

FTC#75 Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions:

Application 2021-49 – Riverbend Residential Development

Date Submitted:	5 August 2021	Tracking #: BRF-230
Security Level	In-Confidence	MfE Priority: Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Decisions on recommendations	TBA

Actions for Minister's Office Staff	Return the signed briefing to MfE.
Number of appendices: 6	<p>Titles of appendices:</p> <ol style="list-style-type: none"> 1. Riverbend Residential Development application documents and further information received 2. Stage 1 Briefing Note and decisions 3. Statutory framework for making decisions 4. Draft Notice of Decisions letter to Tawanui Developments Limited, K3 Property Limited and Mana Ahuriri Holdings Limited 5. Section 17 Report 6. Comments received from Ministers and local authorities

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
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Director	Sara Clarke	s 9(2)(a)	

FTC#75: Application for referred projects under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions

Key Messages

1. This briefing relates to the application received under section 20 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) from Tawanui Developments Limited (TDL), K3 Properties Limited (K3) and Mana Ahuriri Holdings Limited (MAHL) for referral of the Riverbend Residential Development project (the Project) to an expert consenting panel (a panel). A copy of the application is in Appendix 1.
2. This is the second briefing relating to this application. The first (Stage 1) briefing (BRF-140) with your initial decisions annotated is in Appendix 2. The first briefing listed TDL as the sole applicant. Subsequently TDL has confirmed a commercial funding agreement with K3 and MAHL which has enabled inclusion of these parties in this fast-track referral application.
3. The Project is to undertake a staged subdivision and construct a housing development comprising up to approximately 670 residential units, open space and associated infrastructure on a 22 hectare greenfield site in southern Napier. The Project site is located at 195 and 215 Riverbend Road, Meanee and 20 Waterworth Avenue, Onekawa, Hawkes Bay.
4. The Project includes:
 - a. subdivision to create approximately 606 residential lots and a 1.5 hectare expansion to the adjacent Maraenui Park, or approximately 648 lots if the proposed Maraenui Park expansion does not proceed
 - b. construction of roading and three waters infrastructure
 - c. development of open space
 - d. construction and use of land for approximately 648 residential units or, if Maraenui Park is not expanded, construction and use of land for approximately 670 residential units
 - e. provision for commercial use of up to 4500 square metres of ground floor space in some residential units which may include retail, childcare and other amenities.
5. The Project will involve activities such as demolition of existing structures, vegetation clearance, earthworks (may include works on contaminated land), construction of three waters and roading infrastructure, take and discharge of groundwater to land and surface water, discharges of stormwater and contaminants to water and land, diversion and piping of existing drainage structures, construction of residential units and residential/commercial buildings, construction of buildings within flood areas, and development of open space including landscaping and planting, and subdivision.
6. The Project has a non-complying activity status under the Napier City Operative District Plan, meaning that under clause 32 Schedule 6 of the FTCA a panel is required to consider whether any resource consent application for the Project meets the 'gateway tests' in section 104D of the RMA.
7. We recommend you accept the referral application under section 24 of the FTCA and refer the Project to a panel for fast-tracking. We seek your decision on this recommendation and on our recommendations for requirements of the applicant, directions to a panel and notification of your decisions.

Assessment against Statutory Framework

8. The statutory framework for your decision-making is set out in Appendix 3. You must apply this framework when you are deciding whether or not to accept the referral application and when deciding on any further requirements or directions associated with Project referral.
9. Before accepting the application, you must consider the application and any further information provided by the applicant (in Appendix 1), the Section 17 Report (in Appendix 5) and comments from Ministers, Napier City Council (NCC) and Hawkes Bay Regional Council (HBRC) (in Appendix 6). Following that, you may accept the application if you are satisfied that it meets the referral criteria in section 18 of the FTCA. We provide our advice on these matters below.
10. We have also considered if there are any reasons for declining the Project, including the criteria in section 23(5) of the FTCA, and provide our advice on these matters to assist your decision-making.

Further information provided by applicants

11. In response to your request under section 22 of the FTCA the applicants provided further information on a number of matters. We have taken this information into account in our analysis and advice.
12. The Project originally involved subdivision of the site to create up to 648 lots and construction of 380 residential units on a portion of those lots. TDL anticipated that construction of the balance of the residential units (up to 290) would be consented via a land use consent from NCC via the standard Resource Management Act (RMA) process and constructed at a later date. With the funding contribution now available from the two additional joint applicants, the Project scope has been revised to include consenting and construction of approximately 670 residential units. We note that parties were asked to comment on the original scope rather than the revised scope, but consider that, as the number of residential units potentially enabled by the Project has not increased and the Project footprint has not changed, further consultation is not necessary.
13. The applicant has provided further information stating that a partnership and funding agreement is being completed with the Ministry of Housing and Urban Development (MHUD) under the Crown Land Programme for development funding, and that negotiations are underway with Kāinga Ora Homes and Communities to deliver at least 150 of the homes for affordable and community housing.


