

# Fast-Track Approvals Act 2024

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## Applicant's Response to RFI 6

Maitahi Village [FTAA-2502-1009]

30 July 2025

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1. On the 25<sup>th</sup> of July the Maitahi Village Expert Panel (the Panel) requested the following information from the Applicant:
  1. *Confirm whether the Applicant is aware of this approach to managing lots with more than one zone having been previously adopted in Nelson or other Districts?*
  2. *If so, please provide a recent example, including relevant conditions and consent notices, for comparison with those proposed.*
  3. *Provide written advice to confirm whether adopting this approach may give rise to any compliance, practical, or legal implications?*
2. This memorandum responds to each of those questions. The Project's lead planner (Mr Lile) has prepared the response to Information Requests 1 and 2. The Project's counsel have prepared the section regarding Information Request 3 and legal considerations. The Project's planner has prepared the condition refinements proposed, taking into account legal considerations and feedback from a legal review of the proposed refinements.

### Information requests 1 and 2

3. The approach of using the resource consent process (with consent notices) to address zoning inconsistencies (whether with split zoning or to address other matters) is familiar to the Applicant from previous projects it has (or its consultants have) been involved with in Tasman and Nelson.
4. The examples considered to be of most relevance are summarised below.

## The Fields, Richmond

5. *The Fields* is a comprehensive and fully integrated subdivision and development in Richmond West. This project was consented in August 2018 pursuant to the Housing Accords and Special Housing Areas Act 2013 (HASHAA). The purpose of the HASHAA was to (summarily) “*enhance housing affordability by facilitating an increase in land and housing supply*” (Section 4, HASHAA).
6. With respect to conditions on a resource consent, Section 37 of HASHAA states (relevantly):

### **37 Conditions of resource consents**

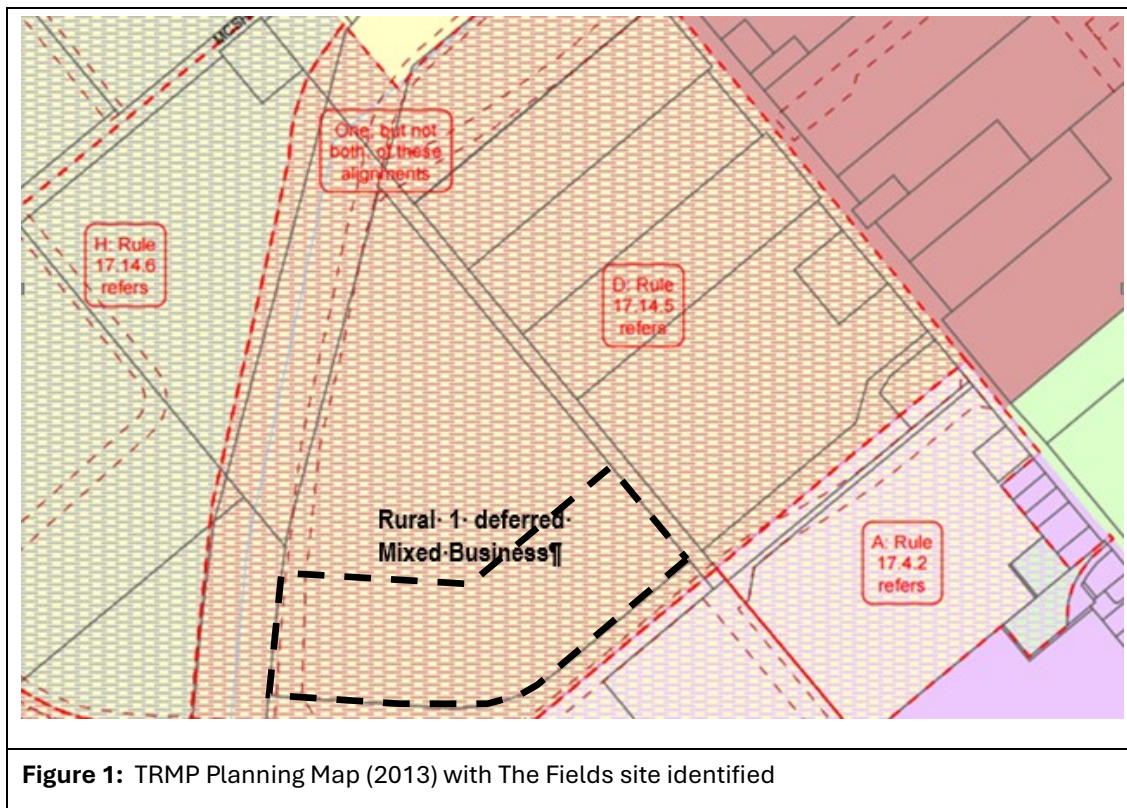
- (1) *Sections 108 to 111 of the Resource Management Act 1991 apply in respect of an application for a resource consent accepted under this Act—*
  - (a) *as if every reference to a consent authority were a reference to the authorised agency; and*
  - (b) *with all other necessary modifications.*
- (2) *Without limiting subsection (1), a resource consent may include any condition that is consistent with, and gives effect to, the purpose of this Act.*
- (3) ...
- (4) ...

