

Before an expert panel appointed under the Fast-track Approvals Act 2024

Under	the Fast-track Approvals Act 2024 (the ' Act ')
In the matter of	A substantive application under the Act for approvals for resource consents, a wildlife permit and an archaeological authority to development a residential allotments, a commercial centre and associated infrastructure in Pukerua Bay, Porirua.
By	Pukerua Property Group Limited Partnership Applicant

Legal submissions on behalf of Pukerua Property Group Limited Partnership

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1 Introduction

- 1.1 These submissions support a substantive application by Pukerua Property Group Limited Partnership ('PPG' or 'the **Applicant**') for resource consents, a wildlife permit and an archaeological authority (collectively, 'the **Approvals**' or 'the **Application**') pursuant to the Fast-track Approvals Act 2024 ('**FTAA**').
- 1.2 The Application relates to the Mt Welcome project, a listed project under Schedule 2 of the FTAA for a residential development and associated infrastructure in Pukerua Bay, Porirua ('the **Project**').
- 1.3 These submissions are provided to assist the expert panel ('**Panel**') in its consideration of the Application against the requirements of the FTAA by:
 - a Providing an overview of the Project and approvals sought; and
 - b Providing an overview of the legal framework under the FTAA and addressing key issues in relation to that framework.
- 1.4 PPG submits that the Panel can grant the approvals sought in the Application, subject to the conditions proposed by PPG, on the basis that:
 - a The project has significant regional benefits;
 - b The effects of the Project can be appropriately managed through the proposed conditions, and have been assessed as generally¹ no more than minor adverse effects;² and
 - c The Project complies with all requirements under the FTAA and achieves the purpose of the FTAA, such that there are no mandatory or discretionary reasons for the Panel to decline the Application.

2 Overview of the Project

- 2.1 The Project involves a staged development at 422, 422A and 422B State Highway 59, 34 Muri Road, and within the State Highway 59 road reserve in Pukera Bay (the '**Site**'). The Application provides for:³
 - a 949 residential allotments with an average lot size of 523m²;

¹ With the potential exception of effects on values of significance to Ngāti Toa.

² Substantive Application, section 15.16.

³ Substantive Application, section 1.

- b A commercial centre;
- c Associated infrastructure including wastewater (including wastewater storage facilities), stormwater, water reticulation,⁴ roading, and pedestrian and cycling trails;
- d Earthworks to establish the required finished surface levels for building platforms, roading, parks and drainage;
- e Landscaping; and
- f A new intersection with State Highway 59.

2.2 The Application seeks the following approvals:

- a Resource consents under the Porirua District Plan, Greater Wellington Natural Resources Plan, Resources Management (National Environmental Standards for Freshwater) Regulations 2020 (**'NES-F'**), and Resources Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (**'NES-Soil'**), which would otherwise be applied for under the Resource Management Act 1991 (**'RMA'**).
- b Wildlife Approvals to authorise the capture, handling, and relocation of lizards and non-game birds during works if required, which would otherwise be applied for under the Wildlife Act 1953 (**'Wildlife Act'**).
- c An Archaeological Authority to manage potential archaeological sites, which would otherwise be applied for under the Heritage New Zealand Pouhere Taonga Act 2014 (**'HNZPTA'**).

2.3 The Project is aligned with the purpose of the FTAA and will result in significant regional benefits, including:

- a Significant economic benefits to Porirua City and the Wellington region by increasing the range and affordability of housing. The proposal provides lower-mid prices new build dwellings, with 34 per cent of dwellings provided for below \$1 million. These dwellings will be \$75,000 - \$160,000 (7-15%)

⁴ An associated water reservoir is being consented separately on the Muri Road Block (to the north of Mt Welcome site), see section 3.1.1 of the Substantive Application.

less expensive than the average sale price of the surrounding key developments in the study area;⁵

- b Significant economic benefits to the region from the construction and ongoing household expenditure;⁶
- c A total contribution to primary sector GDP of \$52.4 million, which would support an estimate 320 full time equivalent ('FTE') jobs.⁷