Section 17 Report


14. The Section 17 Report indicates that there are three iwi authorities, two Treaty settlements and two Treaty settlement entities relevant to the Project area. Two other entities (Ngāti Pārau Hapū Trust and Pukemokimoki Marae Trust) may also have an interest in the Project. As such we consider it would be appropriate for a panel to invite comments from these parties on the applicants' resource consent applications. Pukemokimoki Marae will be invited by a panel to provide comment under clause 17(4)(f) schedule 6 of the FTCA, as it is an occupier of land adjoining the project site, so specific direction to the panel is not required for this party.
15. The Section 17 Report outlines Treaty settlement redress including acknowledgements, apologies and a commitment by the Crown to developing relationships based on mutual trust, partnership, and respect for the Treaty of Waitangi and its principles.


16. No areas covered by a statement of association, statutory acknowledgement, or any other form of cultural or commercial redress provided in the settlements are directly affected by the Project, and the settlements do not create any new co-governance or co-management processes that affect decision-making under the Resource Management Act 1991 (RMA) for the Project.


Comments received


17. Comments received from Ministers, NCC and HBRC are summarised in Table A. Key issues raised are discussed below.

18. s 9(2)(f)(ii), s 9(2)(g)(i)
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19. s 9(2)(f)(ii), s 9(2)(g)(i)
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20. s 9(2)(f)(ii), s 9(2)(g)(i)
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21. s 9(2)(f)(ii), s 9(2)(g)(i)
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22. s 9(2)(f)(ii), s 9(2)(g)(i)
- 

s 9(2)(f)(ii), s 9(2)(g)(i)

23. s 9(2)(f)(ii), s 9(2)(g)(i)

24. NCC states that it supports in principle the objectives of the Project, and acknowledges that the site is well-positioned for future housing, with good connectivity with adjacent neighbourhoods. However, NCC opposes Project referral, with key concerns relating to the following issues:

- a. the scale and intensity of the development would be better suited to the Napier City Centre, is not anticipated by the current policy framework, and a structure planning process is required under standard processes for such developments
- b. NCC's Financial Contributions Policy (2021) for subdivisions in the Rural Zone would apply, which may result in a significant shortfall (approximately \$5 million) in funding required to service the development (because of the lack of alignment of the Project with current zoning)
- c. there is uncertainty about the capacity of the three waters network to service the development and the potential for significant costs associated with upgrading stormwater pump stations
- d. the potentially adverse impact of the proposed commercial use on the existing central business district and other suburban commercial centres within Napier
- e. the Project's location within a flood storage area for the County Drain network.

25. NCC states that greenfield growth areas identified in the Napier District Plan (Te Awa, Parklands and Mission) have a theoretical adequate supply to meet projected housing demand in the short-medium term, and there is no pressing need to fast-track this application. However, NCC also notes that these areas are limited in terms of affordable housing options and additional housing supply is urgently needed.

26. NCC advises it is currently reviewing the Napier District Plan and as part of this review is considering the suitability of the Western Hills area as an alternative growth area to the current greenfield growth areas in the Heretaunga Plains. However, preliminary reports prepared to support the review indicate that development in the western hills is not likely to be feasible. We consider that until the draft District Plan is released it, is appropriate for locations in current greenfield growth areas to be considered for urban intensification.

27. HBRC neither supports nor opposes Project referral. HBRC notes that upgrades to the existing stormwater infrastructure are likely to be required to enable the development and that further analysis is required before a best practicable stormwater solution can be determined. HBRC also identified that the Project site is subject to natural hazards (high liquefaction vulnerability, risk of lateral spreading, high earthquake amplification, coastal inundation) which have not been addressed by the applicant and that further assessment of these matters should be provided with the resource consent applications. We recommend that you direct the applicant to provide additional information regarding natural hazards if you decide to refer the Project.

Section 18 referral criteria

28. You may accept the application for referral of the Project if you are satisfied that the Project does not include ineligible activities (section 18(3)) and will help to achieve the purpose of the FTCA (section 18(2)).
29. We confirm that the Project does not include ineligible activities, and therefore satisfies the requirements of section 18(3) of the FTCA, as explained in Table A.
30. The matters that you may consider when deciding if a project will help achieve the purpose of the FTCA are in Section 19 of the FTCA. Our assessment of these matters is summarised in Table A. We confirm that the Project will help to achieve the purpose of the FTCA, and satisfy the requirements of section 18(2) as it has the potential to:
- a. have positive effects on social wellbeing by providing a diverse range of housing types in an area with a housing capacity shortfall
 - b. generate employment by providing an average of approximately 168 direct full-time equivalent (FTE) jobs per year during the three-year planning and construction period
 - c. increase housing supply through the construction of approximately 670 new residential units
 - d. progress faster by using the processes provided by the FTCA than would otherwise be the case under standard Resource Management Act 1991 process provided that the applicant lodges their applications for resource consent in a timely manner following Project referral.
31. We consider that any actual and potential adverse effects arising from the Project, together with any measures to avoid, remedy, mitigate, offset or compensate for adverse effects, could be appropriately tested by a panel against Part 2 of the RMA and the purpose of the FTCA.

