

Response ID ANON-URZ4-5FGM-4

Submitted to Fast-track approval applications  
Submitted on 2024-05-03 12:51:30

Submitter details

Is this application for section 2a or 2b?

2A

1 Submitter name

Individual or organisation name:  
MMS GP Limited as general partner for the Piripai Limited Partnership

2 Contact person

Contact person name:  
Vanessa Hamm

3 What is your job title

Job title:  
Partner

4 What is your contact email address?

Email:  
vanessa.hamm@hobec.co.nz

5 What is your phone number?

Phone number:  
s 9(2)(a)

6 What is your postal address?

Postal address:  
  
Holland Beckett  
Private Bag 12011  
Tauranga 3143

7 Is your address for service different from your postal address?

No

Organisation:

Contact person:

Phone number:

Email address:

Job title:

Please enter your service address:

Section 1: Project location

Site address or location

Add the address or describe the location:

77 Bunyan Road, Whakatāne.

File upload:  
Pirapai Plan.pdf was uploaded

Upload file here:

Piripai Information Memorandum.pdf was uploaded

Do you have a current copy of the relevant Record(s) of Title?

Yes

upload file:

Pirapai Titles.pdf was uploaded

Who are the registered legal land owner(s)?

Please write your answer here:

Whakatāne District Council.

Detail the nature of the applicant's legal interest (if any) in the land on which the project will occur

Please write your answer here:

MMS GP Limited has an unconditional agreement with the Whakatāne District Council to purchase the land (Lot 4 DP 515496). The agreement enables MMS GP Limited to obtain all necessary consents for the development of the land, and to ultimately have ownership transferred to it. The site will be in MMS GP Limited ownership when the works are undertaken.

## Section 2: Project details

What is the project name?

Please write your answer here:

Piripai Block Development.

What is the project summary?

Please write your answer here:

Development of approximately 27 ha of residentially zoned land to deliver a 240 lot residential subdivision, 13 access lots, eight reserve lots and seven public road lots, over seven stages, and a large lot for development of a 250 unit retirement village in accordance with a comprehensive development plan.

What are the project details?

Please write your answer here:

The project involves the residential development of approximately 27 ha of coastal land in Whakatāne. A decision of the Environment Court in 2016 confirmed the residential zoning for the Piripai block, subject to the Ōpihi Structure Plan (Trustees of the Opihi Whanaungakore v Whakatane District Council [2016] NZEnvC 035).

The Ōpihi Structure Plan sits within Chapter 2 – Strategic of the Whakatāne District Plan, and in addition to residential development provides for Coastal Protection, Urupā and Landscape buffers, which envelop the land to be developed and are to be “future reserves”. The Ōpihi Structure Plan is reproduced in the Information Memorandum submitted as an attachment to the project location.

The Whakatāne District Council subdivided the Piripai block so that lots have been created for the Coastal Protection, Urupā and Landscape buffers, with the central Lot of approximately 27 ha constituting the development area. Titles have issued, and the application primarily relates to the development of the central Lot 4.

Incidental ecological restoration works are required to be undertaken within the Landscape Buffer Zone (Lot 3 DP 515496), Urupā Buffer Zone (Lot 2 DP 515496) and Coastal Protection Zone (Lot 1 DP 515496) although these areas are reserved from development and adjoin the site.

The project has obtained land use and subdivision consent from the Whakatāne District Council, but requires an archaeological authority from Heritage New Zealand Pouhere Taonga, and resource consent from the Bay of Plenty Regional Council for earthworks and potentially stormwater discharge.

There are no other allotments in the Whakatāne urban area zoned residential that, based on parcel size, could provide the comprehensive residential development offering that the project does.

MMS GP limited also seeks authorisation under the Wildlife Act 1953 to handle lizards as part of relocation pre-earthworks

Describe the staging of the project, including the nature and timing of the staging

Please write your answer here:

Staging will be in accordance with a staging plan. The subdivision staging plan has been submitted as an attachment under project location. The stages will be progressed/completed in order (Stages 1-8) as quickly as reasonably practicable.

