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27 March 2025

Fulton Hogan Land Development Limited
C/ Barker & Associates and Wood & Partners Consultants
by email

Attention: Rachel Morgan and Euan Williams

Dear Rachel and Euan

Fast-track Approvals Act 2024: Completeness and Scope – Fulton Hogan Land Development Limited - Milldale

1. This letter is written in support of Fulton Hogan Land Development Limited's (**FHLD**) application under the Fast-track Approvals Act 2024 (**FTAA**) for a development at Milldale.

Background

2. Milldale Stages 4C and 10 – 13 is a listed project contained within Schedule 2 of the FTAA. FHLD is listed as the authorised person.
3. FHLD intend to lodge an application for resource consent and archaeological authority pursuant to the FTAA.
4. The activity for which resource consent is sought is in summary comprehensive residential development including earthworks, civil works and subdivision, along with construction and operation of a Wastewater Treatment Plant (**WWTP**) (together, the **Activity**).
5. The relevant land to which the resource consent will apply is within the jurisdiction of Auckland Council.
6. I comment on two matters:

- (a) The test of completeness under Clause 5 of Schedule 5 and Clause 2 of Schedule 8.
- (b) Whether the proposed WWTP is within the scope of a Project under the FTAA.

Completeness

7. After a substantive application is made, the EPA are required to determine whether the application is complete and within scope.
8. In my view, the application meets the tests of section 46(2) of the FTAA to be accepted for processing by the EPA.
9. I don't propose to summarise all provisions of the FTAA relating to the completeness check. Relevantly, Section 46(2) FTAA sets out the requirements for an application to be deemed complete and thus to be accepted under FTAA. It requires an application to contain the information set out at Clauses 5 to 8 of Schedule 5 (section 43(3)(a) FTAA) and provides that the information "must be specified in sufficient detail to satisfy the purpose for which it is required" (section 44 FTAA). That is the threshold for adequate information.
10. It is trite that a completeness assessment should not be conflated with a substantive assessment of merits. I note that the FTAA includes s67 which enables the substantive decision maker to request that the applicant provide further information relating to the application once the application has been accepted for processing – i.e. the information that is adequate for the purposes of accepting an application may need to be expanded upon for the purposes of assessing it on the merits.
11. The FHLD Milldale application has been carefully and comprehensively prepared to ensure obligations as to completeness will be met. That includes extensive commentary on mitigation measures and provision of draft management plans in most instances (even though provision of a draft management plan is not necessary).
12. I note however that some management plans simply cannot be comprehensively prepared in advance of grant of consent and subsequent detailed design work, appointment of contractors and confirmation of construction methodologies. That poses no issues from the perspective of completeness by reference to applicable case law I briefly reference below.
13. Caselaw under the RMA with reference to management plans establishes:

- (a) Where management plans are proposed, conditions of consent must identify the performance standards that are to be met (and subsequent management plans must identify how those standards are able to be achieved).¹
 - (b) A management plan can provide information as to how parameters or limits can or will be met, however the parameters or limits themselves need to be specified in conditions rather than being left to the management plan.²
 - (c) Conditions must specify the objective(s) of the management plan and summarise the contents of the management plan (i.e.: the matters it must address).³
 - (d) Conditions must not require Council approval for measures, although conditions will typically provide for the council to certify that the management plan addresses all matters specified in the condition.⁴
14. The FHLD Milldale application appropriately engages with the above matters as follows:
- (a) Expert reports submitted with the application demonstrate how the effects of the activities are to be managed and address the mitigation measures that are to be included in the management plans, including key parameters and limits.
 - (b) The objective(s) and required contents of the management plans are specified in proposed conditions, including linkages to relevant recommendations in expert reports.
 - (c) The conditions require that the management plans be submitted to Council to address all matters specified in the conditions.

Scope

15. I have addressed above aspects of the requirement for the EPA after lodgement of a substantive application to confirm whether the application is complete. The other aspect of that process is confirmation that the application is within scope.

¹ *Re Canterbury Cricket Association Inc* [2013] NZEnvC 184 at [125].

² *Wellington Fish and Game Council v Manawatu-Wanganui Regional Council* [2017] NZEnvC 37 at [175].

³ Final Report and Decision of the Board of Inquiry into the Transmission Gully Proposal (June 2012) at [194].

⁴ *Re Canterbury Cricket Association Inc* [2013] NZEnvC 184 at [126].