3 Legal framework

- 3.1 For each of the Approvals sought in the Application, the Panel must decide whether to grant the approval and set any conditions to be imposed, or to decline the approval.⁸
- 3.2 Section 81(2) FTAA provides criteria for the purpose of the Panel making its decision on the approvals. The Panel:
 - a Must consider the substantive application and any advice, report, comment or other information received by the Panel under specified sections of the FTAA;⁹
 - b Must apply the criteria for each type of approval as set out in the schedules of the FTAA (which also address the weighting of different considerations);¹⁰
 - c Must set conditions that are no more onerous than necessary;¹¹
 - d Must give effect to Treaty settlements¹², including when setting conditions;¹³ and
 - e May only decline an approval for the reasons in section 85 FTAA.
- 3.3 The legal framework relating to conditions, treaty settlements, declining the approvals and the criteria for each approval is set out below.

⁵ Economic Report, at section 2.1. The study area includes Porirua City and surrounding suburbs, including Pukerua Bay, Plimmerton, Titahi Bay, Kenpuru, Cannons Creek, Aotea, Whitby and Pautahanui (see figure 3 of the Economics Report).

⁶ Economics Report, section 10.

⁷ Economics Report, section 10.2.

⁸ FTAA, s 81(1).

⁹ FTAA s 81(2)(a).

¹⁰ FTAA s 81(2)(b).

¹¹ FTAA s 83.

¹² FTAA s 82.

¹³ FTAA s 84.

When the Panel may decline approvals

- 3.4 There are limited circumstances in which an approval must, or may, be declined.
- 3.5 A panel *must* decline an approval if the approvals sought are for ineligible activities, and breach obligations relating to Treaty settlements and recognised customary rights.¹⁴ This application does not seek approvals for ineligible activities and does not breach treaty settlement obligations as set out below.¹⁵ PPG submits there is no basis on which the panel must decline this application.
- 3.6 A panel *may* decline an approval if there are adverse impacts in relation to the approvals sought, and those adverse impacts are “sufficiently significant to be out of proportion to the project’s regional or national benefits”, after taking into account any conditions and mitigation of adverse impacts.¹⁶
- 3.7 An ‘adverse impact’ is defined as any matter considered by the panel in complying with section 81(2) that weighs against the approval.¹⁷ This is a broad definition which essentially encompasses any matter before the Panel which counts against the granting of the approval.¹⁸
- 3.8 The expert panel decision in Maitahi Village helpfully summarised a panel’s discretion to grant approvals:¹⁹

First, even if the factors in s 85(3) are met, the Panel can still grant the approval. In other words, even if the adverse impacts are significantly out of proportion to the anticipated benefits, it appears that the Panel still has a discretion to allow the approval(s) to proceed. That discretion will necessarily be informed by the purposes of the Act.

Secondly, and following on from that first point, the mere fact that a project generates or may generate adverse impacts, does not mean it is not allowed to proceed. In other words, a degree of adverse impact is “hard baked” into the legislative regime. This is also reflected in s 85(4).

- 3.9 The Mt Welcome Project has been assessed as having no more than minor adverse effects,²⁰ is consistent with the relevant criteria for each approval, and has significant regional benefits.²¹ Accordingly, PPG submits there is no basis on which the Panel may decline the approvals sought, because there are no adverse

¹⁴ FTAA s 85(1).

¹⁵ Substantive Application, sections 3.1.6 and 8.

¹⁶ FTAA s 85(3).

¹⁷ FTAA, s 85(5).

¹⁸ Expert panel decision in Maitahi Village, at [90].

¹⁹ Expert panel decision in Maitahi Village, at [94]-[95].

²⁰ Substantive Application, section 15.16.

²¹ Substantive Application, section 1.

impacts which are sufficiently significant to be out of proportion to the significant regional benefits of the Project.