What are the details of the regime under which approval is being sought?

Please write your answer here:

Resource Management Act 1991.  
Heritage New Zealand Pouhere Taonga Act 2014.  
Wildlife Act 1953.

If you seeking approval under the Resource Management Act, who are the relevant local authorities?

Please write your answer here:

Bay of Plenty Regional Council.

What applications have you already made for approvals on the same or a similar project?

Please write your answer here:

Land use and subdivision consent has been sought and obtained from the Whakatāne District Council.  
An archaeological authority was sought and obtained from Heritage New Zealand Pouhere Taonga but is under appeal before the Environment Court.

A resource consent application for earthworks and stormwater discharge consent from the Bay of Plenty Regional Council is still to be lodged.

Is approval required for the project by someone other than the applicant?

No

Please explain your answer here:

N/A

If the approval(s) are granted, when do you anticipate construction activities will begin, and be completed?

Please write your answer here:

Detailed design

Detailed design has been completed. Confirmation that it remains current in light of delays will be needed, and this will be progressed when the application is being considered by the Expert Panel.

Procurement

This is expected to take 6 months after detailed design, and is subject to consents. Winter work is possible and preferred.

Funding

Funding is subject to sales. Sales would commence upon obtaining consent.

Site works commencement

Within 6 months of obtaining consent.

Completion

MMS GP Limited considers the site would be fully developed out within 3-5 years. Consents would certainly be given effect to within the two year lapse period.

### Section 3: Consultation

Who are the persons affected by the project?

Please write your answer here:

Bay of Plenty Regional Council  
Whakatāne District Council  
Te Rūnanga O Ngāti Awa  
Ngāi Taiwhakaea  
Ōpihi Whanaungakore Trustees

Detail all consultation undertaken with the persons referred to above. Include a statement explaining how engagement has informed the project.

Please write your answer here:

The applicant has engaged with the Whakatāne District Council, Te Rūnanga O Ngāti Awa, Ngāi Taiwhakaea, and Ōpihi Whanaungakore Trustees since 2017. The site was purchased from the Whakatāne District Council in September 2017.

The Whakatāne District Council subdivided the Piripai block to create the development lot and surrounding 'buffers'.

There have been various consultation meetings, and regulatory processes, involving Te Rūnanga O Ngāti Awa, Ngāi Taiwhakaea, and Ōpihi Whanaungakore Trustees since 2017. Each of those entities have a relationship with the Piripai block and oppose residential development of the block.

Te Rūnanga O Ngāti Awa and Ngāi Taiwhakaea have produced cultural impact assessments in relation to the development of the block.

Consultation has informed the project because as initially proposed the project did not conform to the Ōpihi Structure Plan. Te Rūnanga O Ngāti Awa and Ngāi Taiwhakaea raised significant concern over any departure from the approved Ōpihi Structure Plan, so the project was amended to take into account as much as possible the concerns they raised. This required a re-design of the roading network, stormwater solutions and resulted in a large reduction of the total number of sections. The revised plan adheres as much as possible to the Ōpihi Structure Plan and only deviates where some details have no effect, an example being providing a road link to the west, where there is no road to connect to.

Additionally, in response to Te Rūnanga O Ngāti Awa's cultural impact assessment, the applicant has also agreed to assess the site for possible windblown contaminants arising from the (unrelated to these applications) proposed remediation of contaminated land at 66 Bunyan Street. If contaminants exceed guideline values a risk assessment and methodology will be developed to ensure the environmental and human health effects of disturbing the soils are mitigated.

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Describe any processes already undertaken under the Public Works Act 1981 in relation to the land or any part of the land on which the project will occur:

Please write your answer here:

N/A

#### Section 4: Iwi authorities and Treaty settlements

What treaty settlements apply to the geographical location of the project?

