

Before the Panel appointed under the Fast-track
Approvals Act 2024

Under the	Fast-track Approvals Act 2024
In the matter	of Mt Welcome, Pukerua Bay
By	Pukerua Property Group Limited Partnership

MEMORANDUM OF COUNSEL ON BEHALF OF PORIRUA CITY COUNCIL

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MAY IT PLEASE THE PANEL

Introduction

1. Porirua City Council (**PCC**) has been invited to comment under section 53 of the Fast-track Approvals Act 2024 (**FTAA**) on an application by Pukerua Property Group Limited Partnership (**Applicant**) for resource consents, a wildlife permit, an archaeological authority and a complex freshwater fisheries approval, for a housing development in Pukerua Bay known as Mt Welcome (**Application**).
2. The focus of PCC's comments is on the resource consents within the Application that would otherwise be sought from PCC under the Resource Management Act 1991 (**RMA**).
3. As noted in PCC's comments, it supports development of the Mt Welcome site. Development of the site has the potential to have a positive effect on the social and cultural wellbeing in Porirua by increasing housing supply within a strategic urban development location.
4. Notwithstanding its general support for development of the site, PCC has identified a number of concerns with the Application. These concerns are identified in the reports from relevant experts.
5. This memorandum addresses the legal context for the Panel's consideration of the concerns identified in those reports. This memorandum discusses:
 - (a) The approach required of the Panel when considering applications that include resource consents.
 - (b) Inconsistencies with critical aspects of the Northern Growth Development Area Structure Plan, in particular in relation to future transport connections.

- (c) The adequacy of information provided to enable an assessment of the effects of the activities under the Application.
 - (d) The robustness and enforceability of the Applicant's proposed conditions to the resource consents that provide for later certification of various matters and plans by PCC.
 - (e) The uncertainty surrounding the availability and provision of relevant infrastructure within the development enabled by the Application.
- 6. Responsibility for the delivery of stormwater, water supply and wastewater services transferred from PCC to Tiaki Wai on 1 July 2026. Despite this transfer, PCC has commented on the provision of water services where such matters relate to those it has a more direct interest in.

The legal framework under the FTAA

- 7. Section 40 of the FTAA provides that the process under the FTAA for obtaining an approval applies instead of the process under the relevant specified act.
- 8. The decision-making requirements for the Panel when assessing applications are largely contained within section 79 to 86 of the FTAA.
- 9. Section 81(1) requires that for each approval sought the Panel must decide whether to:
 - (a) grant the approval and set any conditions to be imposed on the approval; or
 - (b) decline the approval.

- 10.** Sections 81(2) and (3) then require the Panel to consider a range of specified matters in making this decision. In particular, section 82(2)(b) requires the Panel to apply the relevant clauses within Schedule 5. In relation to a resource consent, the relevant clauses are 17 to 22 of Schedule 5.
- 11.** Clause 17(1) requires the Panel to take into account:
- (a) the purpose of the FTAA, being to “facilitate the delivery of infrastructure and development projects with significant regional or national benefits”;
 - (b) the provisions of Parts 2, 3, 6 and 8 to 10 of the Resource Management Act 1991 (**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.
- 12.** Clause 17(1) requires the Panel to give greatest weight to the purpose of the FTAA. It otherwise effectively requires the Panel to consider the ordinary range of consenting matters that PCC would consider under the RMA. However, where a provision of the RMA would require a decision-maker to decline an application for a resource consent, the Panel must take into account that the provision in question would ordinarily require decline, but must not treat it as requiring the Panel to decline the application.¹
- 13.** The relevant provisions of the RMA include those that a consenting authority is required to apply when considering an application for a resource consent. This includes section 104 of the RMA, which requires, among other matters, the decision-maker to have regard to:

¹ FTAA, Sch 5 cl 17(4).

- (a) the actual and potential effects on the environment of allowing the activity;
- (b) the relevant provisions of a range of different documents including proposed and operative District Plans, proposed and operative Regional Policy Statements and National Policy Statements; and
- (c) any other matters the consent authority considers are relevant and reasonably necessary to determine the application.

- 14.** To assist with its consideration of an application, the Panel is also empowered to request further information from the Applicant, local authorities, government agencies and any other person invited to comment under section 53.²
- 15.** Despite the broad range of matters that the Panel is required to consider when deciding whether to decline or grant approval for a resource consent (including setting any conditions), the FTAA provides only a fairly narrow ability for the Panel to decline any approval. This power is governed by section 85.
- 16.** Section 85(1) and (2) set out a number of mandatory circumstances in which approvals must be declined. PCC is not aware of any matters in relation to the Application that engage these circumstances, and as such, they are not discussed here.
- 17.** Section 85(3) sets out when a panel has discretion to decline an approval. The Panel may decline an approval if there are one or more adverse impacts in relation to the approval sought that are sufficiently significant as to be out of proportion to the project's regional or national benefits, even after taking into account any conditions the panel may set in relation to those adverse impacts, and any conditions or modification that the applicant may

² FTAA, s 67(1).

agree to or propose to avoid, remedy, mitigate, offset or compensate for those adverse impacts.