Treaty settlements

- 3.10 Section 82 applies where (relevantly) a Treaty settlement is relevant to an approval. If a Treaty settlement or the Act requires a document to be considered, the panel must treat that document in its decision-making as if it had the same effect it would under any relevant specified Act.²²
- 3.11 The panel must also consider whether granting an approval will uphold obligations relating to Treaty settlements and recognised customary rights.²³ The panel must decline an approval if granting the approval would breach obligations relating to Treaty settlements and recognised customary rights.²⁴
- 3.12 For the purpose of performing obligations relating to Treaty settlements and recognised customary rights, the panel may set conditions to recognise or protect a relevant Treaty settlement.²⁵
- 3.13 The Site falls within the area of interest covered by the Treaty settlement with Ngāti Toa.²⁶
- 3.14 While the Site is not within a Statutory Acknowledgement Area, it is within the catchment of Te Awarua-O-Porirua Harbour, which is a Statutory Acknowledgement Area under the settlement act. The Ngāti Toa Rangatira Claims Settlement Act 2014 does not set out any requirements for how the iwi authority will participate in processes that are relevant for this application. Therefore, the Application will not be inconsistent with the obligations in the settlement Act and there is no reason for the Panel to decline the Approvals²⁷ or set any conditions in relation to treaty settlements.²⁸

Criteria for each type of approval

- 3.15 Section 81(3) sets out applicable clauses the panel must apply when considering approvals and conditions for each type of approval. When making its decision in relation to the approvals, the panel must give the greatest weight to the purpose

²² FTAA, s 82(2).

²³ FTAA, s 82(3).

²⁴ FTAA, s 85(1)(b).

²⁵ FTAA, s 84.

²⁶ Substantive Application, section 8. The Ngāti Toa Rangatira Claims Settlement Act 2014 gives legal effect to the 2012 Deed of Settlement (and a 2013 amendment) between Ngāti Toa and the Crown.

²⁷ FTAA, s 85(1)(b).

²⁸ FTAA, s 84.

of the FTAA. The legal framework for each type of approval, and how the panel ought to give “greatest weight” to the purpose of the FTAA, is set out below.

Resource consents

- 3.16 Clause 17 of Schedule 5 provides that, when considering a consent application, including conditions on the resource consent, the panel must take into account, giving the **greatest weight** to paragraph (a):
- a The purpose of the FTAA;
 - b The provisions of Parts 2, 3, 6 and 8 to 10 of the RMA that direct decision making on an application for a resource consent (but, importantly, excluding section 104D); and
 - c The relevant provisions of any other legislation that direct decision making under the RMA.

Greatest weight

- 3.17 The FTAA expressly directs the panel to “give the greatest weight” to the purpose of the FTAA when carrying out its evaluation.²⁹ The purpose of the FTAA is to “facilitate the delivery of infrastructure and development projects with significant regional or national benefits”.³⁰
- 3.18 The expert panel’s in both the Port of Auckland Limited’s application for Bledisloe North Wharf and Fergusson North Berth Extension (**‘POAL decision’**) and Milldale – Stages 4C and 10 to 13 decision (**‘Milldale decision’**) refers to case law regarding legislatively directed weighting³¹ to provide the following guidance for decision making:³²
- a The panel must not rely solely on the purpose of the FTAA at the expense of due consideration of other matters it must consider;
 - b The panel must consider all matters listed on an individual basis, prior to standing back and conducting an overall weighting giving the greatest weight to the purpose of the FTAA; and

²⁹ FTAA, sch 5, cl 17(1).

³⁰ FTAA, s 3.

³¹ *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541, which discussed a hierarchy of criteria in the section 34 of the Housing Accords and Special Housing Areas Act 2018.

³² Expert panel in the Port of Auckland Limited’s fast-track application for Bledisloe North Wharf and Fergusson North Berth Extension, at [121]; Expert panel in the Milldale – Stages 4C and 10 to 13 decision at [60].