Issues and Risks

32. Even if the Project meets the referral criteria in section 18 of the FTCA, section 23(2) of the FTCA permits you to decline to refer the Project for any other reason.

Section 23 FTCA matters

33. Section 23(5) of the FTCA provides further guidance on reasons to decline an application, and a summary of our analysis of these matters is in Table A. You may accept an application even if one or more of those reasons apply.
34. Key issues relate to:
- a. whether the Project would be more appropriately considered through a plan change and resource consent under the RMA
 - b. coordinating development with other infrastructure
 - c. natural hazards.
35. These issues are discussed in detail in Table A and are summarised in the discussion below.
36. The Project includes residential development at a density of 28 dwellings per hectare which does not align with the site's Main Rural zoning in the Napier District Plan (which has a permitted density of 0.25 dwellings per hectare). However, the Project is not a prohibited

activity under the Napier District Plan and a resource consent application can be considered.

37. The Project site is identified in the Heretaunga Plains Urban Development Strategy (HPUDS), a combined growth strategy for NCC, Hastings District Council (HDC) and HBRC, as a future greenfield residential growth area for Napier with an indicative yield of approximately 350 dwellings. While the HPUDS is a non-statutory document and has not been implemented in the Napier District Plan, it was embedded in the Hawkes Bay Regional Policy Statement (HBRPS) through Plan Change 4 – Managing the Built Environment in 2014.
38. The Hawkes Bay Regional Resource Management Plan (HBRRMP) identifies the Project site as part of the Te Awa/The Loop greenfield growth area for future urban development. The HBRPS and the HBRRMP provide a strategic framework for future urban development of the Heretaunga Plains area, including encouraging residential development in a greenfield growth area to progress in accordance with a comprehensive structure plan for the whole area. To date these provisions have not been implemented in the Napier District Plan. We note the draft Napier District Plan is due for release in August 2021.
39. Both NCC and HBRC commented that it would be more appropriate for the Project to be considered through standard RMA consenting processes which would involve a plan change and resource consents. We do not consider that there is sufficient reason for you to decline the referral application on the basis of section 23(5)(b) of the FTCA (it would be more appropriate for the project, or part of the project, to go through the standard consenting process under the RMA) particularly as the Project does not contain any prohibited activity and is generally supported by the HBRPS and the HBRRMP. We recommend that you direct the applicant to submit a detailed development plan for the site as an alternative to a comprehensive structure plan required by the HBRPS, ideally prepared in consultation with NCC, with any application to the Environmental Protection Authority (EPA).
40. We consider that there are risks in referring the Project before a comprehensive policy framework is developed for the area. This could result in misalignment between the Project and future outcomes for the use of the area and integration with the wider community, and may not adequately address issues relating to management of natural hazards. We consider that this risk can be mitigated by the provision of appropriate reports and plans relating to infrastructure, funding, design, and hazard mitigation with an application to a panel.
41. We also consider that there are risks that referring the Project could be viewed negatively by the wider community, who may expect involvement in the consenting process were the Project processed under standard RMA processes. However, we note that the Project is generally aligned with the HBRPS, and the inclusion of the site as a greenfield growth area was included in the publicly notified Plan Change 4 – Managing the Built Environment. On this basis we do not consider that you should decline this application under section 23(5)(b) of the FTCA.
42. If you decide to refer the Project under the FTCA, a panel is required under clause 32 of Schedule 6 of the FTCA to consider whether the Project meets the 'gateway tests' in section 104D of the RMA. The applicant has provided an assessment which states that the Project meets both section 104D(1)(a) and 104D(1)(b) of the RMA. We note that if this assessment is not accurate the application may be declined by a panel.
43. Based on comments received from NCC, there is uncertainty regarding infrastructure capacity available to service the Project. NCC expressed concern that the applicant has underestimated the work required and the cost associated with the necessary infrastructure upgrades. We consider that this issue could be addressed by appropriate engagement and

negotiation with NCC to inform preparation of an infrastructure assessment ahead of lodging consent applications with a panel. We also note that, in accordance with clause 35 of Schedule 6 to the FTCA, a panel could consider imposing a consent condition requiring a financial or development contribution, including one different from that applicable under a current district or regional rule.