7. Section 38 provided:

### **38 Conditions of subdivision consents**

*Section 220 of the Resource Management Act 1991 applies, with all necessary modifications, in respect of an application for a subdivision consent accepted by an authorised agency as if every reference to the territorial authority were a reference to the authorised agency.*

8. *The Fields* site was, in 2018, located in the *Rural 1 deferred Mixed Business Zone*. **Figure 1** below shows the planning map from the Tasman Resource Management Plan (TRMP) that applied in 2018.



9. *The Fields* project was consented in August 2013 and involved 71 residential lots, with specific building plans provided for 40 of those allotments. The relevant consent numbers / references for *The Fields* include:

- **SH180003** – Subdivision Consent
- **SH180006** – Land Use Consent

10. Refer to **Attachment 1** for a copy of these consents.

11. Because of the underlying zoning being Rural 1 deferred Mixed Business, land use consent SH180006 was sought and granted for the future development of the proposed residential allotments to be “*in accordance with the Residential Zone rules of the Tasman Resource Management Plan*”. The Decision (dated 31 August 2018) described the consented activity as:

**SH180006** – Land Use consent to construct 40 residential dwellings in the Rural 1 Zone and for the construction of buildings and land use on Lots 102-172 (created by subdivision SH180003) in accordance with the Residential Zone rules of the Tasman Resource Management Plan.

12. Consent Condition 8 of Land Use consent SH180006 then states:

### ***Future Development***

8. *With the exception of the specific building design approved under this consent for the construction of dwellings on Lots 132-171, the construction of buildings and land use on Lots 102-172 (created by subdivision SH180003) shall be in accordance with Chapter 17.1 (Residential Zone) of the Tasman Resource Management Plan.*
13. The subdivision consent (SH180003) granted as a part of the same integrated package, formally secured the land use outcome consented in SH180006 by imposing the following consent notice requirement:

### ***Consent Notices***

59. *The following consent notice shall be registered on the Computer Freehold Register for Lots 102-172 contained within the subdivision pursuant to Section 221 of the Act. The consent notice shall be prepared by the Consent Holder's solicitor and submitted to the Council for approval and signing. All costs associated with approval and registration of the consent notice shall be paid by the Consent Holder.*
  - (a) *Future development of Lots 102-172 must be undertaken in accordance with Resource Consent SH180006. Non-compliance with this resource consent will require an additional resource consent.*
14. This consent notice has been registered on each of the consented 71 residential allotments as 11500170.11 (a copy is attached as **Attachment 2**). Consent Notice 11500170.11 states:

### ***The following conditions shall apply to all Lots:***

1. *Future development on the Lots must be undertaken in accordance with Resource Consent SH180006. Non-compliance with this resource consent will require an additional resource consent.*
15. There were 31 residential allotments for which building plans were not submitted or approved as part of SH180006. The development of those lots has since proceeded and has been completed in accordance with Chapter 17.1 of the Tasman Resource Management Plan. This now includes an established neighborhood, including the developed and occupied houses along the southern side of Youngberry Drive and houses along the northern side of Berryfields Drive (in the same block).