Please write your answer here:

The site is within the rohe of Te Rūnanga O Ngāti Awa with the relevant settlement legislation being the Ngāti Awa Claims Settlement Act 2005.

Under Schedule 10 of the Ngāti Awa Claims Settlement Act 2005 Ngāti Awa holds a statutory acknowledgement over part of the Whakatāne River as shown on SO Plan 61404. This SO Plan defines the location and extent of the "statutory area".

The statement of association provided within Schedule 10 for the statutory area refers to Ōpihi Whānaungakore. However, it is clear that the statutory acknowledgment relates to the Whakatane River. This is because provisions set out under the Purposes of statutory acknowledgement contained in Schedule 10 refer to the river and deliberately exclude land adjoining the river.

Neither the site nor Ōpihi Whānaungakore form part of any statutory area contained in the Ngāti Awa Claims Settlement Act 2005.

Are there any Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 principles or provisions that are relevant to the project?

No

If yes, what are they?:

Are there any identified parcels of Māori land within the project area, marae, and identified wāhi tapu?

No

If yes, what are they?:

Is the project proposed on any land returned under a Treaty settlement or any identified Māori land described in the ineligibility criteria?

No

Has the applicant has secured the relevant landowners' consent?

Yes

Is the project proposed in any customary marine title area, protected customary rights area, or aquaculture settlement area declared under s 12 of the Māori Commercial Aquaculture Claims Settlement Act 2004 or identified within an individual iwi settlement?

No

If yes, what are they?:

Has there been an assessment of any effects of the activity on the exercise of a protected customary right?

No

If yes, please explain:

Upload your assessment if necessary:

No file uploaded

## Section 5: Adverse effects

What are the anticipated and known adverse effects of the project on the environment?

Please describe:

Land use and subdivision consent has been granted by the Whakatāne District Council so anticipated and known adverse effects on the environment are those arising from earthworks and stormwater discharge activities.

The applicant has engaged the following experts to assist it:

- Planning – Tonkin & Taylor
- Archaeology – Archaeology BOP Heritage Consultants (Ken Phillips)
- Construction/engineering – S&L Land Specialists
- Engineering – Harrison Grierson
- Visual and landscape – SLR Consulting (previously 4sight Consulting)
- Contaminated land – CMW Geosciences
- Geotechnical – CMW Geosciences

**Archaeology** - An archaeological assessment has been undertaken, and an archaeological works plan has been prepared, by Ken Phillips. In summary, the assessment of archaeological effects outlines that there are no known archaeological sites within the site and none were found during the fieldwork. Notwithstanding that, there is a risk of finding archaeological material during the course of the earthworks. Therefore the archaeologist has recommended that the applicant apply to Heritage New Zealand for an authority to destroy or modify an unrecorded archaeological site. There are also detailed conditions contained in the land use and subdivision consent relating to methods for management of excavations on site and the opportunity for tangata whenua to participate in the development and implementation of these methods.

**Ecology** - Any potential ecology effects of the proposal relate to the potential for sediment laden stormwater to be discharged off site during earthworks and into the Orini Canal for a small part of the development that is contained in that stormwater catchment, and the vegetation removal and associated loss of habitat during earthworks. Any potential for sediment to be mobilised on site, and discharged offsite is proposed to be mitigated through the implementation of an Erosion and Sediment Control Plan. The vegetation removal required on site will largely involve the removal of exotic grasses and shrubs. A Piripai Restoration and Management Plan is proposed with measures to enhance and maintain indigenous coastal vegetation and retain ecological features within the site.

**Landscape and visual** - The landscape assessment undertaken by 4sight Consulting (now SLR Consulting) provides a landscape and visual effects assessment and a framework for delivering natural character, ecological and urban design outcomes through the subdivision and land use activities undertaken on site (which are already consented).