18. If a panel does not decline an application (either partially or in full), then the panel must approve it and set appropriate conditions.³ In this context, the setting of conditions becomes the key mechanism by which the Panel may address the range of matters which it is required to consider.
19. The setting of conditions by the Panel is governed by sections 83 to 84A, and clause 18 of Schedule 5.
20. Clause 18 of Schedule 5 to the FTAA, provides that the provisions of Parts 6, 9 and 10 of the RMA that are relevant to setting conditions on a resource consent continue to apply to the Panel with all necessary modification.
21. This includes sections 108 and 108AA of the RMA. These two provisions address the nature of conditions that resource consents may be granted subject to. In particular, section 108(1) provides a broad discretion to grant consent subject to “any condition that the consent authority considers appropriate” subject to other provisions, standards and regulations providing otherwise.
22. Section 108AA requires that conditions must not be included unless:
 - (a) the applicant for the resource consent agrees to the condition; or
 - (b) the condition is directly connected to 1 or more of the following:
 - (i) an adverse effect of the activity on the environment;
 - (ii) an applicable district or regional rule, or a national environmental standard;
 - (iii) a wastewater environmental performance standard made under section 138 of the Water Services Act 2021;
 - (iv) a stormwater environmental performance standard made under section 139A of the Water Services Act 2021;
 - (v) an infrastructure design solution; or

³ FTAA, s 81(1)(a).

(c) the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.

- 23.** Section 83 of the FTAA provides that the Panel must not set a condition that is more onerous than necessary to address the reason for which it is set. While this restriction is expressed under the FTAA, in practice, it likely exists under the requirements of the RMA, or is at least a feature of best practice (unless a more onerous condition is volunteered by the applicant).
- 24.** When taken as a whole, the FTAA provides a process under which the Panel is required to effectively consider the range of matters that the relevant consent authority would consider under the RMA.
- 25.** The key distinction is not in relation to the matters the Panel must consider but instead:
- (a) the weighting exercise where purpose of the FTAA is to be given greatest weight; and
 - (b) the narrower range of circumstances in which it can or must decline to grant the consents sought.
- 26.** This narrower range of circumstances in which an application can be declined also expressly acknowledges the need to consider conditions that could be set in relation to adverse impacts before declining consent.
- 27.** PCC's package of comments and reports identify a range of adverse effects and other matters arising from the Application that must be considered by the Panel, taken into account when deciding whether to decline or approve the Application, and if minded to approve, should be addressed through appropriate conditions.

Inconsistency with the Northern Growth Development Area Structure Plan

- 28.** As outlined in the planning report prepared by Mr Rory Smeaton, the area subject to the Application is within the Northern Growth Development Area (**NGDA**) in the Porirua District Plan 2025.⁴ The District Plan contains a chapter relating to the NGDA with a range of objectives, policies and rules that apply. The chapter also includes a Structure Plan for the NGDA (**Structure Plan**).
- 29.** While section 85(4) makes clear that the Panel cannot refuse consent solely because of inconsistency with the District Plan, this inconsistency is nonetheless a matter that the Panel must take into account. Further, section 85(4) addresses only the inconsistency with such plans, but does not relate to any underlying effects that the plan was intended to address. Those effects (and the inconsistencies themselves) continue to be matters the Panel must consider, and address via appropriate conditions. The effects are to be considered in the proportionality assessment under s 85(3) as well.
- 30.** Mr Smeaton identifies that, in many respects, the design is in accordance with the Structure Plan, and the Application is likely to provide for some positive urban design outcomes for the site.⁵ However, in some material respects the Application departs from the Structure Plan.⁶
- 31.** Those departures are described in the evidence of Mr Smeaton, as well as the Urban Design Memorandum prepared by Mr Matthew Wenden, the Transport technical memorandum prepared by Mr Karthick Aale and the Parks and Reserves technical memorandum prepared by Mr Matt Hoffman and Ms Niamh Brady. In summary, the departures identified relate to different issues including:

⁴ Planning Report, at [2].

⁵ Planning Report at [6.3.2] citing the Urban Design Memorandum.

⁶ Planning Report at [6.3.3] citing the Urban Design Memorandum.

- (a) a failure to provide for adequate future transport connections on the southern boundary of the site;
- (b) restrictions preventing future development of medium density housing across the site, including within a walkable catchment from the proposed neighbourhood centre;
- (c) a failure to adequately provide for the second east-west connection between the Upper Terrace and Lucas Block portions of the proposed development; and
- (d) other inadequacies in relation to connectivity including with the proposed trail networks and connections to SH59.