### **The Meadows, Richmond**

16. *The Meadows* was consented in July 2019. A copy of the approved resource consents are provided in **Attachment 3** of this Memo, being:
  - **SH180019** – Subdivision Consent

○ **SH180022** – Land Use Consent

17. *The Meadows* is much larger than *The Fields*, with 471 residential allotments in a range of typologies and a commercial hub (two allotments). The underlying zoning of *The Meadows* site was *Rural 1 deferred Mixed Business* and *Rural 1 deferred Light Industrial*.
18. Land use consent SH180022 describes the activities consented. 96 of the residential allotments were accompanied with buildings plans. The remaining residential allotments were created without accompanying building plans and so the consent relied on the future development of those allotments being in accordance with the Residential Zone of the TRMP. Following the same approach, the two consented commercial lots were to be developed in accordance with the Commercial Zone of the TRMP:

**SH180022** - Land use consent for a Special Housing Area qualifying development comprising:

- The construction of 96 residential dwellings in the Rural 1 Zone.
- The construction of residential buildings and land use of Lots 1-7, 19-61, 67-69, 102-114, 119-172, 180-357, 370-376, 385-427, 434-440 and 452-482 in accordance with the Residential Zone rules of Tasman Resource Management Plan.
- The construction of buildings and land use of Lots 600 and 601 in accordance with the Commercial Zone rules of the Tasman District Plan.

19. Land use consent condition 10 of SH180022 requires:

**Future Development – Residential**

10. With the exception of the specific building design approved under this consent for the construction of dwellings on Lots 8 - 18, 62 - 66, 70 - 82, 441 - 451, 358 - 369, 173 - 179, 83 - 92, 428-433, 377-384, 93-101 and 115-118, the construction of buildings and land use all residential allotments created by SH180019 shall be in accordance with Chapter 17.1 (Residential Zone) of the Tasman Resource Management Plan.

Advice Note:

For the avoidance of doubt, land use and building construction permitted under Chapter 17.5 (Rural 1 Zone) of the Tasman Resource Management Plan are not permitted.

11. Notwithstanding Condition 10 above, the residential use and development of Lots 1-482 need not comply with the following standards:
- 17.1.3.1(b) – with regard to building within 10m of an indicative road or reserve
  - 17.1.3.1(u) – with regard to setbacks from Rural and Industrial boundaries

- 17.1.3.1(x) – with regard to fencing – for Lots 82, 428, 83-92 only

**Future Development – Commercial**

12. *The construction of buildings and land use on Lots 600 and 601 (created by subdivision SH180019) shall be in accordance with Chapter 17.2 (Commercial Zone) of the Tasman Resource Management Plan.*
20. The manner in which future development of both the residential and commercial lots was to be undertaken was then secured by way of consent notices, as required by subdivision consent condition 68:

**Consent Notices**

68. *The following consent notice shall be registered on the Computer Freehold Register for Lots 1-482, 600 and 601 contained within the subdivision pursuant to Section 221 of the Act. The consent notice shall be prepared by the Consent Holder's solicitor and submitted to the Council for approval and signing. All costs associated with approval and registration of the consent notice shall be paid by the Consent Holder.*
    - (a) *Future development of Lots 1-482, 600 and 601 must be undertaken in accordance with Resource Consent SH180022. Non-compliance with this resource consent will require an additional resource consent.*
21. *The Fields* and *The Meadows* projects therefore provide local examples of using the resource consent process (both land use and subdivision consent) to address zoning inconsistencies. The approach of securing these future development outcomes through the use of conditions on a consent followed by a consent notice has proven to be effective and efficient.
22. Some of the directors of CCKV were also directors of the Richmond West Development Company Limited, which obtained consent for and developed *The Fields* and *The Meadows*. The Applicant is not aware of any adverse compliance, practical, or legal implications having arisen. To the contrary, it is with that experience the Applicant has gained its confidence as to the approach used to address the small zoning inconsistencies for proposed Lots 100, 101, 140, 180 and 1003.
23. All of *The Fields* has been completed and occupied, while a significant majority of *The Meadows* has also been completed and occupied. For both areas and the adjacent areas developed under HASHAA, the Council has now rezoned the areas of inconsistency. This rezoning was undertaken by Plan Change 74 'Rezoning of Special Housing Areas', which became operative in March 2023.

