

14 November 2025

Campbell Brown

by email

Attention: Michelle Kemp / Philip Brown

Dear Michelle / Philip

FTAA-2504-1055 - Rangitooopuni Application – Conditions - Bond

1. I refer to our correspondence regarding draft conditions, and specifically the draft conditions addressing a bond with respect to planting and vegetation maintenance.

Background

2. The draft conditions circulated by the Hearing Panel on 31 October 2025 include conditions requiring mitigation planting, a bond, and all planting (within each stage) to be completed prior to s224(c).
3. Versions of the draft conditions I have seen includes commentary from both the Applicant and Auckland Council officers.
4. Relevant to this advice are the following proposed conditions (condition numbers as of 31 October version):
 - (a) Condition 96 addresses implementation of restoration planting.
 - (b) Conditions 235 – 237 under the subheading “Restoration Planting”.
 - (c) Condition 257 being an uncompleted works bond.
 - (d) Condition 258 providing for a maintenance bond.

5. Condition 96 specifically records all mitigation planting areas must be maintained for a minimum of five years, achieving 80% canopy closure and a minimum of survival rate of the plants being 90% of the original density. The maintenance period commences once the completion report has been certified. Plant maintenance includes the ongoing replacement of plants that do not survive.
6. Condition 237 replicates condition 96.
7. Condition 257 provides for an uncompleted works bond to be entered into where any landscape works have not been completed at the time of lodgement of the section 224(c) certificate, however this is not applicable to “restoration planting”. The Bond amount is 1.5 x the contracted rate of any outstanding works.
8. Condition 258 as proposed in the context of Council comments (in other words the Panel’s version amended by Council officers) states:

Prior to the issue of the section 224(c) certificate, and in accordance with section 108(2)(b) of the Resource Management Act 1991, the Consent Holder must provide the Council a refundable bond in respect of the maintenance of the restoration planting and landscaping works required by the conditions of this consent. The maintenance bond will be held for a period of five years from the issue of a practical completion certificate for restoration planting, and two years for landscape planting. The amount of the bond will be 1.5 x the contracted rate for maintenance and must be agreed in consultation with the Council and be no less than \$32,500 per hectare.

9. Note also that the Restoration Planting and Maintenance Plan required by Conditions 16 and 33 is intended to provide for a minimum of five years maintenance, and (inter-alia), achieve a minimum survival rate of plants of 90% of the original density with replacement planting requirements. The Landscape implementation Management Plan (required by condition 34) will also be of relevance in the context of planting establishment, maintenance and plant replacement.

Council Officer Comments re bond

10. Relevant Council officer comments dated 16 October on the circulated draft Panel version of conditions with respect to condition 258 include:
 - (a) The required maintenance period for Restoration Planting is 5 years as per recommended conditions above. As such, bond is required for a 5 year period.

- (b) Council's approach for bonding for revegetation has been updated following a 2024 EnvCt proceeding & decision - quoting actual costs vs. referring to an undefined contracted rate.

In coming to this figure, Council's ecological team have we factored into the costs the difficulties of the site; terrain, access, wetland/vs dryland, pest factors etc.

This site is hard terrain, being ex-forestry with slash that hasn't been dealt with, minimal plant pest control and site preparation. All of which raises the cost in labour and materials.

11. The comment from the Panel with respect to this condition is "The Panel is currently unclear on the final wording for Condition 258 and will revisit the wording pending further comment from the Applicant."
12. Subsequently the Applicant sought additional clarification from Council regarding its approach for bonding, because I was unable to find the alleged 2024 Environment Court proceeding and decision referred to.
13. In a memorandum responding to Minute 4 of the Panel¹ Council provides no material comment on bond conditions. However in a comment box within the draft conditions with respect to this condition Council stated "The applicant has been in touch with Council seeking further information pertaining to our comments above. On further investigations to review this, the situation has been determined to be more nuanced than originally thought. We are working through this in more detail and will continue to liaise with the applicant to assist with their response next week in relation to the Panels query above".
14. After further requests for clarification from the Applicant, Council acknowledged that there is no relevant 2024 case. Instead Council provided commentary and material it says supports the minimum sum per hectare it has inserted into the draft conditions (no less than \$32,500 per hectare).

¹ Dated 7 November 2025.

Applicant's Position

15. A review of recent caselaw has confirmed that the core principles relating to the imposition of conditions generally (s 108), bond conditions (s 108A) and the application of the *Newbury* test remain accurate and valid statements of law.
16. In my opinion, it is reasonable and appropriate for any bond condition(s) to:
 - (a) Clarify that the bond may be either a cash bond or a bank bond.
 - (b) Adjust (or make provision to adjust) the bond amount for the five year maintenance obligations downward over time to recognise that the obligation reduces (which may also apply to planting where that is done over several planting seasons).
 - (c) Set a mechanism for determining a bond amount in accordance with an identified process without nominating a minimum dollar amount per hectare in the condition imposed at the time of grant of consent.
17. The version of the relevant condition supported by Council blends a process setting the bond amount related to an actual market derived figure specific to the project subject to a multiplier (being 1.5 x the contracted rate for maintenance) with an additional minimum dollar amount per hectare which is nominated by Council by reference to generic Council generated (through officers and consultants) figures. That is inappropriate in my view. It is sufficient, reasonable and appropriate to rely upon a 1.5x multiplier of the contracted rate (without an additional minimum nominated figure). Conservatism is built into that approach by virtue of the multiplier.
18. Adopting a generic and potentially artificially high minimum dollar amount per hectare is not reasonable, efficient or reflective of potential real world figures. Those real world figures not only will respond to actual topography, access and pest assessments, they will also take account of market conditions and other considerations such as the size of the project with its potential for scale efficiencies.
19. For completeness, if a minimum dollar amount per hectare is to be imposed in a condition of consent in addition to a process allowing for setting the figure by reference to a contract rate, then that minimum dollar amount should be tied to actual rates to avoid the risk of artificially inflating the obligation imposed on the Applicant.

Proposed Amendments to Conditions

20. Condition 258:

Maintenance Bonds

Prior to the issue of the section 224(c) certificate, and in accordance with section 108(2)(b) of the Resource Management Act 1991, the Consent Holder must provide the Council a ~~refundable~~ bond in respect of the maintenance of the restoration planting and landscaping works required by the conditions of this consent. If a cash bond, the bond is refundable. The maintenance bond will be held for a period of five years from the issue of a practical completion certificate for restoration planting, and two years for landscape planting. The amount of the bond will be 1.5 x the contracted rate for maintenance and must be agreed in consultation with the Council. ~~and be no less than \$32,500 per hectare.~~

21. New conditions:

[xx] Unless the bond for conditions 257 and 258 is a cash bond, the performance of all the conditions of the bond must be guaranteed by a guarantor acceptable to the Auckland Council. The guarantor must bind itself to pay for the carrying out and completion of any condition in the event of any default of the consent holder, or any occurrence of any adverse environmental effect requiring remedy.

[xx] The bond value for conditions 257 and 258 may be adjusted annually to reflect the works completed and which works remain outstanding, provided that any such changes must be certified by Council as being reflective of work and outcomes secured by the bond being completed.

Yours faithfully



Jeremy Brabant

CC. Avant - Shane Kelly