerable weight attributed to it in assessing the Request, rather than deferring this consideration to the resource consent phase as is proposed by Mr Daysh. Furthermore, the WRLTS should not be given more weight than the NZCPS.

- Mr Ericksen considered that the Request includes errors and omissions in the interpretation of the applicable statutory documents.

- To accept the Request would set a precedent in regard to project specific provisions within regional plans, which in Mr Ericksen’s view is undesirable.
• Mr Ericksen had concerns as to the adequacy and appropriateness of the revised policy. He considers that Mr Daysh’s explanation of how the policy would be applied does not match what is required by the text of the proposed policy.

• It is common practice that loss of ecological values must be offset by gains in ecological values (not amenity or recreation values). Furthermore, Mr Ericksen expressed the opinion that there should be no net loss of such values and preferably a net ecological gain. The proposed plan provisions should be amended to better achieve this outcome.

• Mr Ericksen considered that there is confusion in the use of the term to the extent practicable in the Request. He held the view that use of this term would lead to uncertainty in administering the Freshwater Plan.

• Mr Ericksen had concerns regarding the appropriateness of proposed Policy 4.2.33A and consequently proposed a new Policy 4.2.10A to replace proposed Policy 4.2.33A.

[120] Ms Bradley submitted that the Director General supported a plan change to allow full consideration of TGP under the Freshwater Plan using a cascading regime (which is international best practice) but sought amendments to ensure that after avoiding, remedying, mitigating and offsetting effects there would be no significant remaining adverse effects.

[121] Ms Bradley sought the avoidance of adverse effects on vulnerable or irreplaceable indigenous biodiversity as a mandatory first step in the cascading management regime. Then the policy should require avoidance to the extent practicable, remedying to the extent practicable, mitigating to the extent practicable and finally offsetting of the remaining effects. She submitted that offsetting should apply only to residual effects.

[122] Ms Bradley agreed that offsetting properly defined can mitigate effects and is an available technique under the Act. She submitted that offsetting does not include environmental compensation which, although not lessening effects, can be considered as a positive aspect of a development. Ms Bradley provided several case references on the topic of offsetting and environmental compensation and suggested including in the explanation to Policy 4.2.33A a definition of offset, agreed by the ecologists, as follows:

Offsets are measurable outcomes resulting from, and directly linked to, actions designed to compensate for residual adverse impacts arising from project development after appropriate avoidance, remedying and mitigation measures have been taken.

[123] Ms Bradley submitted that offsetting is a means to achieve remedying or mitigation of residual effects but is somehow distinct from avoid, remedy, mitigate because it is to apply only to residual effects. She accepted the definition of TGP now proposed by NZTA.
Ms Bradley accepted that the Freshwater Plan could potentially preclude the grant of consent to TGP and that amendments to Policies 4.2.10, 7.2.1 and 7.2.2 would remove that risk. However, her interpretation of the current Policy 4.2.10 was that it is only more than minor effects (after mitigation) which need to be avoided and that could be managed under the current wording of the policy. If the policy framework is to be expanded to remove the risk as requested by NZTA, she identified the following requirements:

- Define offset, linking it to TGP effects, and include it in the Policy with a no net loss requirement;
- Include bottom lines (vulnerability and irreplaceability);
- Provide guidance on the place and time for offset works and on the meaning of the term, to the extent practicable;
- Avoid specifying a technique for ecological stream evaluation.

Ms Bradley acknowledged that total avoidance of significant adverse effects on the water bodies in question is not required but noted that care is needed to assess their tolerance to change. She agreed that the Board will need to have regard to the significance of TGP pursuant to s149P(1)(a) and that the Board will need to examine alternatives pursuant to s32(3)(b).

Ms Bradley advised that the Director General is mainly concerned with sedimentation effects downstream of TGP in the Pauatahanui Inlet, an Area of Significant Conservation Value in the Wellington Regional Coastal Plan. She then canvassed the range of relevant statutory instruments including the NPS(FM) and the NZCPS. In the NZCPS Objectives 1 and 2, and Policies 4, 11, 13, 14, 21 and 22 were submitted to be relevant. She submitted that including the bottom line effects (vulnerability and irreplaceability) would give effect to the NPS(FM) and the NZCPS. She identified that the CMS is also relevant to our considerations, particularly in respect of the values in the Pauatahanui Inlet.

Ms Bradley provided draft changes to the Freshwater Plan in her submissions which would meet the Director General’s concerns. She submitted that these amendments were necessary to achieve the objective of the Freshwater plan, were appropriate in terms of the Act and met the purpose of the Act.

In summary, the Director General supported the concept of the Request but had concerns as to its form.

Kapiti Coast District Council

Ms Thomson testified that while KCDC is generally supportive of TGP, she was concerned that the Request seems to envisage redesigning the affected water bodies to fit the preferred road design. She made reference to the NPS(FM) and said that our decision needed to take account of this.

Ms Thomson considered the operative and proposed RPS documents and concluded that while the Freshwater Plan could be amended and still give effect to
both documents, the Request is not a better or more appropriate method than the existing policies. She contended that the WRLTS should not be given more weight than Part 2, the NPS(FM), RPS or existing Freshwater Plan objectives in our considerations.

[131] Ms Thomson was unconvinced that the Request is necessary to enable TGP and generally did not agree with Mr Daysh’s assessment under ss 67 and 32(3)(b) nor with some of the assessments provided in the Mitchell Partnerships s42A report. She considered that the Request is not adequately justified in terms of s32.

Ms Thomson was not comfortable with the environmental compensation approach to offsetting which she considered the Request proposed and instead favoured a mitigation based approach. She suggested amendments to the Request which in her view would be necessary to ensure that the Request is consistent with Part 2 of the Act.

[132] Mr Conway advised on behalf of KCDC that it wanted the Request declined because it prefers adverse effects on the Appendix 2B streams to be avoided. Nevertheless, KCDC supports TGP. In response to a query from the Board, he advised that there had been no formal Council resolution to determine a position for KCDC on the Request. The Board expressed a concern about KCDC stating a formal position to it without that position being approved by resolution.

[133] Mr Conway submitted that the Request, even with improved wording, was not the most appropriate way of achieving the objectives of the Freshwater Plan. Mitigation of adverse effects for some significant resources would not be an adequate response to objectives that used the words protect, preserve and safeguard. Offsetting or compensation is further removed. Offsetting of effects should not be included.

[134] Mr Conway submitted that once the provisions of Policy 4.1.10 and Appendix 2 are applied, the most effective policy to implement Objectives 4.1.4, 4.1.5, 4.1.6, 4.1.11, 4.1.12, 4.1.13, and 7.1.1 is one that provides a greater degree of assurance that the outcomes sought by these objectives will actually occur. All these objectives are relevant because the proposed plan change is to apply to all streams affected by TGP. He submitted that the Request would not implement the objectives as well as the current policies and would not be as effective or efficient.

[135] Mr Conway submitted that, contrary to KCDC’s submission, offsetting was contemplated by the Board then it should be strictly specified and controlled using the material in Schedule 2 of the proposed NPS(FM) and the policy itself should include that specification. He submitted that deleting all reference to offsetting in the plan change so that it simply referred to avoid, remedy and mitigate would be preferable. He contended that both offsetting and environmental compensation can be considered in the resource consenting phase without there being reference to them in the policies.

[136] KCDC supported a more detailed definition of TGP. Mr Conway submitted that whether or not s104D might prevent consideration of TGP, is not a test relevant to s32. He contended that the significance of TGP should not over-ride the unchallenged objectives of the Freshwater Plan.
In summary, KCDC opposed the Request. It had a secondary position that if the Request was approved it ought to be amended as suggested by Ms Thomson.

**Appropriate Technology for Living, Public Transport Voice, Rational Transport Society, and Paula Warren**

Ms Warren gave evidence on offsetting, the effects which TGP may have on fresh water and the coastal marine area, statutory requirements relating to the Request, the costs and benefits of TGP and their relevance in the statutory context. She undertook a theoretical analysis of the offsetting concept and expressed the view that it appears NZTA intends offsetting as something other than mitigation given that the term is added to a list that includes the term mitigation. She considered offsetting as protection, mitigation and avoidance and discussed its appropriateness and the relevance of offsetting for the Appendix 2B streams.

Ms Warren provided information as to natural values in the area of TGP. She identified and discussed what she considered to be relevant policies, plans and other statutory matters regarding likely impacts on the natural resources of the area. Ms Warren endeavoured to refute a number of the claimed benefits of TGP focusing on anticipated route security, reduction in journey times, safety benefits, health effects, social wellbeing, and the implications of changes in fuel prices.

Mr Jones gave evidence on the world oil supply, his key point being that world oil supply has peaked and peak oil presents a problem for New Zealand which is very vulnerable to oil supply constraints. He said that the need to reduce greenhouse gas emissions from transport is widely accepted and that alternative sources of transport fuels will not be sufficient to meet the shortfall in oil production. Projections of increasing transport activity no longer reflect a credible model of future transport activity and this calls into question the need for motorway projects such as TGP. Mr Jones contended that transport alternatives which make better use of scarce resources, and which enhance resilience when faced with a future of declining transport fuel availability and high transport fuel prices are preferable.

Mr Pickford discussed the process involved in calculating benefit-cost ratios (BCR) and stated that the BCR must be larger than one for a project to be viable. He said that in his experience, agencies typically set a minimum BCR for their projects. The former Transit New Zealand required the BCR of a given project to be greater than 4. According to a letter sent from NZTA to Councillor Paul Bruce (dated 16 March 2011), the Wellington Northern Corridor RoNS has a BCR of 1.1 excluding agglomeration benefits and 1.2 including agglomeration benefits. TGP itself has a BCR of only 0.6. Mr Pickford concluded that on the basis of the estimated BCR provided by NZTA it would be economically irrational to proceed with TGP.

Mr Wood discussed the updated NZTA Economic Evaluation Manual and defined the purpose of TGP as being to support traffic growth. The majority of his evidence focused on the difficulties in identifying the BCR for TGP, including issues associated with hourly rates being applied to time savings, values of time, estimating and using time savings and incorporating wider economic benefits and agglomeration effects. Mr Wood contended that a weakness of TGP is that it is...
being developed in isolation of other transport links and that there is a need to consider other approaches towards transportation.

[143] Mr Bennion formally adopted the position of KCDC in a number of respects. Additionally he submitted that benefits and environmental effects of TGP have not been proven sufficiently in terms of s32 and that the change would not conform to the objectives of the Freshwater Plan, the RPS, the NPS(FM), the NZCPS or s67(1).

[144] Mr Bennion argued that the Request does not meet the requirements of s145(9) or s66(1). He submitted that TGP has not been assessed in a detailed enough manner to allow consideration of the Request under Part 2 of the Act and that reductions in stream protection are sought to allow the unproven benefits of TGP. He submitted that Objectives 4.1.4, 4.1.5 4.1.6, 4.1.12 and 4.1.13 of the Freshwater Plan would not be implemented by the plan change particularly in respect to the concept of offsetting.

[145] Mr Bennion considered provisions of the operative and proposed RPS, the Regional Coastal Plan, the NPS(FM) and submitted that any plan change must accord with those provisions. He argued that any policy allowing offsetting (assuming it was appropriately defined) must envisage residual effects and he submitted that is contrary to objectives of protection or preservation.

[146] After considering evidence and submissions during the hearing, Mr Bennion suggested some changes to the proposed Policy 4.2.33A so that the practicability criterion was removed, the term waterway was replaced by waterbody, reference to the coastal marine area was included and effects on threatened species or ecosystems were avoided.

[147] In summary, the parties represented by Mr Bennion opposed the Request. They also had a secondary position that if the Request was approved changes ought to be made to it, as suggested above.

Royal Forest and Bird Protection Society of NZ Inc

[148] Forest and Bird had provided a brief of evidence from Dr Bellingham. His evidence (which was pre-circulated, but not presented in person to the Board) addressed four primary issues:

- The appropriateness of offsetting;
- Whether offsetting is appropriate for TGP;
- Whether SEV is a suitable tool for the proposed offsetting;
- The affect of the NZCPS in assessing offsets for TGP.

[149] Dr Bellingham stated that Forest and Bird does not support offsetting for TGP nor as a general concept for all consent applications. He suggested that it would be premature to formally introduce offsetting into plan provisions while the Department of Conservation is yet to conclude its CRDTP Biodiversity Offset Programme. The effects of TGP should be assessed at the time the resource consent application is
considered as a whole. Allowing the Request would not only allow serious adverse effects on the relevant streams, but would also cause damage to Pauatahanui Inlet and streams affected by TGP. Dr Bellingham suggested that these waterways and water bodies should be subject to progressive restoration rather than permanently degraded.

[150] Dr Bellingham noted that the Freshwater Plan already contains some limited provisions for offsetting. His primary concern was that with no guidance in the Freshwater Plan, the natural environment will be significantly undervalued and inadequate mitigation and compensation will be derived to address the significant adverse effects of TGP. Dr Bellingham provided examples from his experience that the natural environment generally loses in big development projects. To help overcome this, he stated that a better definition of offset is needed to guide the decision and he proposed such an alternative.

[151] Dr Bellingham viewed the offsetting proposal as an opportunity to redress the ecological losses that are likely to come from TGP, but noted that the proposed approach needs amendment. He said that there should be no reference to SEV in the Request. Mitigation should be required to apply to all affected streams not just Appendix 2 streams and the adverse effects footprint of TGP provides a good guide to where NZTA should apply offsets. Furthermore, as TGP extends beyond the motorway itself the Board may need to take into account the NZCPS (in particular Policy 4: Integration).

[152] In summary, Forest and Bird’s evidence was directed specifically at the concept of offsetting, its definition and its inclusion in the Freshwater Plan. The evidence was somewhat more restricted in scope than Forest and Bird’s original submission.

7 EXPERT WITNESS CONFERENCING

[153] Prior to the hearing the Board required expert witnesses in the fields of ecology and planning to participate in conferences where they considered various issues identified by the Board. The witnesses did that and at the conclusion of each conference provided a joint statement identifying matters where they were in agreement, matters where they disagreed and the reasons for their disagreement.

[154] The expert witness joint statements were circulated to all parties and made available on the EPA website.

8 SUMMARY OF REPRESENTATIONS

[155] In addition to those parties who presented evidence and submissions, a number of submitters appeared before the Board and made formal representations which did not constitute evidence but were statements of the parties’ views on the Request. We have given consideration to those representations in reaching this decision. We summarise the representations as follows:
• Mr J Horne raised concerns with the effects of human activity on the rate of sedimentation in the Pauatahanui Inlet. He noted that the Horokiri Stream, Ration Creek, Duck Creek and Pauatahanui Stream flow into the Inlet. Mr Horne requested the Board decline the Request on the basis that if TGP was granted consent it could affect the amenity, biodiversity and wider ecological values of the streams.

• Mr P Morgan (on behalf of Cycle Aware Wellington and Living Streets Aotearoa) expressed a concern that TGP would not deliver benefits to people who travel or live along the existing SH1 coastal route. He also contended that the benefits of TGP were untested, concluding that *we should not be trading away unique biodiversity*\(^{13}\).

• Ms K Brown argued that this hearing was an appropriate avenue for testing the merits of TGP. She identified to the Board what she believes are the wider environmental and social effects generated by transport infrastructure including climate change. Ms Brown concluded by stating that she believed the costs outweighed the benefits of TGP.

• Councillor H Wooding spoke as a representative of KCDC (but we note, without the authority of a Council resolution) in support of the Council's submission. She stated that KCDC does not support the Request as it considers that it undermines environmental bottom lines agreed by the local and regional community and further that it undermines the intent of such documents as the proposed NPS(FM). Clr Wooding advised that KCDC is not convinced that the plan change is necessary to enable TGP to be developed.

• Mr M Mellor (on behalf of Public Transport Voice) questioned whether TGP is consistent with the RPS. In discussing the reason for the group’s submission Mr Mellor stated:

> NZTA acknowledges the change will adversely affect regionally important streams and justifies this because it believes the project to be of overriding regional significance, and we submit that, far from being a benefit to the region, the project is likely to have significant long term adverse effects on the region and its transport network.\(^{14}\)

Mr Mellor identified reasons why his group did not believe that TGP is regionally important infrastructure and that the social, economic and environmental effects of TGP are such that it is contrary to the RPS. He concluded that there is [no] valid reason for lowering the standards of the Regional Freshwater Plan for the project and the plan change request should, therefore be declined\(^{15}\).

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\(^{13}\) Notes of Evidence (NoE), pg 201.

\(^{14}\) NoE, pg 256.

\(^{15}\) NoE, pg 258.
Mr P Bruce (on behalf of Appropriate Technology for Living) stated that he and his group believe that TGP is not a regionally important project and therefore it does not warrant an exemption from the Freshwater Plan. Mr Bruce cited research into the effects of peak oil and the impact of climate change and questioned assumptions in the cost benefit analysis undertaken by NZTA stating that:

So the project will provide no economic benefit and the negative cost benefit ratio, in fact, means that the Project could not be funded under government under normal rules. It is not a good project from an environmental perspective.¹⁶

Mr Bruce said that he would like to see protection for the streams increased rather than decreased and proposed his own plan changes to do so.

Mr R Jessup (representing the Coastal Highway Group) outlined his group’s belief that ...social, economic and cultural well-being and their safety...would be much better dealt with by developing the Coastal Highway at considerably less expense than Transmission Gully.¹⁷

Mr G Thompson (also representing the Coastal Highway Group) questioned NZTA’s decision to proceed with TGP. He expressed the view that ...there is no reason for a plan change before the major application and the water issues should be considered in the total context.¹⁸

Mr Thompson requested that the Board adjourn sine die until the anticipated resource consent applications are made.