## Nelson Examples

24. The Applicant is also aware of at least three other examples of this approach being used in Nelson City to address the same type of issue. This includes:
- Wahanga 2017 Limited Partnership (SH195007, 10 December 2019)
  - RC Campbell (SH195015, 5 March 2021)
  - JSL Partnership (SH195016, 13 July 2021)
25. Copies of the resource consents relating to these other examples are provided as **Attachments 4, 5 and 6** of this response.
26. Each of these Nelson City examples also required that consent notices be imposed to ensure the conditions of consent were enduring. For ease of comparison, the three relevant conditions are set out below:

### **SH195007: Wahanga 2017 Limited Partnership**

39. *The following conditions shall be complied with in perpetuity and shall be registered on the relevant Titles by way of Consent Notice pursuant to Section 221 of the Act. The Consent Notice(s) documentation shall be prepared by the Consent Holder's Solicitor and all costs associated with the approval and registration of the Consent Notice(s) shall be met by the Consent Holder.*

...

- (d) *Lots 1-65 shall be subject to the residential rules provided in the operative district plan at the time of applying for building consent. If at the time of applying for building consent the site is rezoned as residential or there is a non-compliance with the permitted rules and standards, this condition shall not apply and the non-compliance shall be subject to a resource consent for attaining approval by Council.*

### **SH195015: RC Campbell**

46. *The following conditions shall be complied with in perpetuity and shall be registered on the relevant Titles by way of Consent Notice pursuant to Section 221 of the Act. The Consent Notice(s) documentation shall be prepared by the Consent Holder's Solicitor and all costs associated with the approval and registration of the Consent Notice(s) shall be met by the Consent Holder.*

...

- (e) *All lots shall not be subject to the Rural Zone rules of the NRMP rather they shall be subject to the residential rules provided in the operative district plan at the time of applying for building consent. If at the time of applying for building consent the site is rezoned as residential those relevant new residential zone provisions shall apply to the development of the site.*

**SH195016: JSL Partnership**

46. *The following conditions shall be complied with in perpetuity and shall be registered on the relevant Titles by way of Consent Notice pursuant to Section 221 of the Act. The Consent Notice(s) documentation shall be prepared by the Consent Holder's Solicitor and all costs associated with the approval and registration of the Consent Notice(s) shall be met by the Consent Holder.*

...

- (e) *Lots 1-21 shall be subject to the residential rules provided in the operative district plan at the time of applying for building consent. If at the time of applying for building consent the site is rezoned as residential or there is a non-compliance with the permitted rules and standards of the residential zone, the non-compliance shall be subject to a resource consent for attaining approval by Council.*

27. There are some wording differences between the Nelson and Tasman examples. However, they are materially the same outcomes-wise.

Summary of examples

28. The Applicant is confident as to the workability and practicality of the approach it has proposed, which uses consent conditions and consent notices to address the minor zoning inconsistencies at Maitahi Village. The examples described above have applied this approach to more than 500 residential allotments and 2 commercial allotments (in combination), made up of:

- The Fields      40 residential lots (with another 31 having building plans)
- The Meadows   375 residential lots (with another 96 having building plans)  
                         2 commercial lots
- Wahanga        65 residential lots
- Campbell        20 residential lots
- JSL                21 residential lots

29. In contrast to the examples provided, the Maitahi Village Project has just 1 commercial allotment and 4 proposed residential allotments that would be affected by this approach.



### Information request 3

#### Legal considerations

30. The Applicant observes that sections 37 and 38 of the HASHA Act<sup>1</sup> and Clause 18 of Schedule 5 of the FTAA import the RMA requirements as to whether any particular resource consent condition is lawful and appropriate. The most relevant RMA provisions are sections 108 and 108AA (in Part 6) and section 220 and 221 (in Part 10). This is relevant because some of the examples above are from resource consents issued under the HASHA Act.
31. There is a substantial body of case law regarding the lawfulness of conditions imposed under the RMA. Summarily and most relevantly to the matters raised in RFI 6, a condition under the RMA must be clear, enforceable and relevant to the environmental effects of the application being considered.<sup>2</sup> Where a condition of subdivision consent is required to be complied with on a continuing basis after the subdivision has been completed, a council can issue a consent notice (under s221) to be registered by the consent holder against any new Title (Computer Register).
32. It is submitted the consent condition examples provided in this Memorandum are proof the Applicant's proposed conditions:
- a. Are not unusual in the Region; and
  - b. Will be workable and effective in achieving the intended outcomes.
33. In the course of preparing this Memorandum, the Applicant noted the Quality Planning website and "Drafting Conditions" resource includes a *guidance note* that *[c]onditions should not include reference to rules in plans because these may change during the duration of the consent.*<sup>3</sup> However, counsel for the Applicant has been unable to find any judicial authority for this proposition and submits there is

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<sup>1</sup> The relevant parts of which are set out at paragraphs [6] and [7] of this Memorandum.