44. HBRC notes that upgrades to existing stormwater infrastructure are likely to be required and further analysis is needed before the best practicable stormwater solution can be determined. HBRC also identified additional consent triggers under Plan Change 9 (TANK Plan Change) to the HBRRMP and the Source Protection Zone provisions of the HBRRMP. We also note that the Project may require resource consent to take groundwater, associated with construction dewatering. We do not consider that these matters present a barrier to Project referral. They can be addressed by further information provided by the applicants to a panel, appropriate engagement with local authorities and consent conditions.
45. NCC and HBRC both identified the site as being subject to natural hazards including high liquefaction vulnerability, risk of lateral spreading, high earthquake amplification and tsunami inundation. NCC also raised concerns that the site acts as flood storage for the surrounding County Drain system. While the applicants have not provided technical assessments for all hazards they have indicated that they intend to provide detailed hazard assessments and design solutions with a consent application lodged with the EPA.
46. It is unclear whether the subject site provides flood storage for the surrounding County Drain system as the opinions of NCC and the applicants differ. We note that the evidence provided by NCC demonstrating the site providing flood storage for the wider area during the 2020 Napier floods relates to a rainfall event with an Annual Exceedance Probability (AEP) of 1 in 120 to 1 in 250 years. This rainfall event is of a significantly higher magnitude than the 1 in 50 year AEP rainfall event used in the Napier City Council Code of Practice for Subdivision and Land Development as the standard for stormwater infrastructure design.
47. We consider that natural hazard risks can be resolved by the applicant providing appropriate technical reports with their resource consent applications, to be considered as part of a panel's merit assessment, should you decide to refer the Project.

Other matters

48. The applicants are likely to need to undertake significant further technical assessment and consultation, in order to prepare resource consent applications that meet the requirements of clause 9 of Schedule 6 of the FTCA, and our recommended directions. This may cause delays in lodging their applications with the EPA and affect the timing of project delivery. As the applicant has estimated that the use of the FTCA process would save between 12-24 months compared with standard RMA processes, and there are approximately 11 months before the FTCA is repealed, we do not consider that this is sufficient reason to decline the referral application.
49. Given the Project's non-complying activity status under the Napier District Plan, the potential upgrades required to infrastructure and the natural hazard overlays on the site, there is a risk that a consent application may be declined by a panel. Regardless of this risk, we consider it appropriate to refer the Project under the FTCA as it has the potential to:
 - a. have positive effects on social wellbeing by providing a diverse range of housing types in an area where additional housing supply is urgently needed and where there are limited affordable housing options

- b. generate employment by providing an average of approximately 168 full-time equivalent (FTE) jobs per year during the three-year planning and construction period
 - c. increasing housing supply through the construction of up to 670 new residential units
 - d. progress faster by using the processes provided by the FTCA than would otherwise be the case, provided that the applicant lodges their applications for resource consent in a timely manner following Project referral.
50. We consider that the infrastructure upgrades that may be required can be addressed by appropriate engagement between the applicants and the local authorities prior to lodgement of any resource consent applications, and by provision of detailed infrastructure assessments, plans and funding proposals with any applications to a panel. A panel can also address this issue through imposition of appropriate consent conditions relating to financial and development contributions, if they see fit.
51. We also consider that any potentially significant adverse environmental effects, including those arising from natural hazards, can be considered by a panel as part of their assessment.

Conclusions

52. There is a risk that referring the Project could be viewed negatively by the wider community, who could expect to be involved in the consenting process under standard RMA processes, and that referring the Project before a comprehensive policy framework is developed for the area could result in misalignment between the Project and future outcomes for the use of the area and integration with the wider community, and may not adequately address issues relating to management of natural hazards. You may decline the application for referral under section 23(5)(b) of the FTCA should you consider that it would be more appropriate for the Project to go through the standard consenting process under the RMA.
53. We do not consider the matters noted above provide sufficient reason for declining to refer the Project provided that appropriate information is provided by the applicant as part of their resource consent applications to the EPA. We consider that you could accept the application under section 24 of the FTCA and that the Project could be referred to a panel with the specifications outlined below.
54. If you decide to refer the Project, we consider that you should specify under section 24(2)(d) of the FTCA that the applicant must provide the following information, additional to the requirements of clause 9 of Schedule 6 of the FTCA, in a resource consent application submitted to a panel:
- a. a flood hazard assessment, including modelling and analysis of the effects and mitigation of floodwater within the Project site and displaced because of the Project, with particular consideration of how the climate-change scenario used for modelling aligns with *Coastal Hazards and Climate Change: Guidance for Local Government* (Ministry for the Environment, December 2017, ME1341)
 - b. an assessment of the climate change effects of the Project that includes
 - i. an assessment of minimum Finished Floor Level (FFL) taking into account anticipated effects of climate change
 - ii. information to demonstrate that the flood modelling undertaken gives appropriate consideration to climate change impacts

