



Rangitoopuni Developments Limited Partnership
C/ Campbell Brown
by email

Attention: [REDACTED]

Dear [REDACTED]

Fast-track Approvals Act 2024: Completeness – Rangitooopuni Developments Limited Partnership - Rangitooopuni

1. This letter is written in support of Rangitooopuni Developments Limited Partnership (**RDLP**) application under the Fast-track Approvals Act 2024 (**FTAA**) for a development at Old North Road and Forestry Road, Riverhead.

Background

2. Rangitooopuni is a listed project contained within Schedule 2 of the FTAA for a proposed countryside living subdivision and retirement village. RDLP is listed as the authorised person.
3. RDLP intend to lodge an application for land use consent, subdivision consent, a groundwater permit, streamworks consent and a discharge consent under the Auckland Unitary Plan (**AUP**), and an approval under the Wildlife Act 1953 pursuant to the FTAA (together, the **Activity**).
4. The relevant land to which the resource consents will apply is within the jurisdiction of Auckland Council.
5. The application is supported by a suite of reports prepared by appropriately qualified experts. All experts engaged were provided with a copy of the expert witness code of conduct (in the Environment Court Practice Note 2023), circulated by Campbell Brown.

6. I comment on two matters:

- (a) The test of completeness under Clause 5 of Schedule 5 and Clause 2 of Schedule 8.
- (b) Aspects of the legal framework 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 RDLP Rangitooopuni 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 where appropriate (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 RDLP Rangitooopuni 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.

Legal Framework

15. Under section 81 of the FTAA, the Panel needs to decide whether to grant or decline resource consent in accordance with the process set out in clauses 17 to 22 of Schedule 5.⁵

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].

⁵ FTAA, section 81.

Weight

16. Of note, Clause 17(1) of schedule 5 provides that when considering a consent application and setting conditions, the Panel must take into account, giving the greatest weight to paragraph (a), -
 - (a) the purpose of the FTAA; and
 - (b) the provisions of Parts 2, 3, 6 and 8 – 10 of the RMA that direct decision making on an application for a resource consent (but excluding section 104D); and
 - (c) the relevant provisions of any other legislation that directs decision making under the RMA.
17. “Take into account” terminology will be familiar to the Panel in the context of RMA case law (means there is an obligation to consider the particular factor in making a decision, to weigh it with other relevant factors, and to give it whatever weight is appropriate in all the circumstances⁶).
18. “Greatest weight” is a bespoke requirement under the FTAA, albeit earlier ‘RMA adjacent’ legislation has used wording somewhat similar. Section 34(1) of the Housing Accords and Special Housing Areas Act 2013 (“HASHAA”) identified various matters (including the purpose of the Act, being first listed of the matters) and required “giving weight to them (greater to lesser) in the order listed”.
19. The HASHAA wording above was considered by the Courts. The Court of Appeal held that an assessment of the listed factors in s34 must be undertaken prior to the exercise of weighing them through an overall balancing exercise in accordance with the prescribed hierarchy.⁷ In other words, under clause 17 of Schedule 5 the Panel must:
 - (a) Consider the matters in (a) to (c), then
 - (b) Weigh those factors in an overall balancing exercise which gives the greatest weight to the purpose of the FTAA.

⁶ *Trustees of the Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2024] NZCA 134 at [15].

⁷ *Enterprise Miramar Peninsula Inc v Wellington City Council* [2018] NZCA 541 at [52] - [53].

RMA decision making framework

20. Clause 17(1)(b) FTAA engages the decision-making framework from the RMA with some modifications. Notably while it requires the Panel to take into account the provisions of Parts 2, 3, 6 and 8-10 of the RMA, this is qualified on the basis it is only those provisions that "direct decision making on an application for a resource consent (but excluding section 104D of the RMA)".
21. It follows that the requirement to consider those parts of the RMA is limited to the extent that they must "direct decision making on an application for resource consent". That suggests the relevant provisions engaged for this matter are:
 - (a) Section 104 and s104B (but expressly not s104D).
 - (b) Sections 105 and 107 for discharge permits.
 - (c) Sections 106 and 220 for subdivisions.
 - (d) Sections 108 to 108AA for conditions of resource consents.
22. In the context of s104 and "subject to Part 2" terminology, the FTAA modifies what may be considered in a Part 2 assessment, excluding section 8 ("a reference in the Resource Management Act to Part 2 of that Act must be read as a reference to sections 5, 6 and 7 of that Act").⁸

Treaty Settlements

23. The Panel must when making a decision consider whether granting the approval would comply with section 7 FTAA.⁹ Section 7 requires that all persons performing and exercising functions, powers, and duties under the FTAA must act in a manner that is consistent with (inter alia):
 - (a) the obligations arising under existing Treaty settlements.
24. In this matter, there is a relevant settlement agreement - Te Kawerau ā Maki Claims Settlement Act 2015.

⁸ FTAA, Schedule 5, clause 17(2)(a).

⁹ FTAA, section 82.

Wildlife Act

25. An approval under the Wildlife Act 1953 is sought. Under section 81 of the FTAA, the Panel needs to decide whether to grant or decline the wildlife approval in accordance with the process set out in clauses 5 and 6 of schedule 7.16.
26. Schedule 7, clause 5 provides that when considering an application for a wildlife approval, including conditions, the Panel must take into account, giving the greatest weight to paragraph (a):
 - (a) the purpose of the FTAA;
 - (b) the purpose of the Wildlife Act 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 related international conservation agreement).
27. The “take into account” and “greatest weight” wording engage the approach in law already addressed above. The greatest weight is to be given to the purpose of the FTAA in the overall balancing exercise.
28. Specific provisions also apply to conditions imposed on a Wildlife Act approval. Schedule 7, clause 6 provides 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.¹⁰ The start point is that when considering a condition, the Panel must:¹¹
 - (a) consider whether the condition would avoid, minimise, or remedy any impacts on protected wildlife that is to be covered by the approval;
 - (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

¹⁰ FTAA, sch7, cl6.

¹¹ FTAA, sch7, cl6(2).

- (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.
29. It is important to recognise that the Panel's discretion to set conditions is not unlimited, because FTAA s83 states that a condition imposed must be no more onerous than necessary to address the reason for which it is set.
30. Please advise if you need anything further.

Yours faithfully

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

Jeremy Brabant