Dr R Norman stated that freshwater ecosystems are in crisis in New Zealand and that the decline in freshwater ecosystems is due to intensive agricultural use in pastoral catchments. He believed that environmental bottom lines were required, noting that:

...this year we’ll trade off a bit of environmental degradation, next year we’ll trade off a bit more environmental degradation and further and further down the track until we have nothing left, that’s why we need inflexibility in environmental plans to provide some bottom line protection to natural environments particularly freshwater ecosystems which are in crisis at the moment because they are being degraded year after year after year.¹⁹

¹⁶ NoE, pg 266.
¹⁷ NoE, pg 274.
¹⁸ NoE, pg 278.
¹⁹ NoE, pgs 340 – 341.
Dr Norman concluded that if NZTA wishes to proceed with TGP, it should do so within the existing environmental protections provided by the operative and proposed RPS.

- Mr N Fisher did not appear but provided a written representation to the Board outlining his belief that the assumed benefits to the community from TGP are unsupported by evidence. Mr Fisher questioned the concept of offsetting adverse effects and concluded that:

  New Zealand is at a crisis point with the management and quality of our waterways and lagoons. This application, if approved, will only serve to ensure the further deterioration of our environment.

9 UNDERPINNING ISSUES

[156] In reaching our decision on the Request, the Board has considered the Request and all of its supporting material, the s42A reports received, the submissions and further submissions lodged, the evidence, legal submissions, representations and further information presented by NZTA, submitters and/or their representatives at the hearing.

[157] Given that no new objectives have been proposed by the Request, the Board is not required to determine whether the proposed change is the most appropriate way to achieve the purpose of the Act. Rather, the evaluative focus is narrower and requires determination of whether the proposed changes:

- Are appropriate to achieve the objectives of the Freshwater Plan;
- Will assist Greater Wellington in carrying out its functions to achieve the purpose of the Act;
- Will satisfy the relevant requirements of ss 66 and 67; and
- Are in accordance with Part 2.

[158] In Eldamos Investments Ltd v Gisborne District Council21 (adopted in Geotherm Group Ltd v Waikato Regional Council 22), the Environment Court identified the following measures for evaluating proposed plan objectives and for evaluating proposed plan policies, rules and other methods:

A. An objective in a district plan is to be evaluated by the extent to which:

1. it is the most appropriate way to achieve the purpose of the Act (s32(3)(a));

20 Written representation, Monday 11 July 2011, pg 2.


2 it assists the territorial authority to carry out its functions in order to achieve the purpose of the Act (s 72); and

3 it is in accordance with the provisions of Part 2 (s 74(1)).

B. A policy, rule, or other method in a district plan is to be evaluated by whether:

1 it is the most appropriate way to achieve the objectives of the plan (s 32(3)(b)); and

2 it assists the territorial authority to carry out its functions in order to achieve the purpose of the Act (s 72);

3 it is in accordance with the provisions of Part 2 (s 74(1)); and

4 (if a rule) it achieves the objectives and policies of the plan (s 76(1)(b)).

[159] We have adopted the Eldamos approach to the assessment of the Request. In the present case it is only the matters under B (1-3) (above) which are relevant because we are only considering changes to policies, not objectives and not rules. (Eldamos involved a district plan but we believe is equally applicable to evaluation of proposed policies of a regional plan, subject to amendment of the various section references). The Environment Court decision in Long Bay-Okura Great Park Society v North Shore City Council (Long Bay)\(^{23}\) has extended the tests outlined in Eldamos to include the “higher order directions” of sections 72, 74 and 76 (in relation to district plans). We were also advised that the Long Bay decision outlines a more comprehensive set of relevant considerations for plan changes.

[160] As required by s32, a mandatory consideration for the Board when considering the Request is whether the proposed changes (and in particular the cascade of avoiding, remedying, mitigating or offsetting) is the most appropriate means for achieving the objectives of the Freshwater Plan ...having regard to their efficiency and effectiveness.

[161] Before we consider the merits of the Request, we make findings in respect of four matters which inform and underpin our considerations. In some cases these are matters of fact and in some cases matters of fact and law. They are:

- Firstly, whether or not the Freshwater Plan in its present form does preclude or potentially preclude the grant of regional consents to TGP having regard to the provisions of s104D as contended by NZTA;

- Secondly, a finding as to the condition of Horokiri, Ration and Pauatahanui Streams (and the other streams potentially affected by TGP) and whether or not the avoidance of adverse effects is the only appropriate mechanism under RMA to enable their sustainable management;

- Thirdly, the significance of TGP; and

\(^{23}\) Decision A078/2008.
Fourthly, a determination as to what constitutes offsetting.

We consider those matters in the order above.

**Does the Freshwater Plan in its present form preclude or potentially preclude the grant of regional consents to TGP having regard to the provisions of s104D RMA?**

[162] We have previously identified the reasons why NZTA made its Request in paras [55]-[61] above, but for the purposes of this discussion summarise them as follows:

- Rule 50 of the Freshwater Plan provides that the reclamation of the beds of lakes or rivers (excluding Lake Wairarapa) is a non-complying activity.

- Although the word reclamation is not defined in the RMA or the Freshwater Plan, no party to these proceedings disputed that works in water bodies affected by TGP may fall within the commonly accepted meaning of that word. Accordingly, non-complying activity consent under the Freshwater Plan will be required for at least some of these works.

- Non complying activity applications are subject to the provisions of s104D which require (in summary) that a resource consent for a non-complying activity may only be granted if a consent authority is satisfied that either:
  - the adverse effects of the activity on the environment will be minor; or
  - the application is for an activity that will not be contrary to the objectives and policies of (in this case) the Freshwater Plan.

- These two criteria are commonly referred to as the gateway tests. Unless a non-complying activity application passes through one of the gateways it cannot be considered for consent on its merits pursuant to s104.

- NZTA accepts that the magnitude of TGP is such that some adverse effects which it might have on the physical environment will be more than minor. TGP is accordingly unable to pass through the first (minor effects) gateway of s104D.

- NZTA has concluded that (arguably) TGP may be contrary to identified policies of the Freshwater Plan namely Policies 4.2.10, 7.2.1 and 7.2.2 which (individually and collectively) require the avoidance of adverse effects. If that was found to be the case by the consent authority considering any resource consent application for TGP, the application might not pass through the second (objectives and policies) gateway of s104D.

- Having failed to pass through either gateway of s104D, the application would consequently be declined without having been subject to a full appraisal having regard to its beneficial, as well as its adverse, effects. Such an appraisal is undertaken pursuant to s104 but would be precluded if the application had not passed the s104D gateway tests.
• NZTA contends that to the extent that the policies in question seek avoidance of adverse effects, they are unnecessarily restrictive in nature. It seeks to amend the policies to allow consideration of remedy, mitigation and offsetting of adverse effects as well as avoidance. NZTA contends that amending the Freshwater Plan in that manner will enable a full consideration of any resource consent applications for TGP.

[163] There was some debate between the parties before us as to whether or not the policies in question would have the constraining consequences claimed by NZTA. A brief summary of the other parties' positions on that issue is as follows:

• KCDC did not directly address NZTA’s propositions as to the consequences of the policies. However in the planning evidence which she gave on behalf of KCDC, Ms Thomson expressed the opinion that ...it is not a foregone conclusion that the TG Project will necessarily be contrary to the objectives and policies as a whole (in their current form) particularly if the project is designed in a way that is sympathetic to the waterways as indicated in Dr Keesing’s evidence. On that basis the plan change may not be necessary." Accordingly, the position of KCDC as to whether or not the identified policies in their present form preclude a grant of consent to Transmission Gully could probably be described as ambivalent.

• Mr Bennion’s submissions seem to have been predicated on the assumption that even if the policies have the consequences contended by NZTA, they are the appropriate policies to which TGP should be subject.

• In her submissions for the Director General, Ms Bradley identified two situations where Policies 4.2.10, 7.2.1 and 7.2.2 in their present form could potentially preclude the grant of consent to TGP. However, the planning evidence of Mr Ericksen was largely directed at the appropriateness of the Request rather than its perceived necessity. Mr Ericksen went so far as to suggest that there may be other potentially significant policy barriers to the grant of consent to TGP in the Freshwater Plan which are not addressed by the Request.

• In his s42A report Mr Kyle expressed the following view:

....A broad judgement as to applicability and weighting in this regard is required. Section 104D does not allow for a deconstructionist approach whereby the proposal is assessed against each individual objective and policy, on the basis that if the proposal is contrary to any one of those it will fail the gateway test that applies.

While we understand the NZTA’s concerns and the reasoning for the plan change request, it may be that NZTA has adopted an overly cautious

24 Thomson, Evidence in Chief (EiC), para 4.24.

25 Para 41.
approach to the likely assessment of the Transmission Gully Project against the relevant plan provisions.\(^{26}\)

- The officers of Greater Wellington (Messrs M McLea and J Streat) who prepared a s42A report for the Board, accepted that Policy 4.2.10 limited NZTA's options to offset reclamation activities in the named streams and on balance accepted the concerns of NZTA as to the possible effects of the policy provisions on TGP.\(^{27}\)

- Mr Milne expressed reservations as to whether the policies would provide the hurdle to TGP which NZTA considered, but accepted that on at least some interpretations the policies could have that effect. On balance he considered that it was best for any uncertainties to be resolved.

[164] We concur with the view that on at least some interpretations the policies in question could operate to close the objectives and policies gateway of s104D RMA so as to preclude consideration of TGP on its merits pursuant to s104. Consideration of whether any particular proposal is contrary to the objectives and policies of any given regional or district plan is frequently a difficult and disputed exercise involving a broad consideration of objectives and policies overall. However in a situation where there are objectives or policies directed at specific outcomes (as in Policy 4.2.10), a proposal which is found to directly offend such objectives or policies may be found to be contrary to the objectives and policies of the plan overall.

[165] We appreciate that there are contrary arguments (such as those advanced by Ms Thomson for KCDC) but do not think that it is necessary for us to determine who is right or wrong in that regard. In the context of these proceedings, we consider that it is sufficient if we find that there is uncertainty as to the consequences of the policies insofar as any application for non-complying activity consent for TGP is concerned so that they potentially preclude the grant of consent to TGP. We find that to be the case.

[166] Accordingly, we conclude that the underlying rationale for the Request is well founded. That finding of itself does not lead us to the conclusion that the Request ought be approved but does mean that there is a live issue to be determined as to whether or not there should be an alteration to the policy framework of the Freshwater Plan to accommodate TGP as sought by NZTA and if so what form it might take.

**Condition of streams**

[167] TGP will affect, in some way or other, eight water bodies which lie within its route. Three of those water bodies (Horokiri, Ration and Pauatahanui streams) are identified in Appendix 2B of the Freshwater Plan as being water bodies which are to

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\(^{26}\) Mitchell Partnerships s42A Report, April 2011, paras 7.66 - 7.67

\(^{27}\) Wellington Regional Council s42A Report, April 2011, para 18.
be managed for aquatic ecosystem purposes. Policy 4.2.10 seeks to avoid adverse effects of developments on the natural character of Appendix 2B waterways.

[168] Policy 7.2.2 applies to all eight of the water bodies in the TGP route and seeks \textit{to not allow...} the use of the beds of water bodies for activities that have significant adverse effects on various values and qualities including (inter alia) the values held by tangata whenua and natural or amenity values. This policy can be described as requiring total avoidance of significant adverse effects on all of the water bodies concerned.

[169] Put in its simplest terms, what the Request seeks to do is to widen the policies in question to enable consideration of a range of responses to any adverse effects on the water bodies caused by TGP, other than simply avoidance of those effects. The amended policies proposed by NZTA seek to allow avoidance, remedy, mitigation or offsetting of adverse effects (including significant adverse effects) of TGP on the water bodies to be considered rather than just avoidance.

[170] That raises the question as to whether or not the condition and values of the water bodies which might be affected by TGP are such that avoidance of any adverse effects on them is the only appropriate resource management method to be used in their sustainable management. The Board heard evidence on this topic from the four expert ecological witnesses previously identified and whose evidence we have also previously summarised, namely:

- Dr Keesing for NZTA;
- Dr Ussher for the Director General;
- Ms Kettles for the Director General;
- Ms Bott for the Director General.

[171] We have noted that the Board required these witnesses to participate in an expert witness conference prior to our hearing with a view to resolving any disputed issues between them. Additionally, Ms Warren is a qualified ecologist and gave evidence on ecological matters. At the Board’s direction she did not participate in the ecological witnesses’ conference due to her stated interest in the proceedings as a submitter opposing the Request. She was however, given the opportunity to comment on the report from the expert witness conference.

[172] In his rebuttal evidence, Dr Keesing described the values of the water bodies which will be affected by TGP in these terms:

12. \textit{The water bodies affected by the TG Project are hill country water bodies in a fully ruralised area with catchments all having experienced catchment forest clearance, farming, riparian degradation, water quality changes, sedimentation and large changes in species composition. None are pristine or even high in terms of representing a pre-1840 condition or even a particularly natural condition.}

13. \textit{As my EIC states, these water bodies are not without value, but the value is relative. While in generally highly modified states, they nevertheless contain}
species of value and systems that at least mimic their natural state. Furthermore, these water bodies hold greater value because of the paucity of examples in even a reasonable state in rural and urbanized landscapes. They are, however, still very modified when compared to water bodies that are in “pristine” or good condition and are quite tolerant of changes to quality and quantity of water.

14. None of the water bodies affected by the TG Project are of sufficient quality, composition or sensitivity to require avoidance in order to maintain their current values.

[173] The expert witness conference was asked by the Board to comment specifically on the conclusion reached by Dr Keesing in his para 14 (above). The response contained in the witnesses’ joint report was as follows:

Resolved

6. Agreed on the following with respect to:

(a) no streams affected by the Project are of such condition to require total avoidance (i.e. in the normal sense of the word rather than the policy meaning) but it is not known how tolerant they are to change. There are tipping points in condition beyond which degradation can occur rapidly. We are unsure of where the tipping points are in relation to these streams.

[174] In her comments on the joint report, Ms Warren said28:

I do not have sufficient knowledge of the particular streams to be able to agree or disagree with the assessment of their current state.

I agree that ecological systems will generally have a tipping point, and that this is difficult to predict. I would add that reversing deterioration after degradation can be very difficult, and in some cases will not be possible.

I would also note that any evaluation of the effect on the “current values” of a stream must clarify what those values are. The ecological condition overall of a stream could be maintained, while a particular value was adversely affected.

[175] We accept the evidence given by Dr Keesing and summarised in his paragraph 14. His opinion was not upset in cross-examination, nor was it challenged by any other contrary probative evidence. It was consistent with the advice given by the officers of Greater Wellington in their s42A report. It was confirmed at the conference of ecological witnesses, subject to the reservation that it was not known how tolerant the water bodies were to change and where the tipping points might be in relation to those streams. (We understood the term tipping point to describe the point at which there might be a precipitous decline in particular values.)

Accordingly, we find that the values of the water bodies to which the Request relates are not such that avoidance of adverse effects is the only appropriate method of sustainably managing the effects of the TGP on those water bodies. We consider that any consent authority considering resource consent applications for TGP should have available to it the full range of mechanisms contemplated in the Act, namely avoidance, remedy and mitigation, to manage any adverse effects occasioned by TGP.

In making that finding, we are not suggesting that if and when a resource consent application for TGP is made, the relevant consent authority may not determine in light of the evidence before it, that avoidance of adverse effects on certain values is the appropriate response in any given instance. That would be for the consent authority to determine. However, the evidence satisfied us that avoidance is not the only method of managing adverse effects on the affected water bodies which should be available to the consent authority.

The significance of TGP

NZTA contends that TGP is a project of such significance as to warrant making specific provision for it in the Freshwater Plan. NZTA identified a number of matters in support of that proposition which we have considered.

Firstly, we have had regard to the fact that the Minister has determined to refer the matter to this Board pursuant to the provisions of s142(2)(a) which relevantly provides:

(2) If the Minister considers that a matter is or is part of a proposal of national significance, the Minister may call in the matter by making a direction to -
   (a) refer the matter to a board of inquiry for decision;

In determining that TGP is a proposal of national significance which ought be referred to this Board, the Minister was guided by the provisions of s142(3), which provides:

(3) In deciding whether a matter is or is part of a proposal of national significance, the Minister may have regard to:
   (a) any relevant factor, including whether the matter-
      (i) has aroused widespread public concern or interest regarding its actual or likely effect on the environment (including the global environment); or
      (ii) involves or is likely to involve significant use of natural and physical resources; or
      (iii) affects or is likely to affect a structure, feature, place or area of national significance; or
      (iv) affects or is likely to affect or is relevant to New Zealand’s international obligations to the global environment; or
(v) results or is likely to result in or contribute to significant or irreversible changes to the environment (including the global environment); or

(vi) involves or is likely to involve technology, processes, or methods that are new to New Zealand and that may affect its environment; or

(vii) is or is likely to be significant in terms of section 8; or

(viii) will assist the Crown in fulfilling its public health, welfare, security or safety obligations or functions; or

(ix) affects or is likely to affect more than 1 region or district; or

(x) relates to a network utility operation that extends or is proposed to extend to more than 1 district or region.

[181] The Minister clearly had regard to a number of the above factors in determining to refer the Request to this Board. The factors which lead to the Minister so deciding are set out in full in para [5] of this decision and it is not proposed to repeat them here.

[182] Secondly, we have had regard to the GPS issued by the Minister of Transport pursuant to the Land Transport Management Act 2003. The GPS identified seven RoNS including the road described as ...Wellington Northern Corridor (Levin to Wellington) - State highway 1. TGP is part of this road.

[183] The GPS describes the RoNS in these terms:

22. These are seven of New Zealand’s most essential routes that require significant development to reduce congestion, improve safety and support economic growth. The purpose of listing roads as nationally significant is to ensure these priority roading developments are taken fully into account when the NZTA develops the National Land Transport Programme.