- iii. modelling and/or evidence of any emissions reductions opportunities resulting from the Project
 - c. an integrated transport assessment that includes options relating to enhancement of multi-modal connections and infrastructure, including a movement network plan of the availability and feasibility of safe spaces for active modes of transport, including walking and cycling
 - d. assessments against the requirements of the Plan Change 9 to the Hawkes Bay Regional Plan – Tūtaekurī, Ahuriri, Ngaruroro and Karamū Catchments (TANK Plan Change), Source Protection Zone requirements, and consideration of whether the Project will trigger a requirement for resource consent for construction dewatering or water takes in the Hawkes Bay Regional Resource Management Plan
 - e. a natural hazards assessment including assessment of the risk associated with liquefaction, earthquakes and coastal inundation, and detailed design of the works required to address these risks
 - f. a detailed development plan for the Project site, prepared in consultation with Napier City Council, which includes consideration of the effects of the development on the wider Riverbend/The Loop greenfield growth area and any relevant provisions of the draft Napier District Plan
 - g. a detailed assessment of the capacity of the existing three waters infrastructure and/or upgrades to the infrastructure required to service the development (including funding), and including information on discussions held, and agreements made, with NCC and HBRC.
55. If you decide to refer the Project, we recommend you copy the notice of decisions to Pukemokimoki Marae Trust and Ngāti Pārau Hapū Trust, and agree to specify under section 24(2)(e) that a panel must invite comment on a resource consent application for the Project from Ngāti Pārau Hapū Trust.
56. The above information is required to adequately inform a panel of the actual and potential effects of the Project.
57. Our recommendations for your decisions follow.

Next Steps

58. You must give notice of your decisions on the referral application, and the reasons for them, to the applicants and the persons, entities and groups listed in section 25 of the FTCA.
59. We have attached a notice of decisions letter to the applicant based on these requirements and our recommendations (refer Appendix 4). We will assist your office to give copies to all relevant parties.
60. To refer the Project, you must recommend that a referral order be made by way of an Order in Council (OiC).
61. Cabinet has agreed that you can issue drafting instructions to the Parliamentary Counsel Office without the need for a policy decision to be taken by Cabinet in the first instance.¹

¹ Following the first OIC, the Minister for the Environment (and Minister of Conservation for projects in the Coastal Marine Area) can issue drafting instructions directly to the Parliamentary Counsel Office. Cabinet has also agreed that a Regulatory Impact Assessment is not required for an OIC relating to projects to be referred to a panel [ENV-20-MIN-0033 and CAB-20-MIN-0353 refer].

Recommendations

1. We recommend that you:

- a. **Note** that section 23(1) of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) requires you to decline this application for referral unless you are satisfied that the Project meets the referral criteria in section 18 of the FTCA including that it would help to achieve the FTCA's purpose.
- b. **Note** that when assessing whether the Project would achieve the FTCA's purpose, you may consider a number of matters under section 19, including the Project's economic benefits and costs, and effects on social or cultural well-being; whether it may result in a public benefit (such as generating employment or increasing housing supply) and also whether it could have significant adverse effects.
- c. **Note** that if you are satisfied that all or part of the Project meets the referral criteria in section 18 of the FTCA you may:
 - i. refer all or part of the Project to an expert consenting panel (a panel)
 - ii. refer the initial stages of the Project to a panel while deferring decisions about the Project's remaining stages
 - iii. still decline the referral application for any reason under section 23(2) of the FTCA.
- d. **Note** that if you do refer all or part of the Project you may:
 - i. specify restrictions that apply to the Project
 - ii. specify the information that must be submitted to a panel
 - iii. specify the persons or groups from whom a panel must invite comments
 - iv. set specific timeframes for a panel to complete their process.
- e. **Note** that before deciding to accept an application for referral under section 24(1) of the FTCA you must consider:
 - i. the application
 - ii. the report obtained under section 17 of the FTCA
 - iii. any comments received
 - iv. any further information requested and provided within the required timeframe.
- f. **§ 9(2)(f)(ii), § 9(2)(g)(i)**
- g. **Agree** that the Riverbend Residential Development project meets the referral criteria in section 18 (3) of the FTCA.

Yes/No
- h. **Agree** that the Project will help achieve the purpose of the FTCA (and therefore meets the referral criteria in section 18(2) of the FTCA) as it has the potential to:
 - i. have positive effects on social wellbeing by providing a diverse range of housing types in an area where additional housing supply is urgently needed and where there are limited affordable housing options
 - ii. generating employment by providing an average of approximately 168 full-time equivalent (FTE) jobs per year during the three-year planning and construction period

- iii. increasing housing supply through the construction of up to 670 new residential units
- iv. progress faster by using the processes provided by the FTCA than would otherwise be the case, provided that the applicant lodges their applications for resource consent in a timely manner following Project referral.

Yes/No

- i. **Agree** to refer all of the Project to a panel.