<sup>2</sup> *Xray Trust Ltd v QLDC* [2025] NZHC 625 at [91] and [104]; *Puke Coal Ltd v Waikato Regional Council* [2015] NZEnvC 212, at [121]; *Ferguson v Far North DC* A084/98 at pp 8 and 9.

<sup>3</sup> <https://www.qualityplanning.org.nz/node/914> at point 3 under the heading "Content".

no such inflexible rule (and neither should the planning guidance be treated as such).

34. In addition, the Panel helpfully, with respect, articulated its concerns in RFI 6. This prompted the Applicant to re-consider its proposed approach for the five allotments affected. It is submitted the Panel's concerns can be satisfied by ensuring the relevant conditions for the Maitahi Village project are certain and unambiguous. Provided this is the case, the Council, affected allotment owners and any other interested person(s) will be clear as to what is and is not allowed to happen on the five affected allotments should any of the scenarios described in RFI 6, eventuate.
35. To this end, the Applicant proposes some refinements to the most recent set of draft consent conditions. The purpose of these refinements is to improve certainty and clarity of regulation, thereby enhancing the workability and enforceability of the relevant conditions. Proposed refinements
36. The following conditions are now proposed (with changes from version 2, shown in tracking):

*Set D (Land Use Consent) – Condition 8*

8. Any future use or development of this site (Lot 1003) ~~shall which~~ comply with the permitted activity rules and standards in Chapter 9 'Suburban Commercial' Zone of the Nelson Resource Management Plan 2004 (being the rules and standards as at [insert date of Decision]), is allowed.

*Set G (Land Use Consent) – Condition 5*

5. Future use and development which complies with the Residential Zone-permitted activity rules and standards for the Residential Zone in Chapter 7 of the NRMP as at [insert date of Decision], shall be allowed ~~apply to the entirety of on~~ Lots 100, 101, 140, 180, for the purposes of ~~subdivision and~~ land use under this consent.

*Set I (Subdivision Consent) – Condition 42(m) - Consent Notices*

- (m) With the exception of the Koata House development (RM Ref), any future development and activities within Lot 1003 shall adhere to the permitted activity rules and standards of the Nelson Resource Management Plan's Chapter 9 Suburban Commercial Zone rules ~~or any subsequent Plan Change relating to Suburban Commercial Zoning as at [insert date of Decision]~~. Any breach of these rules shall be considered under a resource consent assessing those matters relevant to the rules in which consent is sought.

*Set I (Subdivision Consent) – Condition 42(n)*

- (n) ~~Future use and development of The residential use of~~ Lots 100, 101 and 180 ~~shall be allowed under this consent provided it complies with the permitted activity rules and standards of Chapter 7 of the Nelson Resource Management Plan 2004 as at [insert date of Decision]]~~.

*Set I (Subdivision Consent) – Condition 42(p)*

- (p) ~~The residential use~~ Future use and development of Lot 140 ~~shall be allowed under this consent provided it complies with the permitted activity rules and standards of Chapter 7 of the Nelson Resource Management Plan 2004 as at [insert date of Decision]]~~.

37. Condition 42 of Condition Set I is a general condition requiring that Conditions 42(a) to 42(v) *be complied with in perpetuity and registered on the relevant Titles by way of Consent Notice pursuant to Section 221 of the Act ...* It is not considered any changes or refinements are required to this condition.
38. These refinements “lock in” the rules in the Plan as they currently exist. This distinguishes and improves these conditions from the examples given earlier in this Memorandum and from Version 2 of the Applicant’s proposed conditions of consent (filed on 11 July 2024).

Filed by Mark Lile on behalf of the Applicant, CCKV Maitai Dev Co LP.

A handwritten signature in black ink, appearing to read 'Mark Lile', written in a cursive style.

**Mark Lile**  
Consultant Planner

30 July 2025