[184] Thirdly, in addition to its identification as a RoNS in the GPS, the Wellington Northern Corridor has been identified as being an appropriate project for funding in NZTA’s National Land Transport Programme (NLTP). The importance and priority of the Northern Corridor is outlined in the Wellington Regional Summary to the NLTP in these terms:

In Wellington, the entire length of SH1 between Levin and Wellington Airport has been identified as a RoNS because of the need to provide a quality link to service Wellington, the Kapiti Coast, Levin, Palmerston North and the wider lower North Island. Currently this route is regularly congested and has a relatively poor safety record, which inhibits the flows of people and freight and restricts economic growth.

29 NLTP Wellington Regional Summary, pg 7.
The WRLTS (2010-2040) is a statutory document prepared by the Regional Council. Policy 8.1 r of WRLTS is to:

Ensure the proposed Transmission Gully project is developed as the long term solution to address access reliability for State Highway 1 between MacKays and Linden.

In his evidence for NZTA, Mr Nicholson identified a number of benefits which would arise from TGP. They include:

- Improved route security for the national and regional road network. SH1, SH2 and the North Island main trunk rail networks are presently vulnerable to damage and likely to be closed for many weeks in the event of large earthquake or storm events. TGP will provide a safer, more secure and efficient highway connection between Wellington and the lower North Island with greater resilience to earthquakes and flooding and greater route security in the event of a major incident or natural event.

- A reduction in journey times between Wellington and the lower North Island as TGP will provide a higher standard route with greater capacity and fewer intersections than the existing SH1. Currently SH1 between Levin and Wellington International Airport is regularly and severely congested at some times and in some locations.

- The existing SH1 presently has a poor safety record with one of the highest rates of fatal/serious crashes per kilometre in the country. These safety risks often serve to exacerbate congestion problems. TGP will substantially improve the safety of the route for its users.

- The last benefit identified by Mr Nicholson was that diverting through traffic to TGP would reduce the community severance and amenity impact experienced by the coastal communities along the present SH1, which would become a local road.

Mr Nicholson was cross-examined by Mr Bennion as to calculation of the BCR which formed part of NZTA’s assessment of the project economics. Other than that, his evidence as to the benefits of TGP was unchallenged in cross examination or in the evidence which we heard.

We have no hesitation in finding that TGP is an important roading project at both a national and regional level. In reaching that conclusion we have had regard to the Minister’s assessment that TGP is a proposal of national significance, the identification of TGP as part of a RoNS, the reference to TGP in the WRLTS and Mr Nicholson’s direct evidence on the point.

In considering this Request, we are obliged to have regard to the Minister’s reasons for directing the Request to the Board and to management plans and strategies

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30 EiC, paras 51-59.
31 Section 149P(1)(a).
prepared under legislation other than the Act. The determination of the Minister and provisions of other management plans and strategies are not binding on us but they are something which we must consider and give appropriate weight in our determination.

[189] Our assessment of the significance of TGP is undertaken in a limited context in these current proceedings. The issue for our determination is whether or not the significance of TGP is such that it is appropriate to consider changing the Freshwater Plan as sought by the Request.

[190] We find that TGP is of sufficient significance to warrant that consideration. That conclusion is based on our finding that TGP is a nationally and regionally important roading project, in conjunction with our earlier finding that the condition of the water bodies likely to be affected by TGP is not such that total avoidance of adverse effects on those water bodies is required.

[191] Making that finding does not require us to determine that TGP may or may not have adverse effects on water bodies which ought to be avoided irrespective of the significance of TGP. Nor does it require us to determine whether or not remedy or mitigation of adverse effects in the water bodies is the appropriate response to their management rather than avoidance in any given instance. Those are matters which will be determined by the relevant consent authority when and if resource consent applications are made to carry out TGP works in the water bodies concerned.

[192] It will be apparent from our earlier summary of the submissions made to us that a number of parties to these proceedings challenged the concept that it was appropriate to make provision for roading projects such as TGP at all. We have made no determination on those issues which do not seem relevant to our considerations in this case. We are deciding the comparatively restricted issue of whether or not TGP is of such significance (whatever the views on its merits might be) that the policies of the Freshwater Plan ought to be changed in the manner requested by NZTA.

[193] It is also relevant to record that in the Request as originally proposed, NZTA proposed that the Explanation to Policy 4.2.33A contained the following statement:

>This policy recognises that the Transmission Gully Project is particularly important for enabling people and communities to provide for their social, economic and cultural wellbeing and for their health and safety.

[194] The Board suggested during the course of the hearing, that this statement could not be justified by the evidence before us. We understood NZTA to concur with that proposition. In the amended version of Policy 4.2.33A which NZTA advanced in closing, the Explanation recognised that the basis of the Policy was the significance

32 Section 66(2)(c)(i).
33 Para [81] above.
attributed to TGP by the various national and regional policy documents we have identified rather than the wider benefits which were originally claimed. Again, our finding is consistent with that more limited recognition.

Offset/Offsetting

[195] We have previously referred\(^{34}\) to the cascading management regime which NZTA seeks to insert in the Freshwater Plan through Policy 4.2.33A, providing that adverse effects of TGP are to be managed:

- By avoidance to the extent practicable;
- By being remedied to the extent practicable, if they cannot be practically avoided;
- By being mitigated to the extent practicable if they cannot practically be avoided or remedied;
- Finally, any adverse effects which cannot practically be avoided, remedied or mitigated are to be offset.

[196] There was some confusion on the part those participating in the Request process as to just what NZTA meant by the term offset. That confusion arose for a number of reasons:

- Its identification as a separate final step in the cascading management regime indicated that NZTA considered that offset (or offsetting) was something different to avoidance, remedy or mitigation of adverse effects;
- The Explanation to Proposed Policy 4.2.33A defined offset as meaning \(\text{...taking action that will offset any adverse effects such as enhancing amenity, ecological, or recreational values on-site or elsewhere.}\) Inclusion of the word offset in the definition of offset is not particularly helpful (although it was a feature of a number of definitions which came before the Board during the course of the hearing). Further, the definition was very loosely phrased. Use of the words \(\text{...such as enhancing amenity, ecological, or recreational values on-site or elsewhere...}\) indicates that the specific means identified are examples only and appears to give NZTA an \textit{open book} as to the nature of the offsets it would offer as part of any resource consent application;
- Because the proceedings before the Board were a plan change rather than a resource consent application, the specific proposals which NZTA might have to offset adverse effects of TGP were not put before the Board, so that those interested in these proceedings simply did not know what means NZTA proposed to offset any adverse effects of TGP;
- In their opening submissions, counsel for NZTA submitted that \(\text{...the concept of offsetting (which is sometimes referred to as environmental compensation) has}\)

\(^{34}\) Para [29] above.
been well recognised through case law\textsuperscript{35}. In fact, we understood (and we think ultimately that all parties agreed) that offsetting is something different to the concept commonly known as environmental compensation.

[197] These uncertainties gave rise to a concern that the Board was being asked to write into the Freshwater Plan as a policy, an open-ended provision enabling NZTA to offer a (presently) unidentified and unconfined range of compensatory measures to address adverse effects on water bodies, brought about by TGP.

[198] Both the Director General and KCDC sought that, if the Request was approved, a definition of offset/offsetting should be included in the Freshwater Plan to give certainty as to what may come under that description. Mr Kyle raised concerns on this issue in his initial s42A Report and the Board had similar concerns. One of the matters which we will discuss in the succeeding section of this decision is whether or not reference to offsetting should be included in proposed Policy 4.2.33A at all, however the Board concurs with the view of those parties who advanced the proposition that if there is to be any reference to that concept in the Freshwater Plan it ought be properly defined.

[199] An appropriate starting point is the dictionary definition of the word. The New Shorter Oxford English Dictionary defines offset as meaning ...A \textit{counterbalance to or compensation for something else; a consideration or amount diminishing or neutralizing the effect of a contrary one}. The Cambridge (Online) Dictionary defines offset as meaning ...\textit{to balance one influence against an opposing influence, so that there is no great difference as a result}. Put in its simplest general terms, the concept of offset requires that an adverse effect is counterbalanced by a beneficial effect.

[200] The Act has not defined what constitutes offsetting or environmental compensation. In practice the terms have sometimes been used interchangeably (as they were by counsel for NZTA in their opening submissions). These concepts have largely developed as a matter of practice through applicants for resource consents offering various remedial, mitigatory or compensatory works to counter balance adverse effects caused by development proposals and have been the subject of a number of decisions of the Environment Court.

[201] In the Environment Court decision \textit{J F Investments Ltd v Queenstown Lakes District Council}\textsuperscript{36}, Judge Jackson described the concept of environmental compensation in these terms:

\begin{quote}
\textit{The concept arises in this way: an applicant for a resource consent may choose or be required to avoid or mitigate or, occasionally, to remedy the adverse effects of a proposal. Or the applicant may volunteer to remedy or mitigate adverse effects of other activities. The offer may be fungible, that is of the same kind as the values or resources being lost, or different; it may be to}
\end{quote}

\textsuperscript{35} NZTA Opening Submissions, para 63.

\textsuperscript{36} Decision C48/2006.
remedy or mitigate adverse effects on-site or off-site. We define as ‘environmental compensation’ any action (work, services or restrictive covenants) to avoid, remedy or mitigate adverse effects of activities on the relevant area, landscape or environment as compensation for the unavoided and unmitigated adverse effects of the activity for which consent is being sought\(^{37}\).

And further:
In the context of these proceedings, the enabling concept suggests that land owners should be allowed to volunteer environmental compensation as a set-off for creating some adverse effects\(^ {38}\). (We have assumed that the term set-off means the same as offset)

[202] In \textit{J F Investments}, the Court recognised that there was a continuum of remedial or mitigating actions which might be offered by an applicant for resource consent. In considering the question of how to assess the value of those actions, the Court observed:

\textit{The practical answer is usually that if the proposed remedial or mitigatory action is the repair of damage of the same kind as the adverse effects of the activity, it is easier to accept as not only relevant, but reasonably necessary as well. Similarly, if the proposed remedy is also in the same area, landscape, or environment then its benefits, compared with the costs of the proposed activity, are more easily seen. Conversely, if the offered environmental compensation is too far in distance, kind or quality from the adverse effects caused by the proposed activity then it may be no longer reasonably necessary, but merely expedient for the developer to offer}\(^ {39}\).

[203] Accordingly, the Court in \textit{J F Investments} appeared to use the terms set-off (offsetting) and environmental compensation interchangeably but identified the significance of proximity (in terms of distance, kind or quality) of the counter balancing action in assessing the value of that action. There comes a point at which the action being offered ceases to remedy or mitigate the adverse effect which has been created and is rather offered as an indirect but compensatory benefit for allowing that adverse effect. An example of the latter type of action would be an offer to make a cash payment to an environmental cause as a response to damaging a water body.

[204] That distinction was recognised by the Environment Court in its decision in \textit{Haka International NZ Ltd v Auckland Regional Council}\(^ {40}\) where the Court was

\begin{itemize}
\item \footnotesize{\textsuperscript{37} Decision C48/2006, para 8.}
\item \footnotesize{\textsuperscript{38} Decision C48/2006, para 19.}
\item \footnotesize{\textsuperscript{39} Decision C48/2006, para 37.}
\item \footnotesize{\textsuperscript{40} Decision A097/2007.}
\end{itemize}
considering the inclusion of provision allowing environmental compensation in a regional plan. The Court made the following observation:

*We do observe however that in the future drafters of similar provisions might find increased clarity in differentiating between mitigation, in the traditional sense of lessening or making less intense, and compensation. Compensation does not carry a sense of the lessening of the adverse effect in question, but rather of offering recompense for the loss or impairment of whatever advantage or amenity has been affected*.

[205] The distinction between counter balancing measures which remedy or mitigate adverse effects and those which compensate for them was significant in these proceedings in light of the failure of the Request to adequately identify what was meant by the term offset in proposed Policy 4.2.33A. If the term offset (or offsetting) could be interpreted as extending to include offers of recompense for any adverse effects on water bodies caused by TGP, which had no direct connection with those effects, then the ambit of Policy 4.2.33A was very wide indeed.

[206] It became apparent that NZTA did not seek to define offset as widely as suggested above. Mr Daysh explained his understanding of the word offset in these terms:

*In my view offset for the Project would include carrying out related works to the overall stream environment but including in areas of the catchment they may be unaffected by the proposed works*.

And further:

*I consider that offset is a form of mitigation with the primary distinction between the two terms being that mitigation can be carried out at the direct location of the effect. Offset can be utilised to compensate for these adverse effects away from the actual site where such an effect occurs*.

It is apparent from those statements that Mr Daysh regarded offsetting as a form of mitigation undertaken away from the actual site where an effect had occurred.

[207] In his evidence for NZTA, Dr Keesing explained his understanding of the concept of offsetting in these terms:

*Firstly, however, it is useful to step back and consider the appropriateness of any type of offsetting or environmental compensation. In my view the concept is sound where the evidence produces an assessment that does not require avoidance due to such high existing values and where mitigation or remedial action cannot sufficiently minimise or balance the adverse effect (often due the entire loss of a feature). An offset (a form of mitigation) should create a balance in ecological values before and after the effect as close as possible to*

41 Decision A097/2007, para 11.

42 EIC, para 83.

43 EIC, para 84.
the effect area, but ideally at least within the same Ecological District (the same scale ecological “significance” is usually assessed at). Offsetting does not always need to mean a spatial balance, but can mean the security of threatened values or to create the opportunity for an increase in values commensurate with the values loss.\(^4^4\)

In these statements, Dr Keesing also uses the terms offsetting and environmental compensation interchangeably but recognises offset as \(a \text{ form of mitigation}\).

[208] Similarly, in response to questions from Ms McIndoe, Dr Keesing used the terms interchangeably when he said:

\[
\text{Offsetting, which is a funny term is a little bit newer and to my mind, it is a form of compensation or it is a form of mitigation that you do when you have done everything you can onsite or thereabouts, for the direct affect and you are trying to look for values you can add, to bring the thing to neutrality...To me offsetting has a special component to mitigation and it’s away from the area of direct affect and it is to supplement mitigation going on. I don’t like the term offset but I prefer compensation. It is sort of something that is above and beyond the current sites, remedial mitigation actions that you might do and it is often special, hopefully that helps someone.}
\]

Accordingly, Dr Keesing’s view was that offsetting was something over and above remedial mitigation actions on the affected site and he preferred to call this concept compensation.

[209] In his evidence for the Director General, Dr Ussher referred to a widely used international definition of biodiversity offsets provided by the Business and Biodiversity Offsets Programme (an international collaboration of scientists, policy makers, industry and non-governmental organisations). We do not repeat that definition here as it was provided by Dr Ussher in the specific context of biodiversity offsetting. However, Dr Ussher participated in the caucus of ecological witnesses which, in response to questions from the Board, provided a wider definition of offsetting in these terms:

\[
\text{Offsets are measurable outcomes resulting from, and directly linked to, actions designed to compensate for residual adverse impacts arising from project development after appropriate avoidance, remedying and mitigation measures have been taken.}
\]

Again, as with Policy 4.2.33A, the definition appears to treat offsetting as something different to avoidance, remedying and mitigation, being something that deals with residual adverse effects after avoidance, remedy and mitigation have been undertaken.

\(^{44}\) EIC, para 116.
However, in response to questions, Dr Ussher expressed the view that offsets ...sit firmly and squarely within the realm of mitigation and not compensation\textsuperscript{45}.

[210] What ultimately emerged from the evidence, representations and submissions of the parties was an acknowledgement that the term offsetting encompasses a range of measures which might be proposed to counter balance adverse effects of an activity, but generally fell into two broad categories. Offsetting which related directly to the values affected by an activity was in fact a form of remedy or mitigation of adverse effects and should be regarded as such. Offsetting which did not directly relate to the values affected by an activity could more properly be described as environmental compensation.

[211] That categorisation is consistent with the distinction recognised by the Environment Court in \textit{Haka International}. NZTA made it clear in its closing submissions that it was not seeking to amend the Freshwater Plan to include provision for environmental compensation in the policies of the Freshwater Plan (although it observed that there was nothing to prevent NZTA from offering environmental compensation in the resource consent applications for TGP for consideration as an \textit{other matter} under s104(1)(c)). NZTA acknowledged that the offsetting which it sought to have provided for in the Freshwater Plan was a form of remedy or mitigation of adverse effects on water bodies caused by TGP.

[212] During the course of the hearing a number of definitions of offsetting were tendered to the Board and were the subject of evidence and submission. This iterative process lead to NZTA offering a definition of the term offsetting in its closing submissions which made it clear that for the purposes of this Request, the concept of offsetting is a subset of remedy and/or mitigation (and possibly avoidance) of adverse effects. We will consider the specifics of NZTA’s amended definition later in this decision.

Summary of conclusions

[213] We summarise our conclusions in terms of the underpinning issues which we have identified as follows:

- The policies of the Freshwater Plan in their present form potentially preclude consideration of any resource consent application for TGP under s104 RMA due to the restrictions on grant of consent to applications for non-complying activities contained in s104D RMA;

- The values of the water bodies likely to be affected are not such that avoidance is the only appropriate method of managing adverse effects which should be available to any consent authority determining resource consent applications for TGP;

- TGP is a roading proposal of national and regional significance;

\textsuperscript{45} NoE, pg 390.
The definition and commentary which NZTA proposes be inserted in the Explanation to proposed Policy 4.2.33A adequately explain and define the concept of offsetting as a subset of remedy and mitigation for the purposes of consideration of this Request.

We now turn to address the merits of the Request in light of these findings.