32. These concerns represent not only a departure from the Structure Plan, but are independently adverse effects of the Application which have not adequately been addressed.⁷

33. While all inconsistencies identified above (and elsewhere in the reports provided) should be minimised, PCC is particularly concerned with the Application's inconsistency with the Structure Plan in relation to transport connections, especially on the southern boundary of the development.

34. In relation to additional connections at the southern boundary, and as noted by Mr Smeaton, the Civil Infrastructure Report (CIR) that forms part of the Application appears to rely on "topographical and ecological constraints" to conclude that "only the central southern alignment is technically viable".⁸ However, adequate information has not been provided to justify the failure to provide for sufficient transport connections on this southern boundary.

⁷ See for example Transport Technical Review Memorandum at [3].

⁸ See Planning Report at [6.4.3.1.3].

- 35.** The CIR also appears to contradict a separate report also prepared by Envelope Engineering for Kainga Ora in 2023 as part of its Specified Development Project process (a copy is included with PCC's comments). PCC has been provided permission by Kainga Ora to use that report for planning purposes. That report identified potentially developable areas and a roading network across the entire Northern Growth Area, including multiple roading connections between the Mt Welcome site and the Skaiffe Block to the south with connections proposed at the eastern and western end in the general locations of the Transport Connections identified on the Structure Plan. It is not clear from the CIR what additional technical information has become available since that time that would justify a different conclusion being reached now (noting that both reports were prepared by Envelope Engineering).
- 36.** Given the matters raised by PCC's experts, and the comparative lack of evidence from the Applicant, the Council respectfully submits that the proposal should enable additional transport connections that generally comply with the Northern Growth Development Area Structure Plan to be provided in the future. The structure plan provides a strong basis for a well-functioning urban environment. The Applicant has not provided any evidence to illustrate that the proposed departures from this plan would continue to provide for a well-functioning urban environment.
- 37.** The effects from a subdivision design that prevents the additional transport connections from being built will be enduring and are unlikely to ever be able to be remedied. The opportunity to create a well-connected residential environment would be lost.

Information sufficiency

- 38.** PCC has previously raised concerns regarding the level of information provided in relation to various aspects of the Application. While some further information has been provided by the Applicant throughout May, June and July, the expert reviews and memoranda provided by PCC

continue to identify areas where insufficient information has been provided to assess the likely and potential effects of the activities that would be permitted.

39. It is well established under the RMA that sufficient information must be provided when applying for a resource consent to enable the consent authority to assess the effects of that activity, and decide what conditions to impose to avoid, remedy or mitigate the adverse effects of that activity.⁹
40. The position under the FTAA remains largely the same as that under the RMA. Sections 43 and 44, and clauses 5 to 9 of Schedule 5 of the FTAA require that a range of information be provided with a substantive application under the FTAA.
41. Although the Environmental Protection Agency must decide whether the application is complete before the Application is referred to a panel convenor and panel,¹⁰ the FTAA recognises that once appointed a panel may still require further information by providing it with the ability to request further information under section 67.
42. PCC's comments, reports and reviews identify various matters where insufficient information has been provided to properly assess the effects of the resource consents applied for and appropriately manage them via consent conditions where necessary.
43. As noted above, the Panel is required to consider all actual and potential effects of the proposed activities on the environment. Where insufficient information is currently available to do so, the Panel can utilise its power to request further information under section 67. In the draft decision on the Taranaki VTM application, the Panel found at [184] that if there was insufficient information then this can be considered an "adverse impact"

⁹ RMA, s 88(2) and Sch 4, cl 1; see also for example *AFFCO NZ Ltd v Far North District Council* [1994] NZRMA 224 at 234.

¹⁰ FTAA, s 46.

that could be considered under s 85 when determining whether to decline consent.¹¹

44. If the consents sought are to be granted it will be important that sufficient information has been provided to enable an assessment of the relevant effects and the setting of appropriate conditions.

Infrastructure uncertainty

45. As noted by Mr Smeaton, the Application does not provide sufficient information nor certainty regarding the provisions of infrastructure. In particular:

- (a) based on draft comments provided to Mr Smeaton by Tiaki Wai, PCC understands that Tiaki Wai has concerns regarding the capacity of relevant three waters networks;¹² and
- (b) there does not appear to be any proposed design for electricity or telecommunication infrastructure to each proposed allotment.¹³

46. The lack of sufficient information in relation to these infrastructure matters, and the apparent inadequacy of the designs proposed, creates significant uncertainties regarding both the potential adverse effects of the proposal, and whether the stated benefits will be realised.

47. In the RMA context, the Environment Court in *Pinehaven Orchards Ltd v South Wairarapa District Council* has acknowledged that the ability for a proposed development that would be enabled by a resource consent to connect to relevant water services infrastructure may impact the assessment of effects of the proposed development.¹⁴

¹¹ The draft decision is available [here](#).

