

**BEFORE THE FAST-TRACK PANEL**

FTAA-2502-1009

**UNDER**

The Fast-track Approvals Act 2024

**IN THE MATTER OF**

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

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**MEMORANDUM OF COUNSEL ON BEHALF OF THE APPLICANT  
RESPONDING TO COMMENTS ON CONDITIONS**

**15 AUGUST 2025**

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## MAY IT PLEASE THE PANEL

### Introduction

- 1 This memorandum comprises part of the Applicant's response to comments received on the draft conditions of consent for the Maitahi Village Project (**Project**). This response is provided in accordance with the Panel's Minute 11<sup>1</sup> and section 70(4) of the Fast-Track Approvals Act 2024 (**FTAA**).
- 2 The second part of the Applicant's response to comments on conditions are annotated Condition Sets A to M, filed contemporaneously with this memorandum. The Condition Sets note each condition-specific comment from parties<sup>2</sup>, with a direct response from the Applicant to that comment.

### The comments received

- 3 To the Applicant's knowledge, the Panel received seven responses to its invitation to comment on the draft conditions (in addition to the Applicant's). All of those who responded had earlier made comments on the merits of the application, pursuant to Minute 4 of the Expert Panel and section 53 of the FTAA.

### Comments on conditions

- 4 Comments received from the Department of Conservation (**DOC**), Save the Maitai Inc (**STM**) and Nelson City Council (**NCC**) were a mixture of general and specific comments on conditions. The Applicant responds to these below and/or, where a comment is specific to a particular condition, in the accompanying Condition Sets.

### Comments on the merits of the Project

- 5 Some of the comments received did not relate to draft conditions, only concerns about the Project.<sup>3</sup> The Applicant has not responded to those comments, including because:
  - 5.1 Those parties had 20 working days to voice their concerns earlier in the process (and they both availed themselves of that opportunity);
  - 5.2 The Applicant undertook an exhaustive and thorough process of responding to merit-based comments at the appropriate time; and
  - 5.3 The FTAA does not countenance merit-based comments being received in response to a draft decision. Both Minute 11 and section 70 of the FTAA are clear that comments at this stage of the process, can only relate to draft conditions.
- 6 Notwithstanding, if the Panel intends taking those comments into account and considers they might materially affect the outcome, the Applicant respectfully seeks the right to respond to them.

### Other Comments

- 7 The Minister of Transport's comments expressed support for the draft conditions. As such, it does not call for a response.

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<sup>1</sup> Minute 11 of the Expert Panel (5 August 2025), at [8].

<sup>2</sup> All parties other than the Applicant.

<sup>3</sup> Comments from Gary Scott and Peter Olerenshaw.

- 8 While not providing any condition-specific comments, the email from the Royal Forest and Bird Protection Society Inc noted the draft decision's observation as to the constructive input of the Society in the process to-date. This email does not require a response from the Applicant either.

### **Comments on Management Plan conditions**

- 9 NCC, STM and DOC all comment on the use of management plans in the draft conditions of consent. While the comments differ in their detail, the general concerns of STM and DOC are with certainty of outcome.

#### Lawful management plan conditions

- 10 The Applicant addressed management plans in its Legal Submissions of 6 June 2025. Management plans do not authorise anything themselves but they are a legitimate and often-used means of enhancing the likelihood of compliance with consent conditions. They are particularly useful for projects of material scale and complexity – which most projects of regional or national significance, will be.
- 11 Like any consent condition, a condition requiring or relying upon a management plan must be clear, certain and enforceable. The Applicant accepts it is the consent conditions themselves which should state the objectives/outcomes to be achieved and the matters the management plan must cover. It is the Applicant's intention that its proposed (and the Panel's draft) conditions, achieve this.

#### Specific comments alleging unlawfulness

- 12 Therefore and subject only to a couple of exceptions discussed below, the Applicant does not perceive any material dispute between it and the other parties as to the legal principles applying. Any dispute comes down to whether, in fact, the relevant conditions do what is intended and are lawful, in the sense of clear, certain, enforceable and do not leave important decisions – such as what effects are tolerable – to a later time.
- 13 The two exceptions relate to the following comments from DOC at paragraph 3 of its comments on draft conditions:
- 13.1 *The Department considers reliance should not be placed on unenforceable qualitative objectives of management plans; and*
- 13.2 *Any management plans proposed as part of the consent should be approved by the Panel.*
- 14 By way of response to these two assertions:
- 14.1 To the extent DOC's comment suggests *qualitative objectives* are *unenforceable*, the Applicant respectfully disagrees<sup>4</sup>. It also addressed the lawfulness of qualitative objectives in its 6 June Legal Submissions at [84]; and
- 14.2 The Applicant does not accept all management plans (including any variations) need to be approved by the Panel as part of the FTAA process. It is entirely orthodox for management plans to be prepared after approval is given. The Conveners' Guidance Note<sup>5</sup> agrees:

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<sup>4</sup> *Northcote Point Heritage Preservation Soc Inc v Auckland Council* [2016] NZEnvC 248, in reliance upon the High Court decision in *Environmental Defence Society Inc v NZ King Salmon Co Ltd* [2013] NZRMA 371, at [114]–[128]

<sup>5</sup> Fast-Track Approvals Act 2024: Panel Conveners' Practice and Procedure Guidance (22 July 2025).