10 EVALUATION

10.1 KEY ISSUES FOR DETERMINATION

As outlined previously, and as captured in our Minute and Direction issued on the first day of the hearing, it appeared to us that answering four questions lies at the heart of our considerations in this inquiry. Those four questions are:

i) Does the regional plan in its present form preclude, or potentially preclude, the grant of the consent to the TGP, having regard to provisions of s104D?

ii) If the answer to the first question is yes, then is it appropriate to expand the policy framework of the regional plan as proposed by NZTA to enable consideration of the range of responses to TGP other than simply the avoidance of adverse effects? In answering that question the Board considers that regard should be had to the following issues:

a) Whether the condition of the streams affected by TGP is such that total avoidance of adverse effects is required?

b) The significance of TGP.

c) Consideration of alternatives to the plan change.

d) Consistency of the proposed plan change with the range of statutory provisions and instruments to which the Board needs to have regard.

e) Whether or not the proposed amendments achieve the objectives of the Regional Plan.

iii) If the answer to the second question is yes, then what is the appropriate form of the plan change, having regard to:

a) The objectives of the Regional Plan

b) The reservations previously expressed by the Board as to the meaning and inclusions of the term “offset” in the plan change.

46 Minute and Direction of the Board, Further Key Issues raised after NZTA opening submissions, dated 7 July 2011.
iv) Does the plan change (in whatever form it might ultimately take) achieve the purposes of the Act?

[216] We address Questions 1 and 2 only briefly.

[217] We refer to our earlier findings summarised in para [213] (first bullet point) above which answer Question 1.

[218] Simply put, Question 2 asks whether it is appropriate to expand the policy framework of the Freshwater Plan as proposed by NZTA to enable consideration of the range of responses to TGP other than simply the avoidance of adverse effects? Originally we posed five sub-questions on this issue but the two key issues are those relating to:

- The condition of the streams affected by TGP, and
- The significance of TGP itself.

The remaining sub questions identify statutory tests which we are obliged to (and will) apply later in this decision.

[219] Insofar as the condition of the streams affected by TGP and the significance of TGP are concerned, we again refer to our earlier findings summarised in para [213] above. In the light of those findings we are satisfied that it is appropriate to give consideration to expanding the policy framework of the Freshwater Plan to enable any adverse effects of TGP on water bodies to be managed by a range of methods other than solely the avoidance of adverse effects.

[220] In that context, we briefly address the contention advanced by some submitters opposed to the Request that changing the Freshwater Plan to accommodate TGP creates an undesirable precedent. We do not accept that is the case. There are two reasons for that:

- Firstly, provision for private plan changes has been a feature of the Act since its inception. In our experience such plan changes are commonly undertaken to advance specific projects;
- Secondly, and more relevantly for this Request, Part 6AA makes specific provision for the consideration of requests for plan changes by any person for proposals of national significance, as the Minister has found TGP to be. The Request accords with the process contemplated by the Act.

[221] Having determined that it is appropriate to consider expansion of the policy framework as requested by NZTA, the remaining questions which we have identified somewhat overlap as they encompass the various statutory tests that we are obliged to apply. We now consider those tests and in doing so answer the remaining questions.

47 Schedule 1, Part 2.
10.2 RELEVANT RMA TESTS - SECTION 32 ASSESSMENT

[222] Section 67(1) provides that:

(1) A regional plan must state—

(a) the objectives for the region; and

(b) the policies to implement the objectives; (our emphasis)

(c) the rules (if any) to implement the policies.

[223] The requirement in s67(1) is reflected in the requirement in s32 for the person proposing a plan change,48 and the Board,49 to evaluate whether the policies, rules or other methods proposed, are the most appropriate for achieving the objectives of the plan. Section 32 relevantly requires:

(3) An evaluation must examine—

(a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and

(b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.

(4) For the purposes of the examinations referred to in sub sections (3) and (3A), an evaluation must take into account—

(a) the benefits and costs of policies, rules, or other methods; and

(b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

[224] In determining whether the proposed policy is the most appropriate way to achieve the objectives of the Plan, we have considered the following matters:

- What are the relevant objectives of the Freshwater Plan, in particular what is the predominant focus and flavour of the Plan’s objectives that the proposed policies seek to achieve?

- Does the new policy framework achieve those objectives having regard to efficiency and effectiveness and alternatives (options) including the status quo?

- What is the most appropriate form of the policy?

- How does the preferred policy framework stack up against the relevant statutory documents?

48 Sections 32(1)(d) and 145(9) and clause 22 of Schedule 1.

49 Sections 32(2)(a) and 149P(6)(c).
Finally, in overall terms, is the proposed policy framework in accordance with Part 2.

[225] These five matters form the structure for the remainder of this determination.

[226] Prior to our evaluation we briefly note a criticism of counsel for KCDC in respect to the NZTA s32 report\(^{50}\) and Mr Daysh’s evidence\(^{51}\). Mr Conway contended that the NZTA/Daysh material appears to have included achievement or implementation of TGP as one of their criteria for assessing whether the Request satisfies the requirements of s32.

[227] We concur with Mr Conway that meeting the objectives of the person requesting the plan change is not one of the tests in s32. The relevant s32 inquiry is whether the policies are the most appropriate for achieving the objectives of the Freshwater Plan\(^{52}\). Notwithstanding this, we understood that Mr Conway acknowledged that any error on the part of NZTA in this regard, is not fatal to the s32 analysis given that this is an on-going process which continues into our assessment and determination. We record that whilst we have carefully examined NZTA’s objectives in implementing TGP, we have done so, not in terms of a s32 assessment but rather, in terms of a contextual description of the reasons for and necessity of the Request.

10.3 THE RELEVANT OBJECTIVES OF THE FRESHWATER PLAN

[228] Before identifying the relevant objectives of the Freshwater Plan we record that:

- The objectives in question are \textit{settled}, being part of the operative Freshwater Plan;
- The Request does not seek to change those objectives.

[229] We note that the \textit{Long Bay} decision addresses the situation where the operative plan contains settled objectives which the plan change does not seek to alter. In summary, where the objectives of a plan are not themselves in question, they may be taken to represent sustainable management under section 5:\(^{53}\)

\begin{quote}
\textit{Where there are higher level settled objectives then we agree with \textit{Suburban Estates Limited v Christchurch City Council} that Part 2 RMA considerations are largely subsumed in those settled objectives and policies of the district plan.}
\end{quote}

\(^{50}\) Page 33, part 4.4.

\(^{51}\) EiC para 325.1.

\(^{52}\) Section 32(3)(b); Long Bay requirement 10.

\(^{53}\) Decision A078/2008, para 39.
[230] Consequently, we have assumed that the objectives of the Freshwater Plan achieve the purpose of the Act. We have focused on the relationship between the relevant existing objectives and the proposed policies and in particular on whether the proposed policies achieve the objectives and specifically which option for dealing with the Request most appropriately achieves those objectives.

[231] We consider that the relevant objectives of the Freshwater Plan in terms of the Request, are Objectives 4.1.4-6 (which relate to Policy 4.2.10) and Objective 7.1.1 (which relates to Policies 7.2.1 and 7.2.2). These objectives provide as follows:

4.1.4 The natural character of wetlands, and lakes and rivers and their margins, is preserved and protected from inappropriate subdivision, use and development.

4.1.5 The life-supporting capacity of water and aquatic ecosystems is safeguarded from the adverse effects of any subdivision, use and development.

4.1.6 Significant indigenous aquatic vegetation and significant habitats of fresh water fauna in water bodies are protected.

7.1.1 Appropriate uses of the beds of rivers and lakes are allowed while avoiding, remedying, or mitigating any adverse effects.

[232] These objectives are concerned with preserving, safeguarding and protecting identified values (in the case of Objectives 4.1.4-6) or avoiding, remedying or mitigating adverse effects (in the case of Objective 7.1.1). None of the objectives themselves require outright avoidance of adverse effects as Policies 4.2.10 and 7.2.2 require. Arguably, the policies which seek absolute avoidance go further than the relevant objectives require. In any event s32(3)(b) requires us to assess whether or not the policies now promoted by NZTA are the most appropriate for achieving the identified objectives.

10.4 ALTERNATIVES/OPTIONS

[233] As part of its preparation of the Request, NZTA undertook a s32 assessment as it is required to do. We refer to that in paragraphs [62] to [64] above. We are obliged to undertake our own s32 assessment based upon the evidence and other material before us. Our s32 assessment is slightly different to that undertaken by NZTA and reflects the iterative process which the Request has undergone.

[234] In his advice to the Board in respect of s32 matters, Mr Milne identified five options for dealing with the Request being:

- Option 1 – The Board could reject the Request which would leave avoidance of significant adverse effects as mandatory in relation to all streams affected by the project. This could be described as the status quo option;

- Option 2 – The Board could retain avoidance as a mandatory requirement in respect of the Appendix 2B streams (which is the current Policy 4.2.10) and remove it from Policies 7.2.1 and 7.2.2;
• Option 3 – The Board could remove avoidance as a mandatory requirement for all streams affected by TGP but still provide for avoidance where practicable (effectively the current NZTA proposal);

• Option 4 – The Board could conclude that the where practicable requirement should only apply to the Appendix 2B streams and provide for avoidance, remedy or mitigation in relation to other streams (this appears to go further than requested by NZTA or sought by any party);

• Option 5 – The Board could simply provide for avoidance, remedy or mitigation with no preference for avoidance in relation to all streams. (This would be much less restrictive than the Request proposed and may be beyond the scope of the current request).

[235] We concur with Mr Milne’s assessment. We do not consider that any party to the proceedings identified any other option that we need to address.

[236] It appears to us that in the first instance the choice as to which option is the most appropriate comes down to a choice between Option 1 (the status quo) and any of the remaining four options, all of which propose a change of some form or other.

[237] Those opposed to the Request in its totality effectively sought retention of the status quo. We do not consider that retaining the status quo is the most appropriate way of achieving the objectives. There are two reasons for that:

• Firstly, we do not consider that the identified objectives require that avoidance of adverse effects is the only or most appropriate way of achieving them, as the present policies provide;

• Secondly, we refer to our finding that the qualities of the water bodies potentially affected by TGP are not such that avoidance of adverse effects is the only way of sustainably managing effects which TGP may have on them. It is accordingly appropriate for the Freshwater Plan to provide for a wider range of options for management of adverse effects on those water bodies than just avoidance of those effects.

[238] We consider that the most appropriate way to achieve the objectives is through the inclusion of new policies in the Freshwater Plan which enable consideration of TGP in accordance with the widest range of management methods contemplated in the Act for the promotion of sustainable management namely avoidance, remedy and mitigation of adverse effects. We therefore reject the status quo option.

[239] In terms of the remaining options, we reject options 2 and 4 which contemplate the inclusion of specific policy provisions applicable only to the Appendix 2B water bodies. Underlying that rejection is the finding that none of the water bodies have qualities such that avoidance is the only appropriate means of their management. That being so, it appears to us that a consistent management regime ought to apply to them all. We also consider that efficiency and effectiveness require consistent management. We note Mr Milne’s reservations about the vires of option 4 in any event.
We similarly reject option 5. The Request proposed that avoidance of adverse effects where practicable was NZTA’s preferred option, even if avoidance was not necessary. We think that Drs Keesing and Ussher agreed that as a general principle, avoidance of adverse effects should always be the first consideration where that was practicable. Again, we note Mr Milne’s reservations as to the vires of option 5.

That brings us to the conclusion that option 3, removing avoidance as a mandatory requirement, but still providing for avoidance as the preferred management mechanism for all of the water bodies which may be affected by TGP, is the most appropriate means for achieving the objectives of the Freshwater Plan having regard to its efficiency and effectiveness. That conclusion in turn leads us to consider the appropriate form of the change which we have determined should be made to the Freshwater Plan.

10.5 FORM AND WORDING OF NEW POLICIES

In their closing submissions, counsel for NZTA submitted that in light of the evidence before the Board, Policy 4.2.33A ought be in the following form:

4.2.33A To manage adverse effects of the development of the Transmission Gully Project in accordance with the following management regime:

a. Adverse effects are avoided to the extent practicable;

b. Adverse effects which cannot be avoided are remedied or mitigated (including by offsetting).

Explanation: this policy recognises that the Transmission Gully Project is identified in relevant policy documents as having both national and regional significance. Accordingly, the adverse effects of aspects of the project may be acceptable, even though they cannot be completely avoided, remedied, or mitigated. The policy creates a management regime for the avoidance, remedying, or mitigation of adverse effects.

In this policy “offsetting” means the provision of a positive effect in one location to offset adverse effects of the same or similar type caused by the Transmission Gully Project at another location with the result that the overall adverse effects on the values of the water bodies are avoided, remedied or mitigated.

Where offsetting is to be applied, there should be a clear connection with the effect and the offsetting measure. The offsetting measure should preferably be applied as close as possible to the site incurring the effects (with a principle of benefit diminishing with distance). Hence there should be a focus on offsetting occurring along the Transmission Gully route and to specifically address the effects at issue.

Offsetting should, as far as can be achieved maintain and enhance the particular values affected by the Project when assessed overall.
The adequacy of a proposed offsetting measure should be transparent in that it is assessed against a recognised methodology.

[243] In summary, NZTA proposed to amend proposed Policy 4.2.33A from its form as notified to;

- Flatten the cascading hierarchy so that avoidance of adverse effects where practicable is the preferred option, but there is no expressed preference as between remediation and mitigation. This is consistent with Option 3 above and does not raise any scope issues in terms of the initial application;

- Incorporate clarification that offsetting can be used to remedy or mitigate adverse effects;

- Amend the first sentence of the Explanation to recognise that the significance of TGP is founded on its inclusion in various national and regional documents;

- Incorporate an amended definition of offsetting;

- Remove reference to SEV.

It was NZTA’s position that the amended proposed policy is the most appropriate to achieve the relevant objectives of the Freshwater Plan.

10.6 THE HIERARCHY AND OFFSETTING

[244] In considering NZTA’s amended proposal it was necessary for us to address firstly, the cascading hierarchy and secondly, the place of offsetting in the Policy.

[245] Dealing firstly with the cascading hierarchy, we support a change to the policy framework for the following reasons:

- The cascading concept promoted by NZTA in the Request was supported by the Director General, KCDC, and several submitters. The ecological evidence presented by Dr Keesing in particular (which was supported by Dr Ussher) was that in a practical sense avoidance of adverse effects was the natural and preferred outcome in any situation, followed by remediation/mitigation, without any preference between those two methods. The lack of preference between remediation and mitigation reflected the desire to have all options available (following avoidance) to achieve the best environmental outcomes;

- Although the Act does not provide a preference between avoidance, remedy or mitigation, the Freshwater Plan seeks to preserve, safeguard and protect natural values. Although those concepts do not require absolute avoidance of adverse effects, we consider that they support a preference for avoidance as a starting point before consideration of the other alternatives (including offsetting). This view was supported by the ecologists’ evidence that avoidance of adverse effects was a natural first step and preferred as an outcome. That preference is reflected in the revised policy wording proposed by the Board. We consider that promotion of avoidance as a preferred option is an appropriate first step in managing adverse effects of TGP.
Secondly, and in terms of offsetting we record:

- We agree with the end position of NZTA that offsetting is a subset of remedying or mitigating effects. Ultimately there was general agreement that compensation did not constitute offsetting but if it was advanced as part of any application for TGP, could be considered pursuant to s104(1)(c);

- We are aware that offsetting is a concept already identified in the Freshwater plan under Policies 4.2.14, 4.2.15, 6.2.15 and 10.4. We think that it is generally apparent from those policies that offsetting is regarded as an aspect of avoidance remedy or mitigation although that is not always clear.

We have concluded that for the purposes of TGP the concept of offsetting is intended to encompass management methods which fall into the categories of remedying or mitigating (or possibly even avoiding) adverse effects. That being so there is no need to include reference to offsetting in the policy hierarchy proposed by NZTA even though NZTA continued to seek its inclusion in its closing submissions.

However, we accept that in light of NZTA’s stated intention to provide for offsetting as a means to remedy or mitigate any adverse effects of TGP when resource consent applications are made, Policy 4.2.33A ought include a clear definition of offsetting. The place to do that is in the Explanation to the Policy rather than in the cascade established by the Policy itself.

10.7 SPECIFIC WORDING

There were several versions of proposed Policy 4.2.33A advanced by the parties during the course of our hearing. This included suggestions from Counsel for NZTA, the Director General, KCDC and Ms Warren and also from Mr Kyle and from Mr Milne. Some of these were amended or abandoned as the hearing progressed. The form of the Policy suggested in NZTA’s closing reflects that iterative process.

In selecting the appropriate wording of the Policy, we wished to ensure that the wording of the new Policy 4.2.33A (and consequential changes to existing Policies) is clear and easily understood. To this end, there was a deliberate focus not only on the Policy itself but also on the attendant Explanation. There was also consideration given to the need for additional definitions to aid with interpretation of the Policy. We considered that the flattening of the cascading hierarchy in itself assisted in clarifying the Policy.

The resultant policy framework adopted by the Board is set out in Appendices 1 and 2. Appendix 1 is a tracked changes version of the notified Request. The extent and type of changes that have been decided by the Board are readily apparent. Appendix 2 is simply a clean version of Appendix 1. The reasons for these changes are set out below:

Policy 4.2.10

- The last sentence of the Policy has been altered to include the reference "in relation to its effects on the Horokiri, Ration and lower Pauatahanui Streams."
We considered that while this reference may not be necessary in terms of the Policy itself, its inclusion removed any doubt over the application of Rule 50 in terms of TGP.

- Reference to *offsetting* in the Explanation has been removed. For the purposes of this Policy reference to avoidance, remedy and mitigation are all that is required. The concept of offsetting is adequately dealt with in the Explanation to Policy 4.2.33A.

- The remainder of the changes to this Policy and Explanation as notified in the Request were considered appropriate by the Board.