Yes/No

- j. **Agree** to specify under section 24(2)(d) of the FTCA the following additional information that the applicants must submit with any resource consent application lodged with the Environmental Protection Authority:

- i. a flood hazard assessment, including modelling and analysis of the effects and mitigation of floodwater within the Project site and displaced because of the Project, with particular consideration of how the climate-change scenario used for modelling aligns with *Coastal Hazards and Climate Change: Guidance for Local Government* (Ministry for the Environment, December 2017, ME1341)
- ii. an assessment of the climate change effects of the Project, that includes, but is not limited to:
 - 1. an assessment of minimum Finished Floor Level (FFL) against the anticipated effects of climate change on rainfall events
 - 2. information to demonstrate that the flood modelling undertaken gives appropriate consideration to climate change impacts, and that the site levels will therefore be appropriate to ensure the long-term resilience of the proposed development
 - 3. modelling and/or evidence of any emissions reductions opportunities resulting from the Project
- iii. a traffic assessment that includes options relating to enhancement of multi-modal connections and infrastructure, to support uptake of public and active transport in the development, including a movement network plan of the availability and feasibility of safe spaces for active modes of transport, including walking and cycling
- iv. assessments against the requirements of Plan Change 9 to the Hawkes Bay Regional Plan – Tūtaekurī, Ahuriri, Ngaruroro and Karamū Catchments (TANK Plan Change), the Source Protection Zone requirements, and consideration of whether the Project will trigger a requirement for resource consent for construction dewatering or water takes in the Hawkes Bay Regional Resource Management Plan
- v. a natural hazard assessment including, but not limited to, assessment of the risk associated with liquefaction, earthquakes and coastal inundation, and detailed design of the works required to address these risks
- vi. a detailed development plan for the Project site, prepared in consultation with Napier City Council which includes consideration of the effects of the development on the wider Riverbend/The Loop greenfield growth area and any relevant provisions of the draft Napier District Plan

- vii. a detailed assessment of the capacity of the existing three waters infrastructure and/or upgrades to the infrastructure required to service the development (including funding), and including information on discussions held, and agreements made, with Napier City Council and Hawkes Bay Regional Council.

Yes/No

- k. **Agree** to specify under section 24(2)(e) that a panel must invite comment on a resource consent application for the Project from Ngāti Pārau Hapū Trust.
- l. **Agree** to the Ministry for the Environment issuing drafting instructions to the Parliamentary Counsel Office for an Order in Council to refer the Riverbend Residential Development Project to a panel in accordance with your decisions recorded herein.

Yes/No

- m. **Sign the attached (Appendix 4)** notice of decisions to Tawanui Developments Limited, K3 Property Limited and Mana Ahuriri Holdings Limited.

Yes/No

- n. **Agree** to provide copies of the notice of decisions to Pukemokimoki Marae Trust and Ngāti Pārau Hapū Trust.

Yes/No

- o. **Note** that to ensure your compliance with section 25(3) of the FTCA, the Ministry for the Environment will publish the decisions, the reasons, and the Section 17 Report on the Ministry for the Environment's website.