- 21.1 *Where conditions are reliant on the preparation of management plans, applicants should provide either draft management plans **or sufficient information** as to the purpose, structure, content and drafting process for management plans, to provide the panel with confidence that they will be sufficient to address identified adverse impacts.*

[Emphasis added]

- 15 The Convener is a retired Environment Court Judge. The Associate Conveners are both very experienced and senior Resource Management Act practitioners. The FTAA imports the Resource Management Act's requirements as to conditions of consent. It is submitted you can comfortably rely on Clause 21 of the Guidance Note as confirming not all management plans have to be sighted by the Panel before a decision is made.
- 16 At paragraphs 2(a) and (b) of its comments, STM says:
- 16.1 *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.*
- 16.2 *The conditions interchangeably use the terms "approval" and "certification" where referring to Council certification of management plans. The term certification should be used consistently.*
- 17 The Applicant accepts both comments, save for its discussion of NCC's role (where "review and confirm" is preferred by NCC), below.

#### Role of NCC

- 18 NCC's principal concern with the draft management plan conditions relates to its role in the management plan process. Specifically, it wants to "review and confirm" some management plans rather than "certifying" or "approving" them.
- 19 The Applicant has conferred with NCC to clarify whether its desire to move to a "review and confirm" role affects every management plan proposed. NCC has advised its request only affects some proposed management plans and it is happy to "certify" others – namely, engineering-related management plans. NCC has also advised that its "tracked changes" capture the full extent of change it seeks, in this regard.
- 20 The Applicant proposes that any management plans affected by the change NCC seeks, are therefore *prepared and certified by an independent, suitably qualified and experienced person* prior to submission to NCC. Such conditions would also need to include words making it clear that "independent" does not necessarily mean someone different from the author of the management plan. It means someone independent from the consent holder.
- 21 NCC then reviews the management plan and confirms it addresses everything required. Under this regime it is the *suitably qualified and experienced person* who will be certifying that implementation of the management plan will result in achievement of the performance standards, articulated in the relevant consent condition(s).
- 22 The Applicant submits this is a lawful and appropriate approach to management plans. Certainty and enforceability are assured by the performance objectives being specified in other consent conditions. Those performance-specific conditions and the environmental outcomes they promise, are enforceable directly against the consent

holder. The job of the management plan remains one of detailing how the consent holder will comply with any applicable conditions.

## Other comments

### Consistency of expression

- 23 With reference to **paragraph 2(c) of STM's comments**, the Applicant agrees all conditions should be clear. It also accepts that as a general proposition, consistency is desirable.
- 24 However, the Applicant submits there is no issue with some management plan conditions differing from others – especially because in some situations they will require a different process be followed. As long as the conditions are clear, this will not be problematic.
- 25 The first sentence of **STM's paragraph 2(d)** is addressed in the discussion of lawfulness above.
- 26 As to the remainder of 2(d) and its request for consistency in use of the term “objective”, the Applicant does not necessarily disagree. Although the Applicant considers either word will achieve the same purpose.
- 27 **DOC** also raises concern with wording inconsistencies in some conditions (**at paragraphs 4 and 5**). Where the substance of a condition is not altered, the Applicant is relaxed about improvements of this kind.
- 28 However, it is to be kept in mind that these are resource consent conditions. Resource consents, like plans prepared under the Resource Management Act, are functional, outcome-oriented regulatory tools – not finely-tuned contracts. While drafters of them strive for consistency and exactitude, conditions may not be - and, it is submitted, do not need to be - examples of *Chancery draftsmanship*<sup>6</sup>. The essential features remain as clarity, certainty and enforceability.

### **Annotated Condition Sets**

- 29 As noted earlier in this memorandum, where a party has commented on a specific draft condition, the Applicant has responded directly within the annotated Condition Sets filed with these submissions. Between those Condition Sets and this memorandum, the Applicant believes it has responded to all comments on the draft conditions.

Dated this 15<sup>th</sup> day of August 2025



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<sup>6</sup> *Sandstad v Cheyne Developments Ltd* (1986) 11 NZTPA 250 (CA) at page 13.