**Policy 4.2.33A**

- The Policy is altered to remove any separation between remedy and mitigation as suggested by NZTA in closing. Reference to offset is also removed from the cascading hierarchy contained in the Policy. The Board considered that reference to offsetting was not necessary for the reasons previously stated\(^54\). In light of the stated intention of NZTA to propose offsetting as part of the remediation and mitigation package for TGP, we agree that it is appropriate to include a reference to and definition of offsetting in the Explanation to the Policy.

- For the reasons previously stated\(^55\), we considered that maintaining provision for avoidance to the extent practicable as a preferred first category, indicates that in all cases the initial objective should be to avoid effects on the natural character of the water bodies affected by TGP. If adverse effects cannot practicably be avoided then the ability to remedy and mitigate (including by offsetting) would provide any future consent authority with the ability to consider all possible methods of management of adverse effects in order to achieve the best overall environmental outcome.

- We considered that the inclusion in the Explanation to Policy 4.2.33A of a definition of the term *...to the extent practicable*, was appropriate. We agree with the submission of Director General that there ought to be such a definition and we also agree with the definition suggested by the Director General. We have adopted that definition in our Appendices 1 and 2.

- We have not included in the Policy a requirement for avoidance of adverse effects on vulnerable or irreplaceable indigenous biodiversity as sought by the Director General. Mr Bennion also requested a reference to threatened indigenous species or rare or threatened ecosystems. We agree with counsel for NZTA that there is no need to do so. If in any instance, avoidance of adverse effects on particular values is required to achieve sustainable

\(^{54}\) Paras [195]-[212].

\(^{55}\) Paras [195]-[212].
management, that response is available to a consent authority under the Policy as we have drafted it.

**Policies 7.2.1 & 7.2.2**

- Policy 7.2.2 appeared to the Board to be inconsistent with the new proposed Policies 4.2.10 and 4.2.33A and amendments as we have drafted are needed to provide a specific reference to TGP.

- Changes to Policy 7.2.1 were not strictly necessary, but were included for completeness and clarity.

**Definitions**

- We noted the agreement amongst all parties for need to have a clear and yet flexible definition of TGP. The definition promoted by NZTA included a plan of the TGP route (which we have included as Appendix 3). In our view this adequately defined TGP and would give the consent authority the ability to identify activities relating to TGP.

- The definition proposed by NZTA uses the term *works in proximity* in defining works which are part of TGP. Mr Daysh advised that these words were added to the pre-lodgement version of the definition which had previously just referred to *works associated with implementation of the project*. We agree that further refinement was necessary to provide a spatial component to what those works might be. We considered providing a defined physical dimension to what *in proximity* means but decided that whatever figure might be used would be arbitrary. Ultimately we agreed that the words *in proximity* would suffice.

[252] For the above reasons, the amended provisions set out in Appendices 1, 2 and 3 are considered to represent the most appropriate form and wording of the plan change requested by NZTA.

**10.8 CONSIDERATION OF RELEVANT STATUTORY INSTRUMENTS**

[253] There is a range of statutory instruments that the Board must consider when assessing the Request. The Board has considered these in the three categories set out below, which are then discussed in the following sub-sections:

- National policy statements (previously referred to as NPS);
- Regional documents; and
- Other statutory plans.

[254] Section 67(3)(a) and (b) require that the Freshwater Plan, being a regional plan, must *give effect to* any NPS or any New Zealand coastal policy statement. We have previously identified the relevant statutory instruments in paragraphs [41] and [44] above.
Before considering those instruments in detail, it is useful to briefly consider what the term give effect to means in relation to the Request specifically, as opposed to the Freshwater Plan as a whole. It was argued by NZTA that there is no requirement for the Request itself to give effect to a NPS, but rather that it is the Freshwater Plan as a whole that must give effect to a NPS56.

It was submitted by Ms Bradley that ...there is no reason that it would not be practicable for the plan change to be required to give effect to the provisions of the NPS [on Freshwater Management] or [the] NZCPS in as far as they are relevant to the implementation of the plan change.57

Mr Bennion accepted that it is not the Board’s role to review the Freshwater Plan to fully give effect to (in this instance) the NPS(FM), but submitted that the amendments proposed should give effect to that instrument within the scope of the amendments58. He argued that a Request that is inconsistent with a provision of a NPS would clearly not give effect to it. He went further to say that a plan change that was not inconsistent with a NPS, but that would be altered, within its scope, to address matters in the NPS, would also not give effect to the NPS59.

We consider that the position is as follows:

- Section 67(3)(a) and (b) impose positive obligations on regional plans to give effect to NPS. This obligation appears to be different to that contained in s67(4) which requires that regional plans may not be inconsistent with various identified instruments. However, we accept that regional plans which are inconsistent with NPS cannot be said to give effect to them.

- The Request seeks to change only limited provisions in the Freshwater Plan relevant to TGP. We do not consider that the Request needs to give effect to wider provisions of any NPS that are beyond the limited scope of the Request.

- The Act provides that it is only operative regional plans60 and operative changes to such plans (as opposed to proposed regional plans or proposed changes to such plans) which must give effect to NPS. This particular proposed change to the Freshwater Plan does not set out to give effect to any NPS, nor is it required to do so. We accept that once they are incorporated into

56 This was discussed by counsel, in their Opening Submissions, para 131, in relation to the NPS(FM), but is equally applicable to other NPS.

57 Director General, Submissions, para 57.

58 Rational Transport Society etc, Opening Submissions, para 4.24.


60 Under s43AA a regional plan is defined as being an operative regional plan or operative change to a regional plan (as opposed to a proposed regional plan or proposed change to a regional plan).
the operative Freshwater Plan the plan changes requested cannot be such that they preclude the Freshwater Plan from giving effect to any NPS.

[259] Accordingly, we have asked ourselves, is there is anything in the Request that precludes the Freshwater Plan (when taken as a whole) from giving effect to the relevant NPS?

[260] The Freshwater Plan became operative on 17 December 1999. Section 79(1) requires that any provisions in a regional plan be reviewed within 10 years. As part of such a review, the Freshwater Plan will need to be considered in its entirety, including how it gives effect, overall, to the relevant NPS.

Proposed National Policy Statement on Indigenous Biodiversity

[261] The Board notes that the NPS(IB), is proposed only and has not as yet been approved. As such, we do not consider that it is at a stage where the Act requires that the Freshwater Plan gives effect to it.

[262] We acknowledge that the NPS(IB) includes a cascading management hierarchy which is similar to that proposed in this Request. However, as this NPS is proposed only, we do not give any weight to that as a precedent.

[263] The Board accepts the submission of Mr Hassan & Ms McIndoe that the Act does not require the Board to consider this document61.

National Policy Statement on Electricity Transmission

[264] The NPS(ET) came into effect in 2008. It addresses the need to operate, maintain, develop and upgrade electricity transmission networks. Its policies recognise the national benefits of electricity transmission, manage the environmental effects of electricity transmission, manage the adverse effects of third parties on the transmission network, require territorial authorities to map the electricity transmission network and require decision makers to provide for the longer term strategic planning for transmission sites.

[265] The Board accepts the evidence of all planners who gave evidence that the NPS(ET) is not relevant to the matters being considered under this Request62.

National Policy Statement for Renewable Electricity Generation

[266] The NPS(REG) came into effect on 13 May 2011. It seeks to ensure that a consistent approach is undertaken to planning for renewable electricity generation in New Zealand. It gives clear government direction on the benefits of renewable electricity generation and requires all councils to make provision for it in their plans. Again, the Board accepts the planning evidence that the NPS (REG) is not directly

61 NZTA, Closing Submissions, para 58.

62 Daysh, EiC, para 137; Kyle, Mitchell Partnerships s42A Report, April 2011, para 3.2.3.
applicable to the Request, although, as noted by My Daysh, it does include reference to the term offset\textsuperscript{63}.

**New Zealand Coastal Policy Statement**

[267] The NZCPS came into effect on 3 December 2010. While TGP will not be within any part of the coastal marine area, some of the streams that may be affected by TGP eventually discharge into the coastal marine area at the Pauatahanui inlet. We therefore consider that the NZCPS 2010 is a relevant consideration for the Board.

[268] NZCPS contains 7 objectives and 29 policies. In summary, the relevant objectives relate to:

- Safeguarding and sustaining the coastal environment;
- Preserving natural character and protecting natural features and landscapes;
- Taking account of the Treaty of Waitangi and recognising Tangata whenua as kaitiaki;
- Maintaining and enhancing public open space and recreation opportunities;
- Managing coastal hazard risks;
- Enabling people and communities to provide for their social, economic, and cultural wellbeing through subdivision, use, and development in the coastal environment; and
- Ensuring compliance with New Zealand's international obligations.

[269] Potentially relevant policies of NZCPS include:

- A policy requiring the application of the precautionary approach in certain circumstances;
- A policy requiring policy statements and plans to identify areas where subdivision, use and development are or may be inappropriate;
- Policies emphasising the importance of the coastal environment from a use and development perspective, including in relation to matters such as energy generation and transmission, aquaculture and ports;
- Policies requiring significant levels of protection for indigenous biodiversity, natural character, natural features and landscapes; and
- Policies requiring the management of natural and physical resources to improve water quality, particularly where it is degraded and manage the effects of sedimentation and coastal contamination.

\textsuperscript{63} Daysh, EiC, para 138.
• A policy requiring the integrated management of natural and physical resources in the coastal environment, and activities that affect the coastal environment.

[270] The planning witnesses agreed that Policies 6 (Activities in the Coastal Environment), 13 (Preservation of Natural Character) and 22 (Sedimentation) of the NZCPS are of primary relevance, but were of the view that the NZCPS will be more relevant to the merits consideration associated with the subsequent consenting applications for TGP^64. We agree with those comments. We note that Mr Ericksen was of the opinion that Policy 4 was also a relevant consideration.

[271] Mr Ericksen suggested that the Request was inconsistent with the NZCPS, and considered that the Board should require the Freshwater Plan to give effect to the NZCPS at this opportunity^65.

[272] For the reasons we have outlined earlier, we do not consider it necessary for the Request to give effect to the NZCPS. Mr Daysh concluded that there is nothing in the Request which would detract from the ability of the Freshwater Plan to give effect to the NZCPS. His opinion was consistent with those of Ms Thomson and Mr Kyle^66 and we accept their evidence.

**National Policy Statement for Freshwater Management**

[273] The NPS(FM) came into effect on 1 July 2011. The Board accepts that it is of direct relevance to this inquiry. That was agreed at the planning witness conference.

[274] The NPS(FM) contains 8 objectives and 13 policies. In summary the objectives relate to:

• Safeguarding the life-supporting capacity of fresh water;
• Maintaining or improving the overall quality of freshwater;
• Sustainably managing the taking, using, damming, or diverting of fresh water;
• Avoiding further over allocation of freshwater;
• Maximising the efficient allocation and use of freshwater;
• Protecting significant values of wetlands;

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^65 Ericksen, EiC, para 59.

^66 NZTA, Closing Submissions, para 59.

• Integrated management of freshwater and the use and development of land;
• Ensuring that the values and interests of Tangata whenua are identified and reflected in the management of fresh water.

[275] In approaching the NPS(FM), the Board considered two matters.
• Firstly, the issue of giving effect to the NPS(FM) as canvassed earlier;
• Secondly, the substantive issue of compatibility between the policy framework being proposed by the Request and the framework of the NPS(FM).

[276] Without repeating the substance of our earlier discussion, the Board accepts that the Freshwater Plan, as a regional plan, must give effect to the NPS(FM), but we have considered whether the Request precludes the ability for the Freshwater Plan to do this, rather than considering if the Request in itself gives effect to this document.

[277] NZTA submitted, it is the responsibility of Greater Wellington, consistent with Policy E1 of the NPS (FM), to achieve this. Mr Erickson⁶⁸, suggested that the Board may wish to attempt to modify the Request to give effect to the NPS(FM) through the current proceedings. We respond as follows:
• In our view that is not appropriate. Any attempts to retrofit this Request so as to give effect to the NPS(FM) would be outside the scope of the Request.
• The Act requires regional councils to carry out a Schedule 1 response to the NPS(FM) in its entirety via the normal plan preparation, notification, submission and appeal process. To attempt to undertake this in microcosm through the current Request would not, in our view, represent best practice. In this respect, we refer to the limited nature of the Request, being a specific policy response to a specific project. In addition, the NPS(FM) directs regional councils to make changes to their regional plans outside the Schedule 1 process. Again, we consider that is outside the scope of the Request.

[278] Having determined that it is not necessary for the Request to give effect to the NPS(FM), we have nevertheless considered whether or not it is consistent with that document or precludes the Freshwater Plan from giving effect to it.

[279] All of the planners who appeared before us made an assessment of the Request against the relevant provisions of the NPS(FM). We also heard from the s42A writers on this topic.

[280] From the evidence presented, it was clear that provisions in the NPS(FM) relating to Water Quality (Part A) are the most relevant to the Board’s decision here. Objective A1 is:

⁶⁸ Ericksen, EiC, paras 6 and 44.
To safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water, in sustainably managing the use and development of land, and of discharges of contaminants.

[281] Objective A2 seeks to ensure that:

The overall quality of fresh water within a region is maintained or improved while:

a) protecting the quality of outstanding freshwater bodies

b) protecting the significant values of wetlands and

c) improving the quality of fresh water in water bodies that have been degraded by human activities to the point of being over-allocated.

[282] In our assessment, the proposed (revised) Request framework does not run counter to these objectives nor the policies that follow them for the following reasons:

• Our suggested refinements to Policy 4.2.33A (and its attendant Explanation) would ensure that the safeguarding of life supporting capacity, ecosystem processes and indigenous species will be adequately achieved;

• Avoidance of adverse effects is the first preference under the proposed (revised) policy framework;

• When considering resource consent applications for TGP, the consent authority retains an overall discretion to determine whether adverse effects have been adequately addressed by NZTA. Nothing in the proposed policies precludes a consent authority from determining that the concepts of safeguarding or protecting provided for in Objectives A1 and A2, require the avoidance of adverse effects in any given case.

[283] Aside from Water Quality issues, we note that Part C of the NPS(FM) is a section titled Integrated Management. Objective C1 is:

To improve integrated management of fresh water and the use and development of land in whole catchments, including the interactions between fresh water, land, associated ecosystems and the coastal environment.

[284] Proposed Policy 4.2.33A (as refined) is consistent with achieving integrated management of fresh water and the development of land. It provides the opportunity to manage the effects of the use and development of land in a way that has particular regard to fresh water values through management methods which contemplate avoidance, remedy or mitigation of adverse effects.

[285] Part D relates to Tangata whenua roles and interests. Objective D1 is:

To provide for the involvement of iwi and hapu, and to ensure that tangata whenua values and interests are identified and reflected in the management of fresh water including associated ecosystems, and decision-making regarding
freshwater planning, including on how all other objectives of this national policy statement are given effect to.

[286] We were advised by Mr Nicholson\textsuperscript{69} that NZTA was undertaking consultation with iwi and was in the process of preparing a MoU. We record that this was also discussed in Mr Daysh’s evidence\textsuperscript{70} and in the Reasons for Request Report.\textsuperscript{71} Mr Daysh referred to this again in his rebuttal statement. In those references, Mr Daysh stressed that NZTA has consulted with tangata whenua over many years including in relation to this Request. He stated that he is aware that the draft MoU between NZTA and Ngati Toa includes provision for involvement of iwi in stream diversions and reclamation activity, including the design of streams, checking new stream channels before waters are diverted and involvement, if necessary, when waters are diverted.

[287] In his supplementary s42A Report, Mr Kyle raised concerns about NZTA’s consultation with Ngati Toa, as follows:

- He noted that Objective D1 provides for the involvement of iwi in all elements of the decision making process including where it is proposed to make a change to a plan, as is the case here; and

- He observed that it appeared to him that much of the consultation that has occurred with Ngati Toa has essentially related to the future consenting process and there has been nothing specific produced with respect to the Ngati Toa views about the Request.

[288] Mr Kyle initially concluded that there is a potential shortcoming in the information provided by the NZTA with respect to the views of Ngati Toa in particular, regarding this particular Request. He did acknowledge however that this may be something that would be best addressed further at this hearing.

[289] In response, NZTA counsel referred to an email from Mr G Hastilow of Ngati Toa which was contained in Appendix E to the Reasons for Request Report. We agree with NZTA that this email clearly relates to the Request, rather than TGP more generally. Mr Kyle acknowledged this at the hearing and under cross-examination said that he had indicated that clarification might be provided at the hearing on this issue and agreed that it had been so in this instance.

[290] Finally on this issue, we acknowledge the point made in closing by counsel for NZTA that the development of memoranda of understanding can be a long process, and the resulting documents are not always publicly released. We accept the submission by that Counsel that Ngati Toa (or any other person) was able to lodge a submission on the Request if it was concerned that Tangata whenua roles and

\textsuperscript{69} NoE, pg 56.

\textsuperscript{70} EiC, para 222-223; Rebuttal Evidence, para 15.

\textsuperscript{71} Section 5.
interests had not been appropriately taken into account. We record that no such submission was lodged.

[291] For the above reasons, and following our review of the evidence on the relevant objectives and policies, we conclude that the proposed (revised) Request is not inconsistent with the NPS(FM) and will not preclude the Freshwater Plan from giving effect to that document.

Board’s findings with respect to national policy statements and national instruments overall

[292] Accordingly, the Board finds that:

- There are no issues of inconsistency between the Request and any relevant NPS or the NZCPS;
- Inclusion of the changes sought by the Request in the Freshwater Plan will not preclude Greater Wellington from ensuring that the Freshwater Plan gives effect to relevant and operative national policy statements; and
- Matters relating to Tangata whenua roles and interests have been adequately canvassed insofar as they relate to the national instruments.

10.9 REGIONAL DOCUMENTS

Operative Regional Policy Statement

[293] Section 67(3)(c) requires that the Freshwater Plan gives effect to the operative Regional Policy Statement (RPS).