**Construction effects** – Construction effects include, noise, dust, vibration and nuisance effects from the discharge of sediment laden stormwater which may be associated with the proposal. Conditions requiring compliance with noise standards, a Construction Dust Management Plan and an Erosion and Sediment Control Plan are proposed to manage these effects.

**Contaminated land** – A Preliminary Site Investigation report was undertaken by CMW Geosciences which confirms the site is not listed as a HAIL site by either the Bay of Plenty Regional Council or Whakatāne District Council, and no potentially contaminative activities were observed on site during the site visit, or identified from their inspection of historical records. Any adverse effects on the environment and to human health as a result of the soil disturbance is considered to be minor.

Additionally, in response to Te Rūnanga O Ngāti Awa's cultural impact assessment, and through the land use and subdivision consent process, the applicant has also agreed to assess the site for possible windblown contaminants arising from the (unrelated to these applications) proposed remediation of contaminated land at 66 Bunyan Street. If contaminants exceed guideline values a risk assessment and methodology will be developed to ensure the environmental and human health effects of disturbing the soils are mitigated.

**Stormwater quantity and quality** – Earthworks design ensures that all building platforms will be elevated to ensure they meet a minimum finished ground level of RL 4.5 m, and will be elevated to ensure that they meet Whakatāne District Council requirements for freeboard clearance above any source of ponded water during usage of secondary overland flow paths. Stormwater will be discharged to ground soakage so there is no water quality impact on surface waters.

s 9(2)(ba)(i)

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## Section 6: National policy statements and national environmental standards

What is the general assessment of the project in relation to any relevant national policy statement (including the New Zealand Coastal Policy Statement) and national environmental standard?

Please write your answer here:

New Zealand Coastal Policy Statement – the activities have been assessed by Tonkin & Taylor against the New Zealand Coastal Policy Statement. The development is in accordance with the outcomes sought by the Ōpihi Structure Plan which is a framework to provide for, and enable residential growth at the site. In regards to Policy CE 8B, the implementation of the Coastal Protection, Landscape and Urupa Buffers in accordance with the Structure Plan, amongst other measures, manage effects on visual, ecological and cultural values. Therefore it is considered that the proposed development of the coastal environment at the site is appropriate.

s 9(2)(ba)(i)

National Policy Statement for Urban Development – in the land use/subdivision consent decision, the Commissioners noted at para [87] that “WDC is a “tier 3 local authority” and Whakatāne is “tier three urban environment. We note that the MMS proposal is consistent with the Whakatāne Integrated Urban Growth Strategy 2010 (updated 2012). We accept the Section 42A author’s advice that the proposal is generally consistent with the development outcomes sought by the NPS-UD as it takes a long-term spatial planning approach, promotes a compact urban form and is consistent with plan-enabled and infrastructure-ready development capacity.”

National Policy Statement for Indigenous Biodiversity – The development is in accordance with the outcomes sought by the Ōpihi Structure Plan which is a framework to provide for, and enable residential growth at the site. The implementation of the Coastal Protection, Landscape and Urupa Buffers in accordance with the Ōpihi Structure Plan, amongst other measures, manage effects on ecological values. Therefore it is considered that the proposed development of the coastal environment at the site is appropriate.

National Policy Statement for Freshwater Management – potential effects of the proposal relate to the potential for sediment laden stormwater to be discharged off a small part of the site and into the Orini Canal. Any potential for sediment to be mobilised on site, and discharged offsite is proposed to be mitigated through the topography of the site and the implementation of an Erosion and Sediment Control Plan. Further detail on stormwater management is provided below under the question relating to natural hazards.

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## Section 7: Eligibility

Will access to the fast-track process enable the project to be processed in a more timely and cost-efficient way than under normal processes?

Yes

Please explain your answer here:

The residential zoning of the site was confirmed by the Environment Court in 2016 and the site was purchased in September 2017. Despite the residential zoning, development of the site for residential purposes is opposed by Te Rūnanga O Ngāti Awa, Ngāi Taiwhakaea, and Ōpihi Whanaungakore Trustees.