Signatures



Stephanie Frame
Manager – Fast Track Consenting

Date

Hon David Parker
Minister for the Environment

Date

Table A: Stage 2 - Project Summary and Section 24 Assessment

Project details	Project description	Does all or part of the Project meet the referral criteria in section 18?		Summary of comments received	Section 23 assessment – potential reasons for declining	Referral conclusions & recommendations
		Project eligibility for referral (section 18(3a - d))	Section 18(2) - Does the Project help achieve the purpose of the FTCA (as per section 19)?			
Project name Riverbend Residential Development Applicants Tawanui Developments Limited, K3 Properties Limited and Mana Ahuriri Holdings Limited c/- Development Nous Limited Location 195 and 215 Riverbend Road, Meanee, and 20 Waterworth Avenue, Onekawa, Napier, Hawkes Bay	The Project is to undertake a staged subdivision and construct a housing development comprising approximately 670 residential units, open space and associated infrastructure on a 22 hectare greenfield site in southern Napier. The Project site is located at 195 and 215 Riverbend Road, Meanee and 20 Waterworth Avenue, Onekawa, Hawkes Bay. The Project includes: a. subdivision to create approximately 606 residential lots and a 1.5 hectare expansion to the adjacent Maraenui Park, or approximately 648 lots if the proposed Maraenui Park expansion does not proceed b. construction of roading and three waters infrastructure c. development of open space d. construction and use of land for approximately 648 residential units or, if Mareanui Park is not expanded, construction and use of land for approximately 670 residential units e. provision for commercial use of ground floor areas of some residential units which may include retail,	The Project is eligible under section 18(3)(a-d) as: <ul style="list-style-type: none"> based on information provided by the applicants, it does not include any prohibited activities it does not include activities on land returned under a Treaty settlement it does not include activities in a customary marine title area or a protected customary rights area under the Marine and Coastal Area (Takutai Moana) Act 2011 	Economic benefits for people or industries affected by COVID-19 (19(a)) The applicants estimate that the Project will provide an average of approximately 168 full-time equivalent (FTE) jobs per year over the three year planning and construction period. Economic costs for people or industries affected by COVID-19 (19(a)) N/A Effect on the social and cultural well-being of current and future generations (19(b)) The Project will have positive effects on social wellbeing by providing a diverse range of housing types in a location which is rapidly growing and has a housing capacity shortfall. The range of housing typologies may also improve housing affordability in comparison with traditional standalone residential development. The Project is expected to contribute to cultural wellbeing through the partnership with iwi development groups. Is the Project likely to progress faster by using this Act (19(c))? The applicants consider that the fast-track process is likely to be faster than standard Resource Management Act 1991 (RMA) processes given the nature of the Project. The applicants estimate that the standard RMA processes would add a 12-24 month	Ministers s 9(2)(f)(ii), s 9(2)(g)(i)	Section 23(5) matters: Insufficient information (23(5)(a)) The applicant has provided sufficient information for you to determine whether the Project meets the criteria in section 18 of the FTCA. More appropriate to go through standard RMA process (23(5)(b)) NCC opposes Project referral and considers that consenting for the Project should follow standard processes under the RMA, including a plan change to rezone the site. The Council notes that without a plan change there are potential concerns about the delivery of the remaining 290 residential units on the balance of the site as they will need to progress through standard RMA processes. We note that the inclusion of K3 and MAHL as joint applicants now means the Project scope includes the delivery of the full number of proposed residential units (up to 670) rather than constructing only 380 units and leaving the balance to be developed later. This addresses NCC's concerns arising from the lack of a structure plan to guide the full development. We recommend that you direct the applicant to provide a detailed development plan for the site, prepared in consultation with NCC, with any application to the EPA. We also note that NCC's concerns about potential funding shortfalls could potentially be addressed by appropriate engagement and negotiation of an agreement with NCC ahead of the lodgement of the applicant's resource consent applications to a panel. We also	In response to Ministers' comments, we advise as follows: <ul style="list-style-type: none"> s 9(2)(f)(ii), s 9(2)(g)(i) In response to Napier City Council's comments, we advise as follows: <ul style="list-style-type: none"> Council's concerns about potential funding shortfalls could be addressed by sufficient information from the applicants, appropriate engagement with council agencies, and the ability of the panel to impose an appropriate financial contribution condition the Project involves subdivision and development on land that is anticipated for future urban development. A panel can consider the appropriateness of open space, three waters and roading infrastructure, public and active transport modes. We note that a panel's assessment will be informed by comments received from NCC the comments raise relevant matters about the appropriateness of using the FTCA process rather than the standard RMA plan change process. However, we consider that this matter can be addressed by the provision of a detailed development plan for the entire site, prepared in consultation with NCC the comments raise relevant concerns about a potential funding shortfall in the financial contributions the council is able to levy if the land is not rezoned. We consider that this can be addressed by the provision of details of how the infrastructure required to service the development will be funded, including details of discussions held, and any agreements made, with NCC. We also note that a panel can consider the appropriateness of a consent condition requiring a financial or development contribution.