[294] The operative RPS has been in place since 1995. We note NZTA’s contention that it should be given less weight now, as it is under review with decisions on submissions on the proposed RPS made in May 2010. We also note the comments of Mr Daysh that the operative RPS pre-dates the 2005 Amendments to the Act which added a new regional council function, for ...the strategic integration of infrastructure with land use through objectives, policies and methods (s30(1)(gb))\(^{72}\). We agree with Mr Kyle that until such time as the appeals on the proposed RPS are resolved, the operative RPS remains relevant to this Request\(^{73}\).

[295] The operative RPS contains a number of objectives and policies that are relevant to the Request. These include:

- The iwi environmental management system (Chapter 4);

\(^{72}\) EiC, para 153.

\(^{73}\) Mitchell Partnerships s42A Report, para 7.10.3.
• Fresh water (Chapter 5);
• Ecosystems (Chapter 9); and
• The built environment and transportation (Chapter 14).

[296] We consider that the Request is consistent with the operative RPS, and accept the evidence of Mr Daysh that the Request will not detract from the ability of the Freshwater Plan to give effect to the RPS74. We generally accept the comments of My Kyle in his supplementary s42A report75, in that we agree that:

• TGP is recognised as being of regional and national significance;
• TGP seeks to provide a solution to the region’s existing transportation and accessibility needs. Meeting those needs is important in providing for the social and economic wellbeing of communities; and
• NZTA recognises that adverse effects of TGP will need to be appropriately managed. The Request seeks to broaden the range of options to best manage the effects that would ultimately occur in those water bodies that are directly impacted by TGP.

[297] On the above basis, whilst it not possible to conclude that the Request will give effect to the operative RPS due to the restricted nature of the Request, it is not, in our view, inconsistent with the RPS and does not preclude the Freshwater Plan from giving effect to it.

74 EiC, para 151.

75 Mitchell Partnerships s42A Report, para 7.10.7.
Proposed Regional Policy Statement

[298] In considering the Request, Section 66(2)(a) requires us to have regard to the proposed RPS which contains sections dealing with:

- Energy, infrastructure and waste (section 3.3);
- Fresh water (section 3.4);
- Regional form, design and function (section 3.9); and
- Resource management with tangata whenua (section 3.10).

[299] In Mr Daysh’s view, the Request appropriately recognises the proposed RPS because it seeks to implement the policies in the proposed RPS on Regionally Significant Infrastructure and also considers the proposed RPS provisions relating to natural and ecosystem values76.

[300] Mr Kyle’s initial view was that the proposed RPS favours a cautious approach to the waterways identified in its Appendix 177, particularly the policy protection that is to be provided by regional plans. It was his view that to allow adverse effects on these waterways could be inconsistent with these policies, and he suggested amendments to achieve this78. During the course of the hearing, Mr Kyle acknowledged that both the NZTA revised version of Policy 4.2.33A and a version suggested by Mr Milne addressed his initial reservations regarding the consistency of the proposed Policy with the relevant provisions of the proposed RPS. He added that he was ambivalent about which version might be ultimately selected should the Board decide to approve the Request. We understand this to indicate that he accepted that either version would be consistent with the proposed RPS.

[301] The Board considers that the proposed (revised) policy framework which we have set out in Appendices 1 and 2 is consistent with the proposed RPS.

Regional Plans

[302] Section 67(4)(b) requires that the Freshwater Plan is not inconsistent with the other regional plans for the region. The other operative regional plans for the Wellington region are the:

- Regional Coastal Plan;
- Regional Air Quality Management Plan;

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76 EiC, para 163.

77 Table 16, of Appendix 1 of the proposed RPS lists the Horokiri and Pauatahanui Streams as having significant indigenous ecosystems. Greater Wellington has identified in its key issues report that Ration Stream which is referred to as Little Waitangi in the proposed RPS is also listed in Appendix 1.

78 Mitchell Partnerships s42A Report, para 7.10.17.
• Regional Soil Plan; and
• Regional Discharges to Land Plan.

[303] These plans by their very nature deal with matters unrelated to those covered in the Freshwater Plan, and we were not advised of there being any inconsistencies between these regional plans and the Request.

[304] With respect to the Freshwater Plan itself, we have assessed the Request against the Plan’s objectives in a preceding section of this report. The Board is of the opinion that the Request is not inconsistent with the general approach of the Freshwater Plan. That was also the advice given to us by the officers of Greater Wellington Regional Council who undertook the s42A assessment.

10.10 OTHER STATUTORY PLANS

District Plans

[305] The following district plans are applicable to land affected by TGP:

• The Kapiti Coast District Plan;
• The Upper Hutt City Council District Plan;
• The Porirua City District Plan; and
• The Wellington City District Plan.

[306] The Board notes that under s75(4)(b), any of these district plans must not be inconsistent with the Freshwater Plan. However, we do not understand there to be a reverse requirement for the Freshwater Plan not to be inconsistent with the district plans. We have therefore concluded that while the provisions of these district plans will be relevant to TGP when resource consent applications are made, we do not need to consider them further in our decision on this Request.

Regional Land Transport Strategy

[307] Section 66(2)(c)(i) requires the Board, in considering the Request, to ...have regard to any management plans and strategies prepared under other Acts...to the extent that their content has a bearing on resource management issues of the region.

[308] The WRLTS guides the development of the region’s transport system and provides a context for investment in the regional transport network and supports both the Wellington Northern Corridor RoNS package and TGP. A relevant policy79 of the WRLTS is to:

79 WRLTS, pg 42.
Ensure the proposed Transmission Gully project is developed as the long term solution to address access reliability for State Highway 1 between MacKays and Linden.

[309] While we must have regard to the provisions of the WRLTS, we accept the view of Ms Thomson, that the WRLTS should not be given more weight in our considerations than Part 2 of the Act, the NPS(FM), the RPS or the Objectives of the Freshwater Plan itself80.

[310] We do find that the Request is consistent with the policies of the WRLTS and that As currently drafted, the Freshwater Plan could be seen as a statutory bar to delivering on the intentions of the WRLTS81. We accept that the Request is more consistent with the WRLTS than the current Freshwater Plan provisions. These are appropriate matters for us to take into account in our deliberations.

Conservation Management Strategy

[311] The CMS shows the location of a number of wildlife refuges and reserves, acknowledges the location of water bodies within these areas, and describes the values of Pauatahanui Inlet including the estuarine wetlands, and the management objectives for the area82.

[312] There was some debate about the relevance of this document, with counsel for NZTA arguing that it is not relevant to the Request83. The CMS identifies the importance of the Pauatahanui Inlet primarily for its ecological values which was a matter raised by several submitters. We agree with the comments of Mr Kyle that it is apparent in the CMS that the Inlet has significant values, and that the actual effects on the streams and values within the Inlet is something to be carefully assessed during the consenting phase of TGP84.

Iwi Management Plans

[313] There are no iwi management plans that the Board is required to consider in the context of this Request.

Greater Wellington Parks Network Plan

[314] After the conclusion of our hearing, but before the issue of this decision, Mr Horne forwarded to EPA a copy of the Greater Wellington Parks Network Plan dated July 2011 and requested that it be circulated to the Board. This document includes a

80 EiC, para 4.16.
81 NZTA Opening Submissions, para 154.
82 Director General Opening Submissions, para 62.
83 NZTA Opening Submissions, para 156.
84 Mitchell Partnerships s42A Report, 7.12.3.
section on Battle Hill Farm Forest Park. We have considered this document in our decision however it appears to be of limited relevance to our considerations on the Request. We accept that the document may possibly be of relevance at the time of consideration of any resource consent applications.

10.11 DOES THE REQUEST ASSIST GREATER WELLINGTON TO CARRY OUT ITS FUNCTIONS AND IS IT IN ACCORDANCE WITH THE PROVISIONS OF PART 2 OF THE ACT

[315] We consider these two matters together.

[316] The functions of Greater Wellington relevant to our consideration are those contained in s30, which provides:

30 Functions of regional councils under this Act

(1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:

(a) The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:

(b) The preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance:

(c) The control of the use of land for the purpose of—

(i) Soil conservation:

(ii) The maintenance and enhancement of the quality of water in water bodies and coastal water:

(iii) The maintenance of the quantity of water in water bodies and coastal water:

(iiiia) The maintenance and enhancement of ecosystems in water bodies and coastal water:

(iv) The avoidance or mitigation of natural hazards:

(v) The avoidance or mitigation of any adverse effects of the storage, use, disposal or transportation of hazardous substances:

(ca) The investigation of land for the purposes of identifying and monitoring contaminated land:

(d) In respect of any coastal marine area in the region, the control (in conjunction with the Minister of Conservation) of -
(i) Land and associated natural and physical resources:

(ii) the occupation of space in, and the extraction of sand, shingle, shell or other natural material from, the coastal marine area, to the extent that it is within the common marine and coastal area:

(iii) The taking, use, damming, and diversion of water:

(iv) Discharges of contaminants into or onto land, air, or water and discharges of water into water:

(iv-a) The dumping and incineration of waste or other matter and the dumping of ships, aircraft, and offshore installations:

(v) Any actual or potential effects of the use, development, or protection of land, including the avoidance or mitigation of natural hazards and the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:

(vi) The emission of noise and the mitigation of the effects of noise:

(vii) Activities in relation to the surface of water:

(e) The control of the taking, use, damming, and diversion of water, and the control of the quantity, level, and flow of water in any water body, including—

(i) The setting of any maximum or minimum levels or flows of water:

(ii) The control of the range, or rate of change, of levels or flows of water:

(iii) The control of the taking or use of geothermal energy:

(f) The control of discharges of contaminants into or onto land, air, or water and discharges of water into water:

(fa) If appropriate, the establishment of rules in a regional plan to allocate any of the following:

(i) The taking or use of water (other than open coastal water):

(ii) The taking or use of heat or energy from water (other than open coastal water):

(iii) The taking or use of heat or energy from the material surrounding geothermal water:
(iv) The capacity of air or water to assimilate a discharge of a contaminant:

(fb) If appropriate, and in conjunction with the Minister of Conservation, -

(i) The establishment of rules in a regional coastal plan to allocate the taking or use of heat or energy from open coastal water:

(ii) The establishment of a rule in a regional coastal plan to allocate space in a coastal marine area under Part 7A:

(g) In relation to any bed of a water body, the control of the introduction or planting of any plant in, on, or under that land, for the purpose of—

(i) Soil conservation:

(ii) The maintenance and enhancement of the quality of water in that water body:

(iii) The maintenance of the quantity of water in that water body:

(iv) The avoidance or mitigation of natural hazards:

(ga) The establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:

(gb) The strategic integration of infrastructure with land use through objectives, policies, and methods

(h) Any other functions specified in this Act.

(2) A regional council and the Minister of Conservation may perform the functions specified in the subsection (1)(d) to control the harvesting or enhancement of aquatic organisms to avoid, remedy, or mitigate -

(a) The effects on fishing and fisheries resources of occupying a coastal marine area for the purpose of aquaculture activities:

(b) The effects on fishing and fisheries resources of aquaculture activities:

(3) However, a regional council and the Minister of Conservation must not perform the functions specified in subsection (1)(d)(i), (ii) or (vii) to control the harvesting or enhancement of aquatic organisms for the purpose of conserving, using, enhancing, or developing any fisheries resources controlled under the Fisheries Act 1996.
A rule to allocate a natural resource established by a regional council in a plan under subsection (1)(fa) or (fb) may allocate the resource in any way, subject to the following:

(a) The rule may not, during the term of an existing resource consent, allocate the amount of a resource that has already been allocated to the consent; and

(b) Nothing in paragraph (a) affects section 68(7); and

(c) The rule may allocate the resource in anticipation of the expiry of existing consents; and

(d) In allocating the resource in anticipation of the expiry of existing consents, the rule may -

(i) Allocate all of the resource used for an activity to the same type of activity; or

(ii) Allocate some of the resource used for an activity to the same type of activity and the rest of the resource to any other type of activity or no type of activity; and

(e) The rule may allocate the resource among competing types of activities; and

(f) The rule may allocate water, or heat or energy from water, as long as the allocation does not affect the activities authorised by section 14(3)(b) to (e).

We find that the Request will assist Greater Wellington in carrying out its relevant functions above. The present policy framework in the Freshwater Plan requires the avoidance of adverse effects but we are satisfied that it is appropriate for Greater Wellington to be able to manage the adverse effects of TGP on water bodies by their remedy or mitigation if avoidance is not practicable. Providing a more flexible policy framework enables Greater Wellington to reconcile potentially conflicting requirements of development and protection in an integrated fashion.

Part 2 describes the purpose of the Act in these terms.

5 Purpose

(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while -

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

[319] Natural and physical resources are defined in s2 in these terms:

\textit{Natural and physical resources} includes land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures.

Section 2 relevantly defines structures as meaning:

\textit{Structure} means any building, equipment, device, or other facility made by people and which is fixed to land;

[320] The water bodies potentially affected by TGP are natural and physical resources as are the roads which make up New Zealand’s infrastructure. Section 5 requires that both are managed in a way which promotes sustainable management.

[321] NZTA seeks to enable people and communities to provide for their social and economic well-being and their health and safety through the promotion of an improved roading system. Other parties to these proceedings seek to provide for the cultural well-being of people and communities, to sustain the potential of water bodies to meet the foreseeable needs of future generations and to safeguard the life supporting capacity of those water bodies. Sustainable management involves the resolution of the tensions between the two.

[322] In our judgement, changing the Freshwater Plan to enable any consent authority to consider resource consent applications for TGP in accordance with a management regime which seeks to avoid adverse effects on those water bodies as a first preference but otherwise to remedy or mitigate any adverse effects is in accordance with Part 2 and will assist Greater Wellington in carrying out its functions to achieve the purpose of the Act.

[323] At present the policies of the Freshwater Plan which NZTA seeks to change, require avoidance of adverse effects on the water bodies in question. Such policies restrict the manner in which Greater Wellington may carry out its functions under the Act in respect of water bodies where we are satisfied that avoidance of adverse effects is not the only appropriate management method.

[324] Changing the provisions of the Freshwater Plan as requested by NZTA will enable any resource consent applications for TGP to be considered in the light of a policy framework which allows for the avoidance, remedy or mitigation of any adverse effects of TGP. We return to the point which we have made previously, that if avoidance of adverse effects is the appropriate response to effects of TGP in any given instance, that response is available to the consent authority under proposed Policy 4.2.33A. Similarly if remedy or mitigation of adverse effects is the appropriate response, those responses are available. Nothing in the Policy precludes the consent authority from determining that any proposed remedy or mitigation by way of offsetting is inadequate to such an extent that consent ought be
declined. We consider that such a policy framework is in accordance with the provisions of s5(2)(c) and best assists Greater Wellington in carrying out its functions to achieve the purpose of the Act.

[325] In reaching that conclusion we have been informed by the remaining provisions of Part 2 (more particularly, the provisions of sections 6, 7 and 8).

[326] Section 6 provides:

6 Matters of national importance
In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

(a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development:

(c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

(d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

(f) The protection of historic heritage from inappropriate subdivision, use, and development.

(g) The protection of protected customary rights.

[327] In this case the relevant provisions appear to be s6(a) and (c). We comment as follows regarding those provisions:

- It is recognised that TGP may potentially have downstream effects on the coastal environment by way of sediment discharge to Pauatahanui Inlet. The consent authority determining resource consent applications for TGP will be required to consider the preservation of the natural character of the Inlet and whether or not TGP is an appropriate development. The changes to the Freshwater Plan proposed by NZTA do not preclude the consent authority from avoiding adverse effects of TGP on the coastal environment should it determine to do so. We do not consider that the Request is inconsistent with s6(a);

- Section 6(c) seeks protection of significant habitats of indigenous fauna. The evidence which we heard established that the water bodies within the TGP route were a habitat of indigenous fauna. However, we are satisfied that the significance of that habitat is not such that avoidance of adverse effects is the
only appropriate means of achieving sustainable management of the water bodies.

[328] Section 7 provides:

7 **Other matters**

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to -

(a) Kaitiakitanga:

(aa) The ethic of stewardship:

(b) The efficient use and development of natural and physical resources:

(ba) The efficiency of the end use of energy:

(c) The maintenance and enhancement of amenity values:

(d) Intrinsic values of ecosystems:

(e) [Repealed].

(f) Maintenance and enhancement of the quality of the environment:

(g) Any finite characteristics of natural and physical resources:

(h) The protection of the habitat of trout and salmon:

(i) The effects of climate change:

(j) The benefits to be derived from the use and development of renewable energy.

[329] It appears to us that subsections (a), (aa), (b), (d), (f), (g) are all relevant to our considerations:

- Section 7(a) requires us to have particular regard to Kaitiakitanga. In this instance we are advised that Ngati Toa has chosen to exercise its rights of Kaitiakitanga by way of direct negotiation with NZTA and entering into an MOU;

- The ethic of stewardship seeks to ensure the responsible use of resources. We are satisfied that the Request is consistent with that responsible use;

- Section 7(b) seeks that natural and physical resources are used and developed efficiently. The Request seeks to promote the efficient development of New Zealand’s roading infrastructure. It is not inconsistent with s7(b);

- Section 7(d) requires us to have particular regard to the intrinsic values of the ecosystems within the water bodies likely to be effected by TGP. We are conscious of the fact that three of the water bodies in question have been included in Appendix 2B of the Freshwater Plan as water bodies to be managed for aquatic ecosystem purposes. Again, we refer to our finding that the
avoidance of adverse effects is not the only appropriate method of management of those water bodies;

- Appendix 2 water bodies have been identified in the Freshwater Plan as having a high degree of natural character. Section 7(f) requires us to have regard to the maintenance and enhancement of that natural character to the extent that it contributes to the quality of the environment. Nothing in the evidence which we heard leads us to the conclusion that avoidance of adverse effects is the only means of achieving maintenance and enhancement of that natural character;

- Finally we considered the finite characteristics of the water bodies in question. They are small water bodies confined to a distinct geographical area which have already been subjected to considerable degradation. The Request seeks that management of the water bodies may be undertaken by means of avoidance, remedial and mitigation measures (including offsetting) which may lead to better outcomes than current management of those water bodies. Again we are satisfied that nothing in the Request is inconsistent with s7(g).

