



19 November 2021

Max Gander-Cooper, Senior Policy Analyst  
Ministry for the Environment | Manatū Mō te Taiao  
PO Box 10362  
Wellington 6143

For: Max Gander-Cooper  
s 9(2)(a)

Dear Max

**ROKOAURI NORTH STAGE 1 PROJECT - FURTHER INFORMATION ON CONSENT NOTICES**

**1. INTRODUCTION**

- 1.1 Thank you for your further queries and discussions around the issue of consent notices on the relevant records of title for the Rotokauri North Stage 1 fast-track consent application.
- 1.2 As requested, we now provide an update on further discussions we have had with Hamilton City Council ("the Council"), and our proposal for addressing the consent notices in a manner that ensures that they will not present a barrier to the delivery of the project.

**2. ISSUE ARISING**

- 2.1 To recap, on 5 November 2021, you raised some additional queries after the filing of our response to the request for further information dated 18 October 2021. One of those queries was around the applicant's intention to have the consent notices removed from the relevant titles, on the basis that the consent notices may pose a barrier to project delivery if not removed.

**RNHL Position**

- 2.2 In our response dated 9 November 2021, we advised that RNHL's position was that removal of the existing consent notices could be included as a further reason for consent in its application to the Expert Consenting Panel ("ECP"), if those notices had not been removed prior. This was on the basis that:
- (a) This was legally possible under Schedule 6 of the Covid-19 Recovery (Fast-track Consenting) Act 2020 ("Act");
  - (b) This would allow removal of the consent notices to be considered (in an integrated way) in conjunction with the imposition of replacement consent

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notices, if RNHL's application is approved by the ECP, as is best practice; and

- (c) This represented the most efficient way forward, given that from our review of the consent notices, the underlying intention is to not restrict urban development, but to avoid future urban land uses prejudicing good quality urban outcomes via future resource consents. Thus, while the land is still zoned Future Urban, there is a degree of risk that inappropriate development may occur, if the existing consent notices are removed prematurely (e.g. before PC7 is operative). Our withdrawn HASHAA application had accordingly sought their "concurrent" cancellation with the granting of the new subdivision, as this would guard against such risk and provide sufficient certainty of outcomes to all parties.

### **MfE Position**

- 2.3 On 10 November 2021, you advised that the Ministry's legal team consider that consent notice cancellation or variation cannot be included in the referral order or as a reason for consent. This is on the basis that in their view, the powers under section 221 of the Resource Management Act 1991 ("RMA") had not been 'transferred' under the Act and as such, the authority to remove consent notices remains with the territorial authority.
- 2.4 As is obvious from the description of RNHL's position outlined above, we take a different view of the legislation.
- 2.5 An issue has accordingly arisen with respect to the removal of the relevant consent notices, to enable the project to be referred (if otherwise successful) to an ECP for consideration.

### **Response from the Council**

- 2.6 Since our discussion, we confirm that RNHL's planner, Renee Fraser-Smith, has contacted the Council to ascertain whether they would agree to remove the consent notices, or alternatively, confirm in writing that they can be removed imminently.
- 2.7 The Council's response was that they could not, ahead of making a determination on any application under section 221 of the RMA, provide in writing confirmation that they would agree to cancel or vary the consent notices.
- 2.8 Ms Fraser-Smith considered this was not an unexpected response, given that in her experience it would be very "unusual" for any Council to predetermine in writing the outcome of a not yet lodged (or assessed) application under the RMA.
- 2.9 Thus, unfortunately it is simply not possible to provide written confirmation from the Council as to its position on the consent notices, as MfE has requested.

### **3. ANALYSIS OF THE CONSENT NOTICES**

- 3.1 To progress your query (and given MfE and the Council's respective positions, as outlined above), Ms Fraser-Smith has undertaken a close analysis of the consent notices, to ascertain whether any of the requirements imposed by the consent notices would preclude or be a barrier to RNHL delivering the project, should they remain in place for now.
- 3.2 Ms Fraser-Smiths' analysis addresses each consent notice separately, and works through the three consent notices carefully to conclude as follows:

- (a) Consent notice instrument 11535526.1 (Lots 1 and 2 DP 439970) does not present any barrier to RNHL delivering the project, as the requirements of the notice can be complied with by RNHL, or are of an advisory nature only.
- (b) Consent notice instrument 6072020.2 has been complied with, and does not present any barrier to RNHL delivering the project.
- (c) Consent notice instrument 10031739.1 (Lot 2 DP 485743) is not intended to restrict urban development, but its current wording may inadvertently do so. Thus, RNHL will work with the Council to have this consent notice amended so that it does not preclude delivery of the project, but still continues to protect the site from unanticipated development, should PC7 not be approved.
- 3.3 A copy of Ms Fraser-Smith's analysis of the consent notices is **attached** as **Annexure "A"**.

