

TOLLEMACHE

CONSULTANTS LTD.

memo

To: Gary Noland - MADE
From: Tollemache Consultants
Date: 4 October 2021
Subject: **Planning Review of Prohibited Activities and 104D gateway test provisions in relation to a referral application for a fast track for Rotokauri North Stage 1.**

1.0 Introduction:

1.1 We have been asked to provide a summary to confirm that a Stage 1 application for Rotokauri North would not trigger any prohibited activities, and to confirm that this application could meet the gateway tests of Section 104D of the Resource Management Act if referred to an expert consenting panel, in relation to the application for a referral for a fast track under the COVID-19 Recovery (Fast-track Consenting) Act 2020.

2.0 Prohibited Activities

Hamilton District Plan

2.1 We have reviewed the Hamilton City District Plan ("HCDP") and found that the only prohibited activities relate to the Te Awa Lakes Structure Plan area. There are no prohibited activities that relate to the Rotokauri North Structure Plan area.

Waikato Regional Plan

2.2 We have reviewed the relevant provisions of the Waikato Regional Plan ("WRP"), and confirm that the Stage 1 application for Rotokauri North would not trigger any prohibited activities under that plan. We have noted that prohibited activities under the WRP have been applied to:

- The discharge of untreated animal effluent (Rule 3.5.5.6).
- The discharge of untreated human effluent to water (Rule 3.5.7.8).
- Moorings – in certain circumstances (Rule 4.2.13.6).
- The introduction and planting of plant pests (Rule 4.3.8.2).

- Open burning of specific materials (Rule 6.1.13.4).
- The use and discharge of 2,4-D Butyl Ester to Air (Rule 6.2.4.12).
- Takes of geothermal water and energy - in certain circumstances (Rule 7.6.3.8 and 7.6.46).

2.3 None of these activities would be relevant to the Stage 1 application for Rotokauri North.

Waikato District Plan

2.4 We have reviewed the relevant provisions of the Waikato District Plan ("WDP"), and confirm that the Stage 1 application for Rotokauri North would not trigger any prohibited activities under that plan. We have noted that prohibited activities under the WDP applicable to the rural zone and/or network utility activities are:

- a refuse landfill in the Landscape Policy Area (25.5(b)).
- subdivision of land resulting in more than 2 additional allotments (excluding a utility allotment...) (25.5(d)).
- subdivision of land resulting in any additional allotments (excluding a utility allotment...) (25.5(e)).

2.5 None of these activities would be relevant to the Stage 1 application for Rotokauri North.

National Environmental Standards for Freshwater (NES -F)

2.6 It is acknowledged that under the NES-F Regulation 53 outlines the relevant prohibited activities. These are:

"(1) Earthworks within a natural wetland is a prohibited activity if it—

results, or is likely to result, in the complete or partial drainage of all or part of a natural wetland; and

(b) does not have another status under any of regulations 38 to 51.

(2) The taking, use, damming, diversion, or discharge of water within a natural wetland is a prohibited activity if it—

(a) results, or is likely to result, in the complete or partial drainage of all or part of a natural wetland; and

(b) does not have another status under any of regulations 38 to 51."

2.7 The ecological reporting undertaken to date has not confirmed any natural wetlands within the Stage 1 application area for Rotokauri North. As such, the above is not applicable.

3.0 Section 104D

3.1 As outlined in the Application for Referral, the Stage 1 development is likely to trigger a non-complying resource consent, and as such a review of the Section 104D gateway tests has been deemed to be appropriate. In this regard we note that Section 104 states:

"Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—

- (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
- (b) the application is for an activity that will not be contrary to the objectives and policies of—*
 - (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
 - (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity."*

Effects

3.2 The Application for Referral includes a summary of likely environmental effects. Having reviewed this summary, the proposal adopts the most practicable options to avoid and/or mitigate any actual and/or potential effects on the receiving environment resulting from the proposed earthworks, subdivision and future development on lots. Further taking a balanced approach between the temporary effects on rural character while planting is in the establishment phase, and the long term effects once all planting (including ecological enhancement/mitigation planting) is established, any effects generated will not be more than minor.