- c Environmental effects do not become less than minor simply because of the purpose of the FTAA, but they may be outweighed by the purpose of facilitating the delivery of infrastructure and development projects with significant regional or national benefit, or they may not.
- 3.19 On the other hand, the expert panel in the Maitahi Village decision did not find reference to that case law helpful, due to it arising in a different statutory context.³³ The expert panel did note however, that in the event of any tension between the purpose of the FTAA and the purpose of the RMA, the purpose of the FTAA must prevail.³⁴

Existing environment and permitted baseline

- 3.20 Mt Welcome is zoned medium density residential in the newly operative Porirua District Plan ('**PDP**') and is subject to enabling urban development objectives and policies. The experts have not considered the urban development anticipated by the Porirua District Plan as part of the 'existing environment'³⁵ or as a 'permitted baseline'³⁶.
- 3.21 Instead, where relevant, the assessments provided with the Application have taken into account the medium density residential zoning and the objectives and policies that enable urban development when considering the appropriateness of the scale of effects. This approach is consistent with caselaw, which provides that "a district plan is a frame within which resource consent has to be assessed"³⁷.

Conclusion with respect to resource consents

- 3.22 As set out in the Substantive Application, the Application is generally consistent with the relevant RMA provisions.³⁸ However, insofar as the Panel might conclude that the Application is not fully consistent with the purpose and principles or any other requirements of the RMA, it is required to give the greatest weight to the purpose of the FTAA.

³³ Expert panel decision in *Maitahi Village*, at [69].

³⁴ Expert panel decision in *Maitahi Village*, at [105].

³⁵ See *Queenstown Lakes District Council v Hawthorn Estate Limited* [2006] 12 ELRNZ 299 (CA) at [84]. The 'environment' is the future state of the environment, modified by permitted activities and granted resource consents that are likely to be implemented.

³⁶ RMA, s 104(2).

³⁷ *Westfield (New Zealand) Ltd v North Shore City Council* [2005] NZSC 17 at [10].

³⁸ Substantive Application, section 1.

Wildlife Permit

- 3.23 When considering an application for a wildlife approval, including conditions, the panel must take into account, giving the **greatest weight** to paragraph (a):³⁹
- a The purpose of the FTAA;
 - b The purpose of the Wildlife Act 1953 and the effects of the project on the protected wildlife that is to be covered by the approval; and
 - c Information and requirements relating to the protected wildlife that is to be covered by the approval (including, as the case may be, in the New Zealand Threat Classification System or any relevant international conservation agreement).
- 3.24 The purpose of the Wildlife Act is that, with some limited exceptions, wildlife is to be absolutely protected throughout New Zealand.⁴⁰

Conclusion with respect to wildlife approvals

- 3.25 As set out in the Substantive Application,⁴¹ the Application is consistent with the purpose of the Wildlife Act and the effects are appropriate. However, insofar as the Panel might conclude that the Application is not fully consistent with the purpose of the Wildlife Act, it is required to give the greatest weight to the purpose of the FTAA.

Archaeological authorities

- 3.26 When considering an application for an archaeological authority, including conditions, the panel must take into account giving the **greatest weight** to paragraph (a):⁴²
- a The purpose of the FTAA;
 - b The matters set out in section 59(1)(a) of the HNZPTA;
 - c The matters set out in in section 47(1)(a)(ii) and (5) of the HNZPTA; and

³⁹ FTAA, sch 7, cl 5. We comment on 'greatest weight' above.

⁴⁰ Expert panel in the Port of Auckland Limited's fast-track application for Bledisloe North Wharf and Fergusson North Berth Extension, at [128], and *Shark Experience Ltd v PauaMAC5 Inc* [2019] NZSC 111 at [44]-[45].

⁴¹ Part 2 of the Substantive Application.

⁴² FTAA, sch 8, cl 4.

- d The relevant statement of general policy confirmed or adopted under the HNZPTA.