[330] Section 8 provides:

8 Treaty of Waitangi
In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

[331] We refer to the contents of para [329] (first bullet point) above. Again we are satisfied that any issues pertaining to the Treaty of Waitangi have been addressed through direct negotiation between NZTA and Ngati Toa.

11 OUTCOME

[332] We summarise our determinative findings and the reasons for them in these terms:

- TGP is a roading project which has been identified as nationally and regionally significant.

- TGP is likely to have adverse effects which are more than minor on water bodies on its route;

- The relevant policies of the Freshwater Plan require the avoidance of adverse effects on those water bodies, notwithstanding that avoidance of adverse

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86 Para [98] above.
effects is not the only appropriate method of achieving their sustainable management provided for by the Act\textsuperscript{87};

- The Freshwater Plan in its present form potentially precludes consideration of the merits of any resource consent applications for TGP in accordance with s104 as a consequence of the operation of s104D due the lack of flexibility in the relevant policies\textsuperscript{88};

- Changing the Freshwater Plan to include provision for a wider range of management methods than just avoidance of adverse effects is the appropriate option to achieve sustainable management of the water bodies and allow consideration of resource consent applications for TGP on their merits\textsuperscript{89};

- The appropriate form of the Request having regard to alternatives and to its efficiency and effectiveness in enabling the Freshwater Plan to achieve its Objectives, is that set out in Appendices 1 and 2\textsuperscript{90};

- The changes to the Freshwater Plan contained in Appendices 1 and 2 do not of themselves give effect to any national or regional policy statements as they are limited in scope. The changes are not inconsistent with the relevant national and regional policy instruments and will not preclude the Freshwater Plan from giving effect to such instruments if they are incorporated into the Freshwater Plan\textsuperscript{91};

- The changes to the Freshwater Plan contained in Appendices 1 and 2 will enable Greater Wellington to carry out its functions\textsuperscript{92}; and

- The changes to the Freshwater Plan contained in Appendices 1 and 2 are in accordance with Part 2\textsuperscript{93} and meet the purpose of the Act.

Having regard to all of our findings above, we are satisfied that it is appropriate to approve the Request subject to the plan changes requested being in the form contained in Appendices 1 and 2. Changes should be made to the Freshwater Plan accordingly.

Appendix 3 contains the map referred to in the definition of Transmission Gully Project.

\textsuperscript{87} Para [237] above.

\textsuperscript{88} Para [162] – [166] above.

\textsuperscript{89} Para [233] – [241] above.

\textsuperscript{90} Para [242] – [252] above.

\textsuperscript{91} Para [253] – [304] above.

\textsuperscript{92} Para [316] – [317] above.

\textsuperscript{93} Para [318]-[331] above.
Appendices 4 and 5 contain summaries of reasons why we have accepted or rejected submissions on the issues identified in para [81] and (for the sake of completeness) on the individual submissions and cross submissions themselves.

Prior to the issue of this Final Decision Report the Board had regard to comments received pursuant to S 149Q(5) from:

- Greater Wellington;
- Rational Transport Society Inc & P Warren;
- NZTA;
- The Director General.

A table of the comments received and the outcome of the Board’s consideration of those comments is available from the EPA.

This Decision and Report represents the unanimous opinion of the Board.

Dated this 5th day of October 2011

Signed: Environment Judge Brian Dwyer

Signed: Environment Commissioner Russell Howie

Signed: David McMahon

Signed: David Mitchell

Signed: Glenice Paine
12 APPENDICES
APPENDIX 1

PLAN CHANGE WITH TRACKED CHANGE REVISIONS
Regional Freshwater Plan Chapter 4 - General Objectives and Policies

4.2.10 To avoid adverse effects on wetlands, and lakes and rivers and their margins, identified in Appendix 2 (Parts A and B), (with the exception of the Transmission Gully Project and its effects on the Horokiri, Ration and lower Pauatahanui Streams where Policy 4.2.33A applies), when considering the protection of their natural character from the adverse effects of subdivision, use, and development. For the avoidance of doubt Rule 50 applies to the Transmission Gully Project, in relation to its effects on the Horokiri, Ration and lower Pauatahanui Streams.

Explanation. Wetlands, and lakes and rivers and their margins, are identified in Appendix 2 as having a high degree of natural character when assessed against the characteristics outlined in Policy 4.2.9.

The preservation of natural character in this policy is achieved by avoiding adverse effects. In this policy "to avoid adverse effects" means that when “avoiding, remedying or mitigating adverse effects”, as identified in subsection 5(2)(c) of the Act, the emphasis is to be placed on avoiding adverse effects. “To avoid adverse effects" means that only activities with effects that are no more than minor will be allowed in the water bodies identified unless Policy 4.2.33A applies. Further elaboration of the meaning of “minor” is contained in Policy 4.2.33 (Policy 4.2.33A provides the approach to be considered in relation to the Transmission Gully Project that includes avoidance, remediation, or mitigation of or offsetting adverse effects). Activities can occur in the water bodies listed in Appendix 2 but the emphasis in this policy is on preserving the natural character of these water bodies.

In this context “To avoid … when considering” relates to consideration during the preparation of, variation to, or change to, district and regional plans, or the consideration of any relevant resource consent application.

The wetlands, rivers and lakes which are identified in Part A of Appendix 2 are to have their water quality managed in its natural state according to Policy 5.2.1. The wetlands, rivers and lakes that are identified in Part B of Appendix 2 are to have their water quality managed for aquatic ecosystem purposes according to Policy 5.2.6.

The characteristics of a water body that are commonly perceived to contribute to its natural character are identified in the previous policy.

4.2.33A To allow manage adverse effects of the development of the Transmission Gully Project, which are more than minor, provided in accordance with the following management regime:

(1) Adverse effects are avoided to the extent practicable;
Adverse effects which cannot be avoided are remedied or mitigated to the extent practicable;

Adverse effects which cannot be avoided or remedied are mitigated to the extent practicable;

Adverse effects which cannot practicably be avoided, remedied or mitigated are offset.

Explanation: This policy recognises that the Transmission Gully Project is identified in various statutory and policy documents as having both national and regional significance. In achieving the sustainable management objectives of the Act, resource managers and decision makers have the option of applying avoidance, remediation and mitigation in managing adverse effects, particularly important for enabling people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety. Accordingly, the adverse effects of aspects of the Project may be acceptable, even though they cannot be completely avoided, remedied, or mitigated.

Remedying or mitigating can include the concept of offsetting. The policy creates a cascading hierarchy for the avoidance, remedying, or mitigation of adverse effects. However, the policy also provides that where none of these options are practicable, it may be appropriate to offset such effects. “Offsetting” means the provision of a positive effect in one location to offset adverse effects of the same or similar type caused by the Transmission Gully Project at another location with the result that the overall adverse effects on the values of the waterbodies are remedied or mitigated.

Where offsetting is to be applied, there should be a clear connection with the effect and the offsetting measure. The offsetting measure should preferably be applied as close as possible to the site incurring the effects. Hence, there should be a focus on offsetting occurring within the affected catchments along the Transmission Gully route and to specifically address the effects at issue.

Offsetting should, as far as can be achieved maintain and enhance the particular natural values affected by the Project when assessed overall.

The adequacy of a proposed offsetting measure should be transparent in that it is assessed against a recognised methodology.

In this policy “to the extent practicable” requires consideration of the nature of the activity, the sensitivity of the receiving environment to adverse effects, the financial implications and adverse effects of the measure considered compared with other alternative measures, the current state of technical knowledge and the likelihood that effects can be successfully avoided, remedied or mitigated.

In this context “offset” in clause (4) means taking action that will offset any adverse effects such as enhancing amenity, ecological, or recreational values on-site or elsewhere. Tools such as the “Stream Ecological Valuation” method may assist in evaluating the ecological offset ratio, which, based on measured values, sets the amount of offset required. Other ways of offsetting adverse effects are indicated in the second, third and fourth bullet points of Policy 4.2.36.
Regional Freshwater Plan Chapter 7 - Use of the Beds of Rivers and Lakes and Development on the Floodplain

7.2.1 To allow the following uses within river and lake beds:

- structures or activities for flood mitigation or erosion protection purposes;
- structures for transportation and network utility purposes; or
- structures for activities which need to be located in, on, under, or over the beds of rivers and lakes; or
- structures for cultural harvest (e.g., pa tuna); or
- the maintenance of any lawful structure; or
- the removal of aquatic weeds from farm drains and urban drains for drainage purposes; or
- the extraction of sand, gravel, or rock; or
- the diversion of water associated with activities that are otherwise authorised; or
- the enhancement of the natural character of any wetland, lake or river and its margins;

provided that any adverse effects are avoided, remedied or mitigated and that the significant adverse effects identified in Policy 7.2.2 are avoided (unless the effects are of activities for the Transmission Gully Project and are addressed in accordance with Policy 4.2.33A).

Explanation. Policy 7.2.1 lists criteria for appropriate uses within the beds of rivers and lakes. "Uses" refers to those activities identified in subsections 13(1)(a), 13(1)(b), 13(1)(c), 13(1)(d) and 13(1)(e) of the Act. Structures or activities that do not meet the criteria listed in the policy are inappropriate. For example, any structure associated with a use that does not have to be located in or on the bed of a river or lake is considered inappropriate.

While a particular use of a river or lake bed may meet the criteria listed in the policy, it may need to comply with environmental controls, and is subject to Policy 7.2.2. The policy recognises that adverse effects of activities for the Transmission Gully Project can be considered according to Policy 4.2.33A.

7.2.2 To not allow the use of river and lake beds for structures or activities that have significant adverse effects on:

- the values held by tangata whenua; and/or
- natural or amenity values; and/or
- lawful public access along a river or lake bed; and/or
- the flood hazard; and/or
- river or lake bed or bank stability; and/or
- water quality; and/or
- water quantity and hydraulic processes (such as river flows and sediment transport); and/or
- the safety of canoeists or rafters;

unless the structures or activities are for the Transmission Gully Project and addressed in accordance with Policy 4.2.33A.
**Explanation.** This policy lists characteristics of rivers and lakes that should not be significantly affected by uses of river and lake beds which are identified as "appropriate" in the previous policy. "Uses" has the same meaning as in Policy 7.2.1.

When a new use of any river or lake bed is considered, due regard must be had to avoiding, remedying, or mitigating adverse effects on these characteristics.

In the context of this policy deciding on what are "significant adverse effects" is in part a value judgement which will be determined by the decision makers on resource consents, i.e., Regional Councillors or Hearing Commissioners. When deciding whether an adverse effect is significant or not, decision makers will have regard to:

- the significance of any values identified; and
- the scale/magnitude of any adverse effects on the values identified; and
- the reversibility of any adverse effects on the values identified; and
- any other relevant provisions in the Plan.

Reference in the policy to "the Transmission Gully Project and adverse effects that would otherwise be significant" recognises that these potential effects shall be addressed through Policy 4.2.33A.¹

¹“We have included the original wording as requested by NZTA, but have reservations about the accuracy and relevance of this addition. The parties may make submissions on this matter in their comments on the Draft Report.”
APPENDIX 2

PLAN CHANGE FINAL FORM WITH REVISIONS ACCEPTED
**Regional Freshwater Plan Chapter 4 - General Objectives and Policies**

4.2.10 To avoid adverse effects on wetlands, and lakes and rivers and their margins, identified in Appendix 2 (Parts A and B), (with the exception of the Transmission Gully Project and its effects on the Horokiri, Ration and lower Pauatahanui Streams where Policy 4.2.33A applies), when considering the protection of their natural character from the adverse effects of subdivision, use, and development. For the avoidance of doubt Rule 50 applies to the Transmission Gully Project, in relation to the Horokiri, Ration and lower Pauatahanui Streams.

**Explanation.** Wetlands, and lakes and rivers and their margins, are identified in Appendix 2 as having a high degree of natural character when assessed against the characteristics outlined in Policy 4.2.9.

The preservation of natural character in this policy is achieved by avoiding adverse effects. In this policy "to avoid adverse effects" means that when “avoiding, remedying or mitigating adverse effects”, as identified in subsection 5(2)(c) of the Act, the emphasis is to be placed on avoiding adverse effects. "To avoid adverse effects" means that only activities with effects that are no more than minor will be allowed in the water bodies identified unless Policy 4.2.33A applies. Further elaboration of the meaning of “minor” is contained in Policy 4.2.33 (Policy 4.2.33A provides the approach to be considered in relation to the Transmission Gully Project that includes avoidance, remediation, or mitigation of adverse effects). Activities can occur in the water bodies listed in Appendix 2 but the emphasis in this policy is on preserving the natural character of these water bodies.

In this context “To avoid … when considering” relates to consideration during the preparation of, variation to, or change to, district and regional plans, or the consideration of any relevant resource consent application.

The wetlands, rivers and lakes which are identified in Part A of Appendix 2 are to have their water quality managed in its natural state according to Policy 5.2.1. The wetlands, rivers and lakes that are identified in Part B of Appendix 2 are to have their water quality managed for aquatic ecosystem purposes according to Policy 5.2.6.

The characteristics of a water body that are commonly perceived to contribute to its natural character are identified in the previous policy.

4.2.33A To manage adverse effects of the development of the Transmission Gully Project, in accordance with the following management regime:

1. Adverse effects are avoided to the extent practicable;
2. Adverse effects which cannot be avoided are remedied or mitigated.

**Explanation:** This policy recognises that the Transmission Gully Project is identified in various statutory and policy documents as having both national and regional significance. In achieving the sustainable management objectives of the Act, resource managers and decision makers have the option of applying avoidance, remediation and mitigation in managing adverse effects. Accordingly, the adverse effects of aspects of
the Project may be acceptable, even though they cannot be completely avoided, remedied, or mitigated.

Remedying or mitigating can include the concept of offsetting. “Offsetting” means the provision of a positive effect in one location to offset adverse effects of the same or similar type caused by the Transmission Gully Project at another location with the result that the overall adverse effects on the values of the waterbodies are remedied or mitigated.

Where offsetting is to be applied, there should be a clear connection with the effect and the offsetting measure. The offsetting measure should preferably be applied as close as possible to the site incurring the effects. Hence, there should be a focus on offsetting occurring within the affected catchments along the Transmission Gully route and to specifically address the effects at issue.

Offsetting should, as far as can be achieved maintain and enhance the particular natural values affected by the Project when assessed overall.

The adequacy of a proposed offsetting measure should be transparent in that it is assessed against a recognised methodology.

In this policy “to the extent practicable” requires consideration of the nature of the activity, the sensitivity of the receiving environment to adverse effects, the financial implications and adverse effects of the measure considered compared with other alternative measures, the current state of technical knowledge and the likelihood that effects can be successfully avoided, remedied or mitigated.

**Regional Freshwater Plan Chapter 7 - Use of the Beds of Rivers and Lakes and Development on the Floodplain**

7.2.1 To allow the following uses within river and lake beds:
- structures or activities for flood mitigation or erosion protection purposes;
- structures for transportation and network utility purposes; or
- structures for activities which need to be located in, on, under, or over the beds of rivers and lakes; or
- structures for cultural harvest (e.g., pa tuna); or
- the maintenance of any lawful structure; or
- the removal of aquatic weeds from farm drains and urban drains for drainage purposes; or
- the extraction of sand, gravel, or rock; or
- the diversion of water associated with activities that are otherwise authorised; or
- the enhancement of the natural character of any wetland, lake or river and its margins;

provided that any adverse effects are avoided, remedied or mitigated and that the significant adverse effects identified in Policy 7.2.2 are avoided (unless the effects are of activities for the Transmission Gully Project and are addressed in accordance with Policy 4.2.33A).

**Explanation.** Policy 7.2.1 lists criteria for appropriate uses within the beds of rivers and lakes. "Uses" refers to those activities identified in
subsections 13(1)(a), 13(1)(b), 13(1)(c), 13(1)(d) and 13(1)(e) of the Act. Structures or activities that do not meet the criteria listed in the policy are inappropriate. For example, any structure associated with a use that does not have to be located in or on the bed of a river or lake is considered inappropriate.

While a particular use of a river or lake bed may meet the criteria listed in the policy, it may need to comply with environmental controls, and is subject to Policy 7.2.2. The policy recognises that adverse effects of activities for the Transmission Gully Project can be considered according to Policy 4.2.33A.

7.2.2 To not allow the use of river and lake beds for structures or activities that have significant adverse effects on:

- the values held by tangata whenua; and/or
- natural or amenity values; and/or
- lawful public access along a river or lake bed; and/or
- the flood hazard; and/or
- river or lake bed or bank stability; and/or
- water quality; and/or
- water quantity and hydraulic processes (such as river flows and sediment transport); and/or
- the safety of canoeists or rafters;

unless the structures or activities are for the Transmission Gully Project and addressed in accordance with Policy 4.2.33A.

Explanation. This policy lists characteristics of rivers and lakes that should not be significantly affected by uses of river and lake beds which are identified as "appropriate" in the previous policy. "Uses" has the same meaning as in Policy 7.2.1.

When a new use of any river or lake bed is considered, due regard must be had to avoiding, remedying, or mitigating adverse effects on these characteristics.

In the context of this policy deciding on what are “significant adverse effects” is in part a value judgement which will be determined by the decision makers on resource consents, i.e., Regional Councillors or Hearing Commissioners. When deciding whether an adverse effect is significant or not, decision makers will have regard to:

- the significance of any values identified; and
- the scale/magnitude of any adverse effects on the values identified; and
- the reversibility of any adverse effects on the values identified; and
- any other relevant provisions in the Plan.