¹² Planning Report at [6.5.1].

¹³ Planning Report at [6.5.2].

¹⁴ *Pinehaven Orchards Ltd v South Wairarapa District Council* [2006] ELHNZ 274 at [34]–[56].

- 48.** In the present circumstances, the uncertainty in relation to whether the proposed development can be adequately serviced by relevant infrastructure significantly impacts on the ability of the Panel to assess the positive and adverse effects of the proposal. If the Panel is not satisfied that the necessary connections can be provided (and that the manner of doing so is appropriate) then the overall assessment of effects may change significantly.
- 49.** Under the FTAA, section 84A provides that:
- (1) The panel may set conditions to ensure that the infrastructure in the project area or other infrastructure the project will rely on is or can be made adequate to support—
 - (a) the project; or
 - (b) the stage of the project to which the application relates.
 - (2) This section applies in addition to, and does not limit, any other powers to set conditions under this Act.
 - (3) To avoid doubt, a condition set under this section may impose an obligation on the applicant only.
- 50.** This provides scope for the Panel to set conditions that ensure the necessary infrastructure is or can be made adequate to support the project. However, such conditions can only impose obligations on the applicant.
- 51.** While section 84A allows the Panel to set conditions that ensure the infrastructure in question will be provided, the Panel still needs to consider the effects related to infrastructure and consider the likelihood that that infrastructure can and will in fact be provided in a satisfactory manner. The proper identification of any concerns regarding existing capacity may also be important if conditions are to be imposed under section 84A so that the conditions properly “ensure” that the relevant infrastructure will in fact be provided.

52. This issue has been considered in applications under the FTAA to date.¹⁵ Panels in those cases have considered extensively the relevant infrastructure capacity, constraints and concerns to identify whether there is a credible infrastructure solution available, and where relevant have set conditions under section 84A, including conditions precedent.¹⁶ None of these decisions are binding on the panel, but may provide some guidance, bearing in mind the facts of each application are different.
53. Where Tiaki Wai and Mr Smeaton have identified concerns with the ability for the proposed development to be properly serviced by relevant infrastructure, the Council's preference is that those issues are resolved through the provision of further information and modifications to the application's design, together with appropriate conditions.
54. Any remaining uncertainty about whether the proposal can be appropriately serviced, and the consequences if it cannot (both in terms of environment effects and the potential for the regional benefits not to be realised) is an important consideration for the Panel's final decision on whether to grant the application, and the conditions it elects to impose (if the panel is minded to grant the application).

Appropriate conditions

55. The expert memoranda and reports provided as part of PCC's comments identify matters that PCC's experts consider should be addressed via appropriate conditions. The Council's experts will be available to participate in any conferencing or workshops on conditions.
56. In addition to the range of concerns that could be managed via appropriate conditions referred to above, the conditions currently proposed by the

¹⁵ See for example the Pound Road Industrial Development decision (FTAA-2505-1057) at [144]–[314]; Milldale decision at [107]–[114]; Sunfield decision (FTAA-2503-1039) at [124]–[170]; and Drury Metropolitan Centre – Consolidated Stages 1 and 2 Project decision at [220]–[226].

¹⁶ See for example Pound Road Industrial Development decision (FTAA-2505-1057) at [144]–[314].

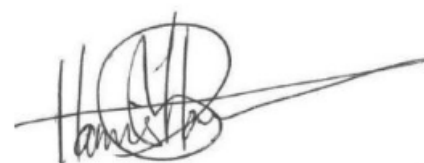
Applicant include a number of conditions that require PCC to subsequently approve or certify management plans or other matters.

57. In places, it is unclear what parameters or standards PCC will be required to certify the relevant plans or matters in relation to.¹⁷ Approval and certification style conditions should be drafted to ensure that PCC's role in approving or certifying is with reference to clear parameters and standards.
58. It is a well-established point of law that a consent authority is not able to delay, postpone or delegate its duty to consider and provide for the management of effects through overly broad conditions that provide for subsequent approvals or decision making.¹⁸ From a more practical perspective, the setting of clear parameters and standards ensure that PCC's later role in approving or certifying plans or other matters is clear which is to the benefit of the applicant, other interest persons including iwi, and PCC.

Conclusion and next steps

59. The Council wishes to see the Mt Welcome site developed in a manner that addresses the concerns it and its experts have identified, if they can be resolved.
60. The Council remains open to work with the applicant, iwi and other parties, and is available to assist the panel as the panel sees fit.

Dated 31 July 2026



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¹⁷ See for example, proposed conditions 31 and 32.

¹⁸ See for example *AFFCO NZ Ltd v Far North District Council* [1994] NZRMA 224 at 234 citing *Turner v Allison* [1971] NZLR 833 (CA).