Conclusion with respect to archaeological authorities

- 3.27 As set out in the Substantive Application,⁴³ the Application is consistent with the relevant HNZPTA provisions. However, once again, insofar as the Panel might conclude that the Application is not fully consistent with the HNZPTA, it is required to give the greatest weight to the purpose of the FTAA.

Fast-Track Approvals Act Amendment Bill

- 3.28 At the time of lodging the Application, the Fast-Track Approvals Act Amendment Bill ('**FTAAB**') has been introduced to Parliament, but not yet passed. As introduced, the FTAAB does not contain any transitional provisions.
- 3.29 In the event that the FTAAB is passed, and some or all of its amendments to the FTAA apply to the Application, counsel will seek leave to provide advice to the Panel on its implications for processing or determination of the Application.

4 Conditions

- 4.1 As set out above, when considering an application – including any proposed conditions – the panel must take into account and give the greatest weight to the purpose of the FTAA.⁴⁴ The panel also must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the FTAA that confers the discretion.⁴⁵
- 4.2 The legal framework for setting conditions for each type of approval is set out below.

Resource consent

- 4.3 When setting conditions on a consent, the provisions of Parts 6, 9 and 10 of the RMA that are relevant to setting conditions on a resource consent apply to the panel, subject to all necessary modifications, including the following:⁴⁶
 - a. A reference to a consent authority must be read as a reference to a panel; and

⁴³ Part 3 of the Substantive Application.

⁴⁴ FTAA, sch 5, cl 17; sch 7 cl 5; sch 8 cl 4.

⁴⁵ FTAA s 83.

⁴⁶ FTAA, sch 5, cl 18.

- b. The reference to services or works must be read as a reference to any activities that are the subject of the consent application.
- 4.4 The panel may only impose conditions that are directly connected to an adverse effect of the activity on the environment, or an applicable district or regional rule, or national environmental standard.⁴⁷
- 4.5 Case law also provides that conditions must be:⁴⁸
 - a For a resource management purpose, not an ulterior one;
 - b Fairly and reasonably relate to the development authorised by the consent to which the condition is attached; and
 - c Not be so unreasonable that a reasonable planning authority could not have approved it.
- 4.6 In the FTAA context, these legal principles are also subject to the requirement that “the panel must not set a condition that is more onerous than necessary to address the reason for which it is set in accordance with the provision of this Act that confers the discretion.”⁴⁹
- 4.7 The conditions that the Applicant proposes for the resource consent are set out in section 14 of the Substantive Application.

Key matters to be addressed in conditions

- 4.8 Based on the consultation and engagement undertaken to date, PPG anticipates that some of the persons and groups affected by the Project currently take a different view with regard to some aspects of the proposed conditions, and may continue to do so if/when they are invited to provide comments by the Panel. These aspects relate to:
 - a The timing (i.e. staging) of the Roundabout access to State Highway 59;
 - b Consistency of the proposal with the Structure Plan and associated policies contained in the PDP;
 - c Effects on values of significance to Ngāti Toa as mana whenua, and appropriate mitigation; and

⁴⁷ RMA s 108AA(1)(b)(i)-(ii).

⁴⁸ *Newbury DC v Secretary of State for the Environment* [1981] AC 578, [1980] 1 All ER 731, affirmed as being of general application in *New Zealand in Housing New Zealand Ltd v Waitakere City Council* [2001] NZRMA 202 (CA) at [18].

⁴⁹ FTAA, s 83.