4. **PROPOSED SOLUTION**

- 4.1 You have advised that to enable the project to be referred despite the consent notices, there may need to be a restriction included in any Order of Council (if the referral application were successful) requiring that the consent notices be removed from the records of title, before any application is lodged with the ECP.
- 4.2 As confirmed verbally with you, we have no issue in principle with the Order in Council including such a caveat. However, we request that the caveat refer to the consent notices being either removed or amended in such a way that they do not preclude or prohibit delivery of the development, rather than only requiring removal.
- 4.3 We are confident this will allow RNHL scope to resolve the matter in a timely way, and in a manner that is acceptable to the Council. As noted above, work is already underway in this regard with respect to the discussions that have occurred between Ms Fraser-Smith and relevant Council personnel.

5. **CONCLUSION**

- 5.1 We trust the above satisfactorily outlines the present issue and proposed solution, in a manner that allows you to continue processing RNHL's referral application without delay. We would be happy to discuss this matter further or provide any further information you may require.
- 5.2 Thank you for your consideration.

Yours sincerely



**Helen Andrews | Olivia Manning**  
Partner | Associate

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**ANNEXURE A**

**TOLLEMACHE CONSULTANTS' SUMMARY OF AND  
COMMENTS ON RELEVANT CONSENT NOTICES**

**Consent notice: Instrument 1153526.1**

*That pursuant to section 221 Resource Management Act 1991, a consent notice be registered on the Record of Titles of Lots 1 and 2 DP 439970*

<b>Requirement</b>	<b>Comment</b>
1. ...advising current and prospective owners of the requirements to adhere to the Rotokauri Structure Plan prepared by Hamilton City Council with regard to any potential development of the lots noting that both lots have a green/drainage corridor, Collector Road and Residential Character Area.	This is an advisory note that the structure plan will need to be adhered to. It does not require strict compliance nor does it limit development.  <b>No deletion or amendment needed.</b>
2. ...advising that at the time of full site development the provision of a water supply be provided to all lots.	This can be complied with.  <b>No deletion or amendment needed.</b>
3. ...advising that at the time of full site development each lot is to be provided with a means for disposal of stormwater and control runoff from the whole development and any adjacent property.	This can be complied with.  <b>No deletion or amendment needed.</b>
4. ...advising that at the time of full site development each lot is to be provided with a means of wastewater disposal in compliance with Rule 3.5.7.5 and rule 3.5.7.6 of the Waikato Regional Plan.	The quoted rules refer to onsite wastewater disposal systems. Any new development would not utilise onsite treatment rather be part of the reticulated network treated at the HCC plant.  It is not considered that the intent was to <b>require</b> individual onsite systems or that this provision would necessarily restrict future development to providing onsite land disposal only.  <b>However for the avoidance of doubt an application to vary with can be made to HCC to amended the text to include specific reference to a public reticulated and treatment system.</b>

**Consent notice: Instrument 6072020.2**

*That pursuant to section 221 Resource Management Act 1991, a consent notice be registered on the Certificate/s of Title for the new Lots 2 and 3*

<b>Requirement</b>	<b>Comment</b>
1. ...advising that the siting of the buildings will not prejudice any subsequent subdivision of the land as	The relevant Concept Plan identifies "the buildings" referred to in the consent notice. These have been constructed.

Requirement	Comment
<p>detailed on Thomson &amp; Farrer's Concept Plan F2013 03/3/18CA.</p>	<p>Thus the consent notice has been satisfied and does not require ongoing compliance.</p> <p>The intent of this consent notice is not restrict urban development, but to avoid future urban land uses prejudging good quality urban outcomes via future resource consents.</p> <p><b>However for the avoidance of doubt an application to cancel for vary can be made to HCC.</b></p> <p><i>Variation wording can be agreed with HCC as necessary.</i></p>

**Consent notice: Instrument 10031739.1**

*That pursuant to section 221 Resource Management Act 1991, a consent notice be registered on the Computer Freehold Register of Lot 2 DP 485743*

Requirement	Comment
<p>1. ...advising that in regard to future development, the erection of any dwelling or permanent building is not to conflict with the proposed Collector Roads and the Drainage Corridor as shown in the Overall Concept Plan 13/066 Drawing 2 of 3 Blue Wallace Surveyors Ltd (File Reference 13/066).</p>	<p>The intent of this consent notice is not restrict urban development, but to avoid future urban land uses prejudging good quality urban outcomes via future resource consents.</p> <p>However, the final drafting appears to have inadvertently "locked in" a Concept Plan (which has not been through any resource consent process against the subdivision design guidelines etc). The result is that this would restrict future development on the site which does not align with the concept plan.</p> <p><b>An application to cancel for vary will need to be made to HCC.</b></p> <p><i>Variation wording can be agreed with HCC as necessary.</i></p>

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