3.3 Thus, it is considered that the proposal would meet the gateway test under section 104D(a).

Objectives and Policies

3.4 We have reviewed the relevant objectives and policies in respect of determining that an application for the Stage 1 development would be able to meet the gateway test in relation to objectives and policies.

3.5 The assessment found that the majority of the proposal would be consistent with the relevant objectives and policies as (generally grouped in themes below):

- (a) There would be provision of adequate infrastructure to service development (including transport infrastructure);

- (b) Land modification works would be undertaken in accordance with best practices for sediment control, and (including where in proximity to wetlands) ensuring that discharges during works were kept to best practice to avoid adverse effects on freshwater qualities;
- (c) Adequate provision for undergrounding utilities and provision of utilities to service development;
- (d) Stormwater water quality treatment and quantity controls for conveyance, treatment and to mitigate climate change and flood hazards;
- (e) Stream works enhancing ecological values including providing for fish passage and other in stream habitat, coupled with riparian planting to enhance in freshwater and terrestrial ecology values; and
- (f) Cultural values being taken into account and enabled and provided for through the design as well as ongoing participation as part of the Tangata Whenua Working Group.

3.6 However, that assessment did highlight that there would be a few areas of inconsistency with the HCDP provisions. These areas of inconsistency are discussed below:

- (a) *Of out character development for the FUZ*

Given that the site has been earmarked for urban development, this signals that the FUZ zone is not appropriate to be used as a base standard for development as this will not contribute to the housing shortfall or the provision of affordable housing. Similarly, it is not appropriate to expect future dwellings on lots to adhere to the low-density development controls set by the FUZ. Therefore, although the proposal is consistent with the identification of the land as a future growth cell under the HCDP, as that plan (and the zoning of the land) currently stands, the proposal is inconsistent with the objectives and policies relating to the FUZ's low density character.

- (b) *Enabling Medium density without a CDP*

Legal advice indicates that Comprehensive Development Plan ("CDP") and LDC/LDP consents are not appropriate and may not be lawful. The consent process under the fast track legislation does not require land use consents for a CDP or LDC, providing for resource consents to be issued for subdivision without a double-barrelled resource consent process.

The primary concern is an ambiguous nature of a land use consent for a CDP or LDC as it neither allows actual subdivision or development activities, and rather is an interim method to create a framework for other consents (subdivision and land use) to follow. While the applicant has undertaken its own master planning of the site, Council has sufficient tools to ensure that each stage can appropriately integrate with future stages. Further, as

infrastructure reporting has been undertaken on a wider basis, effects on wider network issues can be appropriately addressed at each stage. This can be achieved in the future through the advancement of the current private plan change process (known as Plan Change 7).

(c) *Some inconsistency with the operative Rotokauri Structure Plan*

The proposal is considered to generally accord with the Rotokauri Structure Plan. Working with Council in a collaborative manner the applicant has prepared a more defined Rotokauri North Structure Plan that reflects the SC-ICMP, technical reports from experts and more up to date urban design considerations.

The Stage 1 land is internal to the wider PC7 site, and the wider connections to neighbouring sites, the stormwater network, green network and other infrastructure considerations are reflected in the Rotokauri North Structure Plan. While the Stage 1 development would commence the development of the road network, it reflects only part of the overall structure plan area. Consequently, subsequent resource consents would provide the remainder of connections to adjoining sites and planned road networks.

- 3.7 The above has highlighted that the proposal would not be entirely consistent with the FUZ zone objectives and policies. However, we consider it should be acknowledged that the FUZ zone is a 'holding zone' for urban development. Therefore, it is not a question of whether the land should be developed, but when. As appropriate infrastructure for servicing can be provided, there is no reason to delay housing in this location.
- 3.8 In light of the above, overall, it is considered that the proposal would meet the gateway test under section 104D(b). That said, it is noted that there would be no impediment to an expert consenting panel being able to consider the application for the Stage 1 application for Rotokauri North if it was referred to them, and they took a different view. That is because only one of the gateway tests under section 104D needs to be met before the application can be considered on its merits.