The land use/subdivision consent application was lodged in July 2019 and was amended twice following lodgement. The first amendment was through a January 2020 Addendum, to address the cultural impact assessments. The second amendment was through a Memorandum of Counsel to the Commissioners in May 2020. The amendment was to remove the neighbourhood convenience retail to put the definition of “residential activity” beyond doubt, in so far as that definition is relevant to special provisions of the RMA relating to notification and appeals of applications for residential activities.

The Whakatāne District Council granted consent on 4 March 2021.

Although there was no appeal right to the Environment Court against residential activities, Te Rūnanga O Ngāti Awa, Ngāi Taiwhakaea, and Ōpihi Whanaungakore Trustees lodged appeals in the Environment Court. Following a jurisdictional hearing before the Environment Court, the Environment Court held that there was no jurisdiction for the appeals (Manukorihi Tarau – Ngāi Taiwhakaea v Whakatāne District Council [2021] NZEnvC 108). The appellants then appealed to the High Court. The High Court held in April 2022 that there was no jurisdiction for the appeals (Te Rūnanga O Ngāti Awa v Whakatāne District Council [2022] NZHC 819).

The applicant sought and obtained an archaeological authority from Heritage New Zealand Pouhere Taonga on 5 February 2020.

Te Rūnanga O Ngāti Awa and Ōpihi Whanaungakore Trustees appealed the decision to grant the archaeological authority to the applicant. The appeal was due to be heard in late 2022 but was adjourned to enable MMS GP Limited to explore with the appellants whether a mutually agreeable resolution could be found. This has proved unsuccessful. Although MMS GP Limited could re-start the Environment Court process, it will be more efficient for the archaeological authority, Bay of Plenty Regional Council resource consent, and wildlife permit applications to be determined through the fast-track process.

What is the impact referring this project will have on the efficient operation of the fast-track process?

Please write your answer here:

The work required to progress the applications has been completed or is almost completed, and MMS GP Limited will be ready to lodge applications promptly upon being listed in Schedule 2A. Therefore, listing this project will demonstrate the efficient operation of the fast-track process.

Has the project been identified as a priority project in a:

Not Answered

Please explain your answer here:

N/A

Will the project deliver regionally or nationally significant infrastructure?

Not Answered

Please explain your answer here:

Will the project:

increase the supply of housing, address housing needs, contribute to a well-functioning urban environment

Please explain your answer here:

The Whakatāne district has a dearth of residentially zoned land available for development, and there are no other allotments in the Whakatāne urban area zoned residential that, based on parcel size, could provide the comprehensive residential development offering that the project does. There is also a severe lack of retirement offering in the Whakatāne district, and so the development will provide land to address housing needs for the aged care sector. This project will deliver 240 residential allotments, and land for a 250 unit retirement village, which is a significant contribution of housing to the Whakatāne district, and wider Bay of Plenty region.

The report obtained by the Whakatāne District Council (Whakatāne District Housing Demand Economic Assessment m.e consulting, June 2021) contains further detail on this shortage.

The project will meet the definition of a well-functioning urban environment because it:

- Will have a variety of offerings, including retirement;
- Provides for Māori to express their cultural traditions and norms particularly through the Urupā Buffer;
- Is accessible to the Whakatāne urban area and wider eastern Bay of Plenty, while also providing community services, natural spaces, and open spaces;
- Creates land supply and therefore limits adverse impacts on the competitive operation of land and development markets;
- Supports reductions in greenhouse gas emissions by being located within the Whakatāne urban area; and
- Has been assessed for natural hazards through the Whakatāne District Council land use and subdivision consent process.

Will the project deliver significant economic benefits?

Yes

Please explain your answer here:

The project will significantly increase the supply of housing in the Whakatāne urban area.