- d The effects of the Project on streams, and associated offsetting measures.
- 4.9 In large part, these matters have been addressed in detail in the Substantive Application and supporting reports,⁵⁰ and require a factual evaluation by the Panel on the evidence provided, against the backdrop that any additional conditions (beyond what is proposed by the Applicant) that the Panel is minded to impose must not be “more onerous than necessary to address the reason for which it is set”⁵¹.
- 4.10 In addition, the consistency of the Project with the Structure Plan has been assessed in detail in Appendix 8. The associated policies in the Northern Growth Area chapter of the Porirua District Plan have been assessed in Appendix 5. In short, notwithstanding a number of minor departures from the Structure Plan (in relation to roading, walking, and bus connections), the analyses contained in Appendix 5 concludes that the matters referred to in DEV-NG-P3 will still apply or be achieved,⁵² and that the Project will not have the outcomes referred to in DEV-NG-P4.⁵³
- 4.11 In this context (as well as in other areas where the Project does not fully comply with the myriad of applicable policies in the RMA system), it is appropriate to record that even if the Panel found that the Project was not consistent with the NGA Structure Plan policies (or indeed any other policies in the Plan or national direction), the FTAA makes it clear that a panel cannot decline an approval solely on the basis of inconsistency with a planning document.⁵⁴ This is an important departure from the way in which planning documents can be considered under the RMA.⁵⁵

⁵⁰ Effects on mana whenua values are addressed in 15.12.6 of the Substantive Application. The ecological effects associated with the project have been thoroughly assessed in the report prepared by Bluegreen Ecology (Appendix 15) which concludes there will be an overall net ecological gain. The Transport Assessment has concluded that the long term roundabout solution is only required after Stage 3 of the Project (183 dwellings).

⁵¹ FTAA, s 83.

⁵² Appendix 5 – Assessment of RMA planning document objectives and policies.

⁵³ Appendix 5 – Assessment of RMA planning document objectives and policies.

⁵⁴ FTAA, s 85(4).

⁵⁵ For example, in *Stirling v Christchurch City Council* [2010] NZEnvC 401, the Environment Court found that an application could be declined due to an inconsistency with a policy in a district plan.

Wildlife approval

4.12 A panel may set any conditions on a wildlife approval that the panel considers necessary to manage the effects of the activity on protected wildlife. In setting conditions, the panel must:⁵⁶

- a. Consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife that is to be covered by the approval; and
- b. Where more than minor residual impacts on protected wildlife cannot be avoided, minimised, or remedied, ensure that they are offset or compensated for where possible and appropriate; and
- c. Take into account, as the case may be, the New Zealand Threat Classification System or any relevant international conservation agreement that may apply in respect of the protected wildlife that is to be covered by the approval.

4.13 The conditions that the Applicant proposes for the wildlife permit are set out in section 24 of the Substantive Application.

Archaeological authorities

4.14 A panel may impose conditions, including conditions that:⁵⁷

- (a) the consent of the land owner and the holder of any specified registered interest must be obtained before the holder of an archaeological authority may enter the relevant site or undertake any activity under that authority; and
- (b) the site must be returned as nearly as possible to its former state (unless otherwise agreed between the owner of the land on which the site is located and the panel); and
- (c) any activity undertaken at the site under the archaeological authority must conform to accepted archaeological practice; and
- (d) Heritage New Zealand Pouhere Taonga, or the person approved under this schedule to carry out an activity, must provide a report to—
 - i. the holder of the authority; and
 - ii. the owner of the archaeological site concerned, if different from the holder of the authority; and

⁵⁶ FTAA, sch 7, cl 6.

⁵⁷ FTAA, sch 8, cl 5.

- iii. Heritage New Zealand Pouhere Taonga, unless Heritage New Zealand Pouhere Taonga prepared the report.

4.15 The conditions that the Applicant proposes for the archaeological authorities are set out in section 30 of the Substantive Application.

5 Conclusion

5.1 PPG submit that the Panel must grant the approvals sought in this Application as:

- a The Project will have significant regional benefits;
- b The effects of the Project will be appropriately managed through conditions, and (with the possible exception of effects on values of significance to Ngāti Toa) will be no more than minor;⁵⁸
- c The Project complies with all requirements under the FTAA and achieves the purpose of the FTAA; and
- d There are no mandatory or discretionary reasons for which the Panel can decline this Application.

Dated 21 November 2025



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⁵⁸ Substantive Application, section 15.16.