WWTP

16. The application includes a proposed (temporary) WWTP.
17. In my opinion the WWTP is within scope. In short, I agree with the assessment set out in section 8.4 of the overview report.⁵ The WWTP is clearly an activity that supports and is subsidiary to the referred project.
18. Although not critical to the scope of analysis, I include some commentary below on the genesis of the WWTP which does have some relevance.
19. The overview report for the substantive application states with respect to the WWTP at 8.4:

A temporary wastewater treatment plant (WWTP) is included in the application in the event that there are short term capacity constraints at the Army Bay wastewater treatment plant. This may or may not eventuate, and this aspect of the proposal is therefore included as a precaution.
20. The reason for the reference to temporary capacity constraints is recent advice by Watercare that:
 - (a) A major upgrade to the Army Bay Wastewater Treatment Plant servicing the Hibiscus Coast is planned. However, Watercare say “it’s possible that the treatment plant could reach capacity before we are able to upgrade it. We are therefore closely managing new connections to our wastewater network in area”.
 - (b) Developers are advised:
 - Anyone with a building consent granted before 15 November 2024 will be able to connect when they’re ready.
 - If you have a resource consent issued before 15 November 2024 but don’t yet have a building consent, please get in touch with us to get an understanding of the remaining capacity at the treatment plant. We’ll be assessing these applications to connect on a case-by-case basis as we keep a close eye on the plant’s capacity.
 - Anyone who applies for a resource consent to build a new home or business in the Hibiscus Coast will have a condition on their consent that says they won’t be

⁵ Volume 1, Application.

able to connect to the public wastewater network until we have upgraded the Army Bay Wastewater Treatment Plant to increase its capacity.

- An upgrade to the Army Bay Wastewater Treatment Plant is currently scheduled for completion in 2031 in our Asset Management Plan. However, we're hoping we can deliver an alternative upgrade faster and are currently exploring options for this.

(c) The matters above are reflected in a Watercare press release dated 14 November 2024.⁶ This advice postdated the Government's announcement on 6 October 2024 of which projects were included in the FTAA.

21. Therefore, Watercare's position set out above was not known at the time FHLD applied to be a listed project in the FTAA. FHLD's application to be listed does record that it has entered Infrastructure Funding Agreements with Auckland Council and Crown Infrastructure Partners which encompass funding for wastewater infrastructure. The application stated:

Milldale Stages 4C and 10-13 is considered a priority project as it is anticipated both through the Auckland Future Development Strategy as well as through the live zones applied to the project area under the AUP.

The Milldale development has also been identified as a priority project through the major infrastructure partnership between Auckland Council, Auckland Transport, Crown Infrastructure Partners and FHLD to fund \$91 million of roading and wastewater infrastructure to support the building of 9000 homes at Wainui, north of Auckland. In the media release dated November 2018 and included as Appendix 9, Milldale was identified as a priority project as it will help address the shortage and unaffordability of housing in Auckland, with the funding solution to enable the roads, water and wastewater servicing required to enable the development of the project area for houses.

22. As one might expect, urban development requires supporting infrastructure. The application recorded that funding solutions were in place for water and wastewater servicing. Those solutions for the permanent public infrastructure remain in place – however Watercare's revised timing necessitates a temporary treatment activity to support as a subsidiary matter the referred project for an interim period.

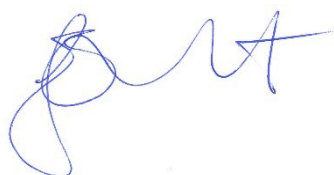
⁶<https://www.watercare.co.nz/home/about-us/latest-news-and-media/plans-to-invest-500m-for-growing-hibiscus-coast-community>

23. Section 46 FTAA (as already mentioned) provides in subsection (2) that the application complies, if it satisfies the matters set out in that subsection. Relevantly (inter alia):
- (a) Subsection (2)(a) cross references sections 42, 43 and 44.
 - (b) Subsection (2)(b) states “the application relates solely to a listed project or a referred project...”
24. Turning to definitions:
- project—**
- (a) means,—
 - (i) in relation to a listed project, the project as described in Schedule 2:
 - ...
 - (b) includes any activity that is involved in, or that supports and is subsidiary to, a project referred to in paragraph (a).
25. Commencing with the Schedule 2 description for this proposed project, it can fairly be said to be relatively general:
- (a) The geographical location is "Wainui Road, Argent Lane, Lysnar Road, and Cemetery Road, Wainui, Auckland". That is where the activity is proposed. The WWTP fronts one of the named roads.
 - (b) Turning to description of the works, "earthworks and site work for...1,100 residential allotments". In my view this description is a summary and needs to be interpreted in a workable manner - the project is clearly to develop residential allotments in order that they can be sold to be used for residential purposes. The works to enable that outcome can encompass a temporary wastewater plant.
26. Looking at other Schedule 2 listings, there are a number of residential proposals where the descriptions are relatively generic and certainly do not comprehensively identify every component part of an application. That is not the expectation of the description in Schedule 2.
27. In addition the words “includes any activity that is involved in, or that supports and is subsidiary to, a project referred to in paragraph (a)” [i.e. the project as described in Schedule 2] would be superfluous if the description in Schedule 2 was required to comprehensively list

every single activity being part of the project, with anything not specifically set out in the description being out of scope.

28. In my view the intention and purpose of the project is clearly to develop the allotments, including them being able to be sold and utilised. To give purpose to the exercise, a temporary wastewater plant forms part of the works needed to deliver the project given Watercare have recently advised there will be a connection delay.
29. Please advise if you need anything further.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'J Brabant', with a large loop at the start and a long horizontal stroke extending to the right.

Jeremy Brabant