The project will provide for the development of the land within a residentially zoned area which will open up a range of residential housing typologies and price points for the community. The residential opportunities provided will have different character and amenity, and a range of lot sizes are proposed. This includes properties which face onto greenspace, and avenue sections with amenity provided by the streetscape environment. In addition, the close proximity to the beach provides a safe and accessible meeting point for the entire Whakatāne community to enjoy. Whakatāne has traditionally struggled to provide coastal living opportunities in a master planned community. This project will facilitate this outcome.

Will the project support primary industries, including aquaculture?

No

Please explain your answer here:

Will the project support development of natural resources, including minerals and petroleum?

No

Please explain your answer here:

Will the project support climate change mitigation, including the reduction or removal of greenhouse gas emissions?

Yes

Please explain your answer here:

The project supports reductions in greenhouse gas emissions by being located within the Whakatāne urban area rather than requiring development of remote land which will lead to more vehicle kilometres travelled.

Will the project support adaptation, resilience, and recovery from natural hazards?

Yes

Please explain your answer here:

The project has been designed to address this, and this has also been assessed already through the land use and subdivision consent process. More specifically:

- All stormwater (from private dwellings and public roadways and reserve areas) from the completed development will be assimilated on site within soakage crates, and no permanent stormwater discharge permit is required.
- Technical investigations have concluded that lateral spreading and active earthquake fault lines are unlikely to affect the site and the liquefaction risk is low.
- Similarly, the risk from coastal hazards (erosion, inundation, and tsunami) is low. The risk from coastal erosion and inundation is low given the location and lack of disturbance of Lot 1 (Coastal Protection Buffer) coupled with the proposed native dune planting. This will reduce the ability of tsunami to enter and affect the area. Should a larger tsunami (up to RL 11 metres) occur, there is elevated reserve land for people to evacuate to.

Will the project address significant environmental issues?

Yes

Please explain your answer here:

There are not considered to be significant environmental issues that require addressing at present. However, the applicant notes that:

- Lack of housing supply is a significant environment issue and the project will address this by delivering land for housing (240 lot residential subdivision and land for a 250 unit retirement village).

• s 9(2)(ba)(i)

Is the project consistent with local or regional planning documents, including spatial strategies?

Yes

Please explain your answer here:

The project is provided for in the Whakatāne District Plan through the Ōpihi Structure Plan which sits within Chapter 2 – Strategic.

Anything else?

Please write your answer here:

The development of this land has been signalled for decades, and was made possible by the Environment Court's 2016 decision to confirm the residential zoning of the site. Relevant dates as follows:

- 1976: Whakatane Borough District Scheme changes zoning of the site from "Rural" to "Residential A1".
- 1983: Review No 1 of Whakatane District Scheme changes zoning of the site from "Residential A1" to "Deferred Residential A Zone".
- 1993: Provisions for Residential A Zone affecting the site came into effect.
- 2003: Variation 2 to the Proposed Whakatane District Plan continued residential zoning for the site but renamed it "Residential 1".



- 2011: Draft District Plan Review sustained the residential zoning for this site but renamed it "Residential".
- 2016: Environment Court confirms the Residential Zoning of the site.
- 2021: No changes to the District Plan have occurred since the 2016 Environment Court decision; the site remains zoned Residential.

Does the project includes an activity which would make it ineligible?

No

If yes, please explain:

## Section 8: Climate change and natural hazards

Will the project be affected by climate change and natural hazards?

No

If yes, please explain:

## Section 9: Track record

Please add a summary of all compliance and/or enforcement actions taken against the applicant by any entity with enforcement powers under the Acts referred to in the Bill, and the outcome of those actions.

Please write your answer here:

MMS GP Limited has not had any compliance or enforcement actions taken against it by either the Bay of Plenty Regional Council or Heritage New Zealand Pouhere Taonga or the Department of Conservation.

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## Declaration

Do you acknowledge your submission will be published on environment.govt.nz if required

Yes

By typing your name in the field below you are electronically signing this application form and certifying the information given in this application is true and correct.

Please write your name here:

Vanessa Hamm

Important notes