Reference in the policy to “the Transmission Gully Project and adverse effects that would otherwise be significant” recognises that these potential effects shall be addressed through Policy 4.2.33A.
“Transmission Gully Project” is a strategic transport route as shown on the plan attached to this report as Appendix 3 and running from MacKays Crossing to Linden and the term includes works in proximity that are associated with the implementation of that project.
APPENDIX 3

MAP SHOWING INDICATIVE TRANSMISSION GULLY ROUTE
APPENDIX 4

DECISIONS ON MATTERS RAISED IN SUBMISSIONS
In accordance with clause 10(2)(a)(ii) of Schedule 1 we address the issues raised in submissions identified in para [81] of this Report:

Environmental Effects on Important Streams

We have rejected those submissions which opposed the Request on the basis that allowing it would result in significant adverse effects on the streams affected by TGP. Our reason for doing so is our finding that the values of these streams potentially affected by TGP are not such that the avoidance of adverse effects is the only appropriate method of achieving their sustainable management.

The Justification for Exceptions to the Existing Provisions of the Freshwater Plan is Inappropriate or Inaccurate

We have rejected the submissions which contend that the justification for exceptions to the Freshwater Plan is inappropriate or inaccurate. Our reasons for doing so are that:

- We are satisfied that TGP is a nationally significant roading project;

- We find that the values of the streams potentially affected by TGP are not such that the avoidance of adverse effects is the only appropriate method of achieving their sustainable management;

- It is accordingly appropriate to allow consideration of resource consent applications for TGP under a more flexible policy framework than presently exists in the Freshwater Plan.

Impacts Extend Beyond Instream Values

We have rejected those submissions which raised this issue. Although we have accepted that water bodies other than Horokiri, Ration and Pauatahanui streams will be affected by TGP there was no evidence before us to support the submissions as to wider affects of drinking water, recreation, shallow aquifers etc. Insofar as the other matters raised under this head are concerned we find that:

- The values of the streams (other than Horokiri, Ration and Pauatahanui) that may potentially be affected by TGP are not such that the avoidance of adverse effects is the only appropriate method of achieving their sustainable management;

- Insofar as potential affects of TGP on Pauatahanui Inlet are concerned we refer to our findings that if any consent authority determines that avoidance of adverse effects of TGP on Pauatahanui Inlet is the appropriate response to resource consent applications, then that response remains available to it notwithstanding the inclusion of Policy 4.2.33A in the Freshwater Plan;

- There is nothing in the request which would detract from the ability of the Freshwater Plan to give effect to the NZCPS.
Impacts of the Transmission Gully Project

We have rejected those submissions which raise concerns relating to construction and implementation of TGP. We do so for two reasons:

- The submissions were unsupported by relevant evidence;
- We refer to our findings in a number of instances that matters relevant to TGP can be properly assessed and considered as part of any application for resource consents. Nothing in the request as approved by us precludes a full assessment of adverse effects of TGP.

The Protection Afforded by the Freshwater Plan is Appropriate

We have rejected those submissions which contended that if construction of TGP is to cause adverse effects on the environment, then the obstacles to this should not be removed from the Freshwater Plan. Our reason for doing so is our finding that the values of the streams potentially affected by TGP are not such that the avoidance of adverse effects is the only appropriate method of achieving their sustainable management.

Offsetting

We have rejected those submissions which contended that offsetting was an inappropriate way of managing the values of water bodies potentially affected by TGP. We have done so because the evidence of the ecologists led us to the view that offsetting is a technique commonly used for ecological management. Whether or not offsetting is the appropriate method for dealing with all (or any) adverse effects of TGP is something to be determined by the consent authority determining resource consent applications for TGP. Policy 4.2.33A does not require the application of offsetting in any given instance, it simply makes that method available (as a subset of mitigation or remedy) if it is appropriate.

We have accepted those submissions which have questioned the use of SEV as a method for assessing offsetting by deleting reference to SEV from Policy 4.2.33A. Whether or not SEV is in fact an appropriate method in any given instance is again something that will be determined by the consent authority. We have accepted in part the submission seeking a cascading hierarchy in Policy 4.2.33A by accepting the preference for avoidance where practicable.

The Plan Change may set a Precedent

We have rejected those submissions which raised precedent issues pertaining to the Request. The reason for doing so is that private plan changes are a mechanism provided for the Act and because Part 6AA specifically contemplates and provides for plan changes for proposals of national significance as we have found TGP to be.

Relevant Planning Documents
We have rejected those submissions which contended that the Request is contrary to various relevant planning instruments and inconsistent with others. We have found that the changes proposed in the Request are not inconsistent with any of the relevant national and regional policy statements and documents and will not preclude the Freshwater Plan from giving effect to such instruments. We have found that the changes proposed in the request are in accordance with Part 2.

**Part 2 of the Act**

We have rejected those submissions which expressed concerns about protection of the natural character of the coastal environment, effects of TGP on significant habitats of indigenous fauna and who argue that TGP does not represent an efficient use of natural and physical resources. None of the submissions to that effect were supported by relevant probative evidence. We refer to our earlier findings as to potential effects on Pauatahanui Inlet and our findings that the values of the streams potentially affected by TGP are not such that avoidance of adverse effects is the only appropriate method of achieving their sustainable management. We do not consider it necessary to address matters such as generation of traffic and the like as these were not relevant to the limited consideration of changes to the Freshwater Plan.

**Importance of the Project**

We have accepted those submissions which supported the Request, to the extent that it would remove barriers to the benefits arising from implementation of TGP. We have found that the Policies of the Freshwater plan in their present form do potentially preclude the grant of consents under that Plan to TGP.

We have rejected the submissions to the extent that the changes to the proposed Policies which we have required do not ensure that TGP will proceed (as the submissions sought), but rather that any resource consent applications to be made in respect of TGP may be considered in the context of policies which permit consideration of the fullest appropriate range of methods to manage adverse effects.
APPENDIX 5

DECISIONS ON SUBMISSIONS
<table>
<thead>
<tr>
<th>Reference</th>
<th>Submitter</th>
<th>Position</th>
<th>Decision requested</th>
<th>Board Decision on Submission</th>
</tr>
</thead>
<tbody>
<tr>
<td>0032</td>
<td>Alliance for Sustainable Kapiti, Inc (contact Marie O’Sullivan)</td>
<td>Oppose in full</td>
<td>Reject. The submitter also seeks that Kapiti waterways are given protection in the Freshwater Plan.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0034</td>
<td>Appropriate Technology for Living Association (contact – Paul Bruce)</td>
<td>Oppose in full</td>
<td>Reject. The submitter also proposes a new set of rules for permitted, discretionary and prohibited activities in the Freshwater Plan.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0041(^1)</td>
<td>Richard Barber</td>
<td>Oppose in full</td>
<td>Reject.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0024</td>
<td>Bronwyn Bell</td>
<td>Oppose in full</td>
<td>Reject.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0009</td>
<td>Allan Bloomfield</td>
<td>Support in full</td>
<td>Accept.</td>
<td>Submission is accepted in part because of the findings summarised in Para [332] and the identified reasons for each of those findings. Request has been amended to reflect the Board’s findings.</td>
</tr>
<tr>
<td>0001</td>
<td>Stephen Brouwer</td>
<td>Oppose in full</td>
<td>Reject.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0038</td>
<td>Katy Brown</td>
<td>Oppose in full</td>
<td>Reject.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0010</td>
<td>Benjamin Burkhart</td>
<td>Oppose in full</td>
<td>Not stated.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
</tbody>
</table>

\(^1\) This late submission was accepted by the Board of Inquiry on 23/03/2011.
<table>
<thead>
<tr>
<th></th>
<th>Name</th>
<th>Support/Oppose</th>
<th>Accept/Reject/Not Stated</th>
<th>Submission Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>0036</td>
<td>Director General of Conservation</td>
<td>Support in part Oppose in part</td>
<td>Accept the plan change subject to the amendments set out by the submitter.</td>
<td>Submission is accepted in part because of the findings summarised in Para [332] and the identified reasons for each of those findings. The form of the plan change contained in the Request has been amended to reflect the Board's findings.</td>
</tr>
<tr>
<td>0003</td>
<td>Richard and Susan Finlay</td>
<td>Support in full</td>
<td>Not stated.</td>
<td>Submission is accepted in part because of the findings summarised in Para [332] and the identified reasons for each of those findings. The form of the plan change contained in the Request has been amended to reflect the Board's findings.</td>
</tr>
<tr>
<td>0018</td>
<td>Nick Fisher</td>
<td>Oppose in full and in particular policy 4.2.33A</td>
<td>Reject.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0015</td>
<td>Lesley Frederikson</td>
<td>Oppose in part and are neutral in part.</td>
<td>Accept the plan change subject to addressing the concerns raised by the submitter.</td>
<td>Submission is accepted in part because of the findings summarised in Para [332] and the identified reasons for each of those findings. The form of the plan change contained in the Request has been amended to reflect the Board’s findings.</td>
</tr>
<tr>
<td>0031</td>
<td>Stacey Gasson</td>
<td>Oppose in full</td>
<td>Not stated.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0005</td>
<td>Corona Griffiths</td>
<td>Oppose in part</td>
<td>Reject.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0002</td>
<td>Marc Hastings Griffiths</td>
<td>Oppose in full</td>
<td>Not stated.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0023</td>
<td>Guardians of Pauatahanui Inlet (Anthony Shaw – contact person)</td>
<td>Oppose in full</td>
<td>Reject.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
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<td>No</td>
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<td>Position/Approval Level</td>
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<td>0039</td>
<td>John Horne</td>
<td>Oppose in full</td>
<td>Reject</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0020</td>
<td>Kapiti Coast District Council</td>
<td>Oppose in full</td>
<td>Reject</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0028</td>
<td>Jan Logie</td>
<td>Oppose in full</td>
<td>Reject</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0021</td>
<td>Wayne Mackenzie</td>
<td>Oppose in full</td>
<td>Reject</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0017</td>
<td>Patrick Morgan</td>
<td>Oppose in full</td>
<td>Reject</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0013</td>
<td>Michael Nicholson</td>
<td>Oppose in part</td>
<td>Accept the plan change subject to addressing the concerns raised by the submitter.</td>
<td>Submission is accepted in part because of the findings summarised in Para [332] and the identified reasons for each of those findings. The form of the plan change contained in the Request has been amended to reflect the Board’s findings.</td>
</tr>
<tr>
<td>0008</td>
<td>Russel Norman</td>
<td>Oppose in full</td>
<td>Reject</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0022</td>
<td>Paremata Residents Association Inc.</td>
<td>Support in full</td>
<td>Accept</td>
<td>Submission is accepted in part because of the findings summarised in Para [332] and the identified reasons for each of those findings. The form of the plan change contained in the Request has been amended to reflect the Board’s findings.</td>
</tr>
<tr>
<td>0035</td>
<td>Pauatahanui Inlet Community Trust (PICT)</td>
<td>Support in full</td>
<td>Accept the plan change subject to addressing the concerns raised by the submitter.</td>
<td>Submission is rejected in part and accepted in part because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>Ticket</td>
<td>Name</td>
<td>Support/Oppose</td>
<td>Decision</td>
<td>Notes</td>
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<tr>
<td>0037</td>
<td>Karen Phillips</td>
<td>Support in full</td>
<td>Accept.</td>
<td>Submission is accepted in part because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
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<td>The form of the plan change contained in the Request has been amended to reflect the Board’s findings.</td>
</tr>
<tr>
<td>0007</td>
<td>Mr Roger, Mrs Jennifer and Ms Karen Phillips</td>
<td>Support in full</td>
<td>Accept.</td>
<td>Submission is accepted in part because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
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<td>The form of the plan change contained in the Request has been amended to reflect the Board’s findings.</td>
</tr>
<tr>
<td>0030</td>
<td>Porirua City Council (PCC) (contact Gary Simpson)</td>
<td>Support in full</td>
<td>Accept.</td>
<td>Submission is accepted in part because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
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<td>The form of the plan change contained in the Request has been amended to reflect the Board’s findings.</td>
</tr>
<tr>
<td>0027</td>
<td>Public Transport Voice (Mike Mellor – contact)</td>
<td>Oppose in full</td>
<td>Reject.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
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<tr>
<td>0019</td>
<td>Rational Transport Society Incorporated (contact Paula Warren)</td>
<td>Oppose in full</td>
<td>Reject.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
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<tr>
<td>0026</td>
<td>Royal Forest and Bird, Wellington Branch</td>
<td>Oppose in full</td>
<td>Reject.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0014</td>
<td>Alison Smith</td>
<td>Oppose in full</td>
<td>Not stated.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>Page</td>
<td>Name</td>
<td>Position</td>
<td>Decision</td>
<td>Reason</td>
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</tr>
<tr>
<td>0016</td>
<td>Tiffany Stewart</td>
<td>Oppose in full</td>
<td>Reject.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0004</td>
<td>Michael and Kathleen Sudfeldt</td>
<td>Support in full</td>
<td>Not stated.</td>
<td>Submission is accepted in part because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0033</td>
<td>Alice Taylor</td>
<td>Oppose in full</td>
<td>Reject.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0025</td>
<td>The Coastal Highway Group</td>
<td>Oppose in full</td>
<td>Reject.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0006</td>
<td>R &amp; C Vasta Family Trust</td>
<td>Support in full</td>
<td>Not stated.</td>
<td>Submission is accepted in part because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0012</td>
<td>Paula Warren</td>
<td>Oppose in full</td>
<td>Reject.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>0040^2</td>
<td>Beverley Wakem and Nicky Chapman</td>
<td>Oppose in full</td>
<td>Reject.</td>
<td>Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
</tbody>
</table>

^2 This late submission was accepted by the Board of Inquiry on 23/03/2011.
<table>
<thead>
<tr>
<th>Reference</th>
<th>Submitter</th>
<th>Position</th>
<th>Decision requested</th>
<th>Board Decision on Submission</th>
</tr>
</thead>
<tbody>
<tr>
<td>0011</td>
<td>Whitby Coastal Estates Ltd (contact David Bradford)</td>
<td>Support in part</td>
<td>Accept the plan change subject to addressing the concerns raised by the submitter.</td>
<td>Submission is accepted in part because of the findings summarised in Para [332] and the identified reasons for each of those findings. The form of the plan change contained in the Request has been amended to reflect the Board’s findings.</td>
</tr>
<tr>
<td>029</td>
<td>Winstone Aggregates, a division of Fletcher Concrete and Infrastructure Limited</td>
<td>Support in part</td>
<td>Accept the plan change subject to addressing the concerns raised by the submitter.</td>
<td>Submission is accepted in part because of the findings summarised in Para [332] and the identified reasons for each of those findings. The form of the plan change contained in the Request has been amended to reflect the Board’s findings.</td>
</tr>
</tbody>
</table>

**FURTHER SUBMISSIONS**

<table>
<thead>
<tr>
<th>Reference</th>
<th>Submitter</th>
<th>Position</th>
<th>Decision requested</th>
<th>Board Decision on Submission</th>
</tr>
</thead>
<tbody>
<tr>
<td>01</td>
<td>Living Streets Wellington and Cycle Aware Wellington</td>
<td>Oppose submission No. 13 - Michael Nicholson</td>
<td>Reject</td>
<td>Further Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
</tr>
<tr>
<td>02</td>
<td>Royal Forest &amp; Bird, National Office</td>
<td>Oppose submission No.11 - Whitby Coastal Estates Ltd</td>
<td>Disallow part of the submission that seeks to extend the offsetting principle to all projects.</td>
<td>Further Submission is accepted in part because of the findings summarised in Para [332] and the identified reasons for each of those findings. The form of the plan change contained in the Request has been amended to reflect the Board’s findings</td>
</tr>
<tr>
<td></td>
<td>Support submission No.12 - Paula Warren</td>
<td>Allow submission reject plan change in full.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Support submission No.20 - Kapiti Coast District Council</td>
<td>Allow submission reject plan change in full.</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Support submission No.26 - Royal Forest &amp;</td>
<td>Allow submission reject plan change in full.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name</td>
<td>Submission Details</td>
<td>Decision Details</td>
<td></td>
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</tr>
<tr>
<td>Bird, Wellington Branch</td>
<td>Support submission No.23 - Guardians of Pauatahanui Inlet Support in part submission No.36 – Director General of Conservation.</td>
<td>Allow submission reject plan change in full. Seek that the plan change is rejected in full. However, if the Board decides to grant the plan change, we seek greater certainty in several aspects of the plan change, as outlined by DOC at paragraph 5 of its submissions.</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Support submission No.8 - Russel Norman</td>
<td>Allow submission reject plan change in full.</td>
<td></td>
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</tr>
<tr>
<td>John Home</td>
<td>Support submission No.34 - Appropriate Technology for Living Association</td>
<td>Allow the whole of the original submission by adopting the plan change proposed, or an equally effective set of rules to manage the impacts of land uses on freshwater and coastal ecosystems and values</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Support submission No.12 - Paula Warren</td>
<td>Allow whole of submission</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Further Submission is rejected because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
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</tr>
<tr>
<td></td>
<td>Director General of Conservation</td>
<td>Support submission No.29 - Winstone Aggregates</td>
<td>Allow in whole</td>
<td>Further Submission is accepted in part because of the findings summarised in Para [332] and the identified reasons for each of those findings.</td>
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<tr>
<td></td>
<td></td>
<td>Support in part submission No.40 – Beverley Wakem &amp; Nicky Chapman</td>
<td>Allow in part</td>
<td>The form of the plan change contained in the Request has been amended to reflect the Board’s findings.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Support in part submission No.23 - Guardians of Pauatahanui Inlet</td>
<td>Allow in part</td>
<td></td>
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</tbody>
</table>
