

**FTAA-2502-1009**

## the Fast-track Approvals Act 2024

**AND**

**IN THE MATTER OF**

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

**MEMORANDUM OF COUNSEL FOR SAVE THE MAITAI INC**

**WITH COMMENTS ON CONDITIONS AND CORRECTIONS TO DRAFT DECISION**

**12 August 2025**

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]



**SALLY GEPP KC**  
BARRISTER

## MAY IT PLEASE THE PANEL

1. The Panel has released a draft decision and 13 sets of draft consent conditions and has provided 5 working days for comments on the draft conditions. That is a very short timeframe, and the extent to which Save the Maitai Inc has been able to review and comment on the conditions reflects that timeframe.

### Draft conditions

2. There are issues with the draft conditions relating to management plans, which apply to all of the consents:
  - a. The conditions do not clearly specify that all works must be undertaken in accordance with certified management plans. A statement that “All works must be undertaken in accordance with certified management plans” should be added to every consent.
  - b. The conditions interchangeably use the terms “approval” and “certification” where referring to Council certification of management plans. The term certification should be used consistently.
  - c. Generally it appears that the conditions allocate the task of certifying management plans to the Council, and it could be expected that Council would engage a SQEP for this purpose. However a different approach is used for the Encapsulation Cell Ongoing Management Plan in Landfill Condition 14:

The OSMP-Landfill shall be submitted to Council's Monitoring Officer and certified by suitably qualified and experienced practitioner (SQEP) at the Consent Holders expense, prior to the placement of any material into the encapsulation cell.

This raises the question as to whether Council is certifying the other management plans, whether Council will engage a SQEP for that purpose where relevant, and if so why different condition wording is used in Landfill Condition 14.

STM's comment on the substantive application requested a condition requiring that any future contamination-related matters that need to be signed off by a Suitably Qualified and Experienced Practitioner require a dual sign-off / peer review approach. At this stage it is unclear how certification is to occur.

- d. Objectives and parameters to be met by management plans must be set in consent conditions and not left to the management plans.<sup>1</sup> It is

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<sup>1</sup> *Remediation NZ Ltd v Taranaki Regional Council* [2024] NZEnvC 213 at [466]-[468] applying *Wellington Fish & Game Council v Manawatu-Wanganui Regional Council* [2017]

frequently unclear what objective a management plan is required to meet. The conditions sometimes refer to the purpose of the management plan, and other times to the objective of the management plan (and sometimes no outcome term is used). The term “objective” should be used consistently, and the objective should be specified in certain terms so it is clear what the certifier is certifying.

- e. Conditions relating to stormwater management (post-development) do not appear to reflect Policy RE6.3 and Schedule X.13. STM comments on the CHD Conditions include edits to reflect those NRMP provisions. The same provisions should apply where relevant to all condition sets.
3. STM's comment referred to the Arvida retirement village components for which no assessment had been provided (Pavilion, Club house, care centre, café). There do not appear to be any conditions associated with the operation of these activities.
  4. Edited versions of the following conditions are **enclosed**:
    - a. Set A CHD Conditions
    - b. Set B Earthworks and Vegetation Clearance Conditions
    - c. Set H Landfill Conditions
    - d. Set I Subdivision Conditions

#### Corrections to draft decision

#### *STM position as recorded at [86]*

5. The Panel's Draft decision says:<sup>2</sup>

[86] The Panel has considered the comments provided by Save the Maitai Inc (STM) suggesting that the statement of purpose in s 3 has the effect of imposing a “significance” gloss on the identified regional or national benefits. **If these benefits are not significant, then approval cannot be granted.** The Panel does not consider that the purpose statement has that effect. Plainly, the scale or extent of the identified benefits is relevant to the Panel's consideration of the approval, but not in the way of a bar on approval being granted. If the Legislature had intended that to be the case, it would have been much more explicit in the operative provisions of the legislation. STM's argument also appears inconsistent with s 81(4) which refers to extent not significance.

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NZEnvC 37 at [175] and *Re Canterbury Cricket Association Inc* [2013] NZEnvC 184 at [125]-[130]

<sup>2</sup> At 86

6. STM's comment did not (or was not intended to) suggest the outcome in bold that is attributed to it in the excerpt above. The relevant part of the comment said:

It is necessary to determine whether the project's regional or national benefits are "significant" in order to properly apply the relevant decision-making criteria. The purpose of the Act is to facilitate projects with "significant" regional or national benefits, and that purpose must be given the greatest weight when considering a consent application and conditions. **If a project is considered to have regional or national benefits that are less than "significant", then this weighting will have no impact for the project as the purpose of the Act is just as well met by not facilitating the project.**

7. Put another way, facilitating the delivery of a project with benefits that are less than significant does not appear to promote the FTAA's purpose of "facilitating the delivery of infrastructure and development projects with significant regional or national benefits". It does not follow that approval cannot be granted. Once a substantive application is before a Panel, the limited grounds for declining projects in s 85 are the only bases on which approval cannot or may not be granted (along with jurisdictional grounds).

*Mr Kirden Lees*

8. The Draft decision says:

[307] ... The Panel is particularly mindful that PPC28 not only involved Mr Tim Heath on behalf of the Applicant, but also Mr Kirden Lees who represented STM.

9. Mr Lees was engaged by Nelson City Council not STM.




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Sally Gepp KC / Shoshona Galbreath  
Counsel for Save the Maitai Inc