Project details	Project description	Does all or part of the Project meet the referral criteria in section 18?		Summary of comments received	Section 23 assessment – potential reasons for declining	Referral conclusions & recommendations
		Project eligibility for referral (section 18(3a - d))	Section 18(2) - Does the Project help achieve the purpose of the FTCA (as per section 19)?			
			<p>significant adverse environmental effects.</p> <p>We note that you do not require a full assessment of environmental effects and supporting evidence to make a referral decision, and that a panel will assess environmental effects and appropriate mitigation should you decide to refer the Project.</p> <p>We recommend that you direct that technical assessments are prepared on infrastructure and climate change including flood assessment to address issues raised in comments from the Minister of Climate Change, NCC and the HBRC.</p> <p>Other relevant matters (19(f))</p> <p>N/A</p>	<p>NCC advises that if the land is developed without being rezoned the Council would be constrained by the current rules in the operative District Plan and its Financial Contributions Policy (2021) relating to financial contributions levied on subdivisions in the Rural Zone, which may result in a significant shortfall (approximately \$5 million) in the funding required to service the development.</p> <p>NCC states that the existing plan-enabled greenfield growth areas (Te Awa, Parklands and Mission) have the theoretical adequate supply to meet project housing demand in the short-medium term, and there is therefore no pressing need to fast-track this application. However, NCC also notes that these areas are limited in terms of affordable housing options, and acknowledges that additional housing supply in Napier is urgently needed in the short term. NCC is currently undertaking a review of the District Plan, and note that as part of that review there is a preference for greenfield growth in the western hills, rather than the existing growth areas. However, further investigation concluded that there are extensive areas of significant slope throughout the hills, and development within these areas could not be considered feasible at this time.</p> <p>NCC raised particular concerns about the location of the development within a flood storage area for the surrounding County Drain network. While NCC acknowledged the applicants' modelling which indicates that the site only stores flood water from the site itself, it provided photographic evidence from the 1-in-120 to 1-in-250 Annual Exceedance Probability rainfall event in 2020 which indicate that the site acts as a flood plain for the surrounding catchment.</p> <p>NCC also noted uncertainties about:</p> <ol style="list-style-type: none"> the current capacity of the council's three waters networks to service the development and the potential for significant costs associated with upgrade of stormwater pump stations if needed. the impact of the proposed commercial development on the existing central business district and other suburban commercial centres within Napier. <p>Hawkes Bay Regional Council (HBRC) neither supports nor opposes Project referral. The Council notes that upgrades to the existing stormwater infrastructure would likely be required to enable the development and that further analysis is required before the best practicable stormwater solution can be determined. The Council also identified that the site is subject to several natural hazard-related issues (high liquefaction vulnerability, risk of lateral spreading, high earthquake amplification, coastal inundation) which have not been addressed by the applicant and that further assessment of these matters should be provided with their resource consent applications.</p> <p>Both NCC and HBRC identified that Tawanui Developments Limited was subject to prosecution by Hawkes Bay Regional Council in 2109 for burning asbestos-containing material. Tawanui Developments Limited was convicted and fined \$11750.</p> <p>All responses received by parties invited to comment are attached at Appendix 6.</p>	<p>The matters raised by NCC and HBRC present the risk that the applicants will be required to undertake significant further assessment and consultation, which may affect the certainty of project delivery and cause delays in lodging an application with the EPA. As the applicant has estimated that the use of the FTCA process would save between 12-24 months compared to standard RMA processes, and there are still approximately 11 months before the FTCA is repealed, we do not consider that this is sufficient reason to decline a referral application.</p> <p>As the Project has a non-complying activity status under the Napier District Plan, under clause 32 of Schedule 6 of the FTCA a panel is required to consider whether the Project meets the 'gateway tests' in section 104D of the RMA. The applicant has provided an assessment which states that the Project meets both section 104D(1)(a) and 104D(1)(b) of the RMA. We note that if this assessment is not accepted the application may be declined by a panel.</p> <p>The applicant has provided further information stating that a partnership and funding agreement is being completed with MHUD under the Crown Land Programme for development funding, and that negotiations are underway with Kainga Ora Homes and Communities to deliver at least 150 of the homes for affordable and community housing.</p>	<p>We also recommend you require the applicants to submit the following information with any consent application lodged with the Environmental Protection Authority:</p> <ul style="list-style-type: none"> a flood hazard assessment, including modelling and analysis of the effects and mitigation of floodwater within the Project site and displaced because of the Project, with particular consideration of how the climate-change scenario used for modelling aligns with Coastal Hazards and Climate Change: Guidance for Local Government (Ministry for the Environment, December 2017, ME1341) an assessment of the climate change effects of the Project that includes, but is not limited to: <ul style="list-style-type: none"> an assessment of minimum Finished Floor Level (FFL) against the anticipated effects of climate change on rainfall events information to demonstrate that the flood modelling undertaken gives appropriate consideration to climate change impacts modelling and/or evidence of any emissions reductions opportunities resulting from the Project a traffic assessment that includes options relating to enhancement of multi-modal connections and infrastructure, including a movement network plan of the availability and feasibility of safe spaces for active modes of transport, including walking and cycling assessments against the requirements of Plan Change 9 to the Hawkes Bay Regional Plan – Tūtaekurī, Ahuriri, Ngaruroro and Karamū Catchments (TANK Plan Change), Source Protection Zone requirements, and consideration of whether the Project will trigger a requirement for resource consent for construction dewatering or water takes in the Hawkes Bay Regional Resource Management Plan a natural hazard assessment including, but not limited to, assessment of the risk associated with liquefaction, earthquakes and coastal inundation, and detailed design of the works required to address these risks a detailed development plan for the entire site, prepared in consultation with Napier City Council which includes consideration of the effects of the development on the wider Riverbend/The Loop greenfield growth area and any relevant provisions of the draft Napier District Plan a detailed assessment of the capacity of the existing three waters infrastructure and/or upgrades to the infrastructure required to service the development (including funding), and including information on discussions held, and agreements made, with Napier City Council and Hawkes Bay Regional Council <p>We recommend that you provide your notice of decisions to:</p> <ul style="list-style-type: none"> Pukemokimoki Marae Trust Ngāti Pārau Hapū Trust <p>We recommend that you make a direction to a panel to invite comments from:</p> <ul style="list-style-type: none"> Ngāti Pārau Hapū Trust

Schedule of Appendices and Attachments

Appendix 1 – Riverbend Residential Development – Application form and additional information received

Appendix 2 – BRF-140 FTC59 – Application for referred project under the COVID-Recovery FTCA - Stage 1 decisions on Riverbend Residential Development project

Appendix 3 – Statutory framework for making decisions

Appendix 4 – Draft Notice of Decisions letter to Tawanui Developments Limited, K3 Property Limited and Mana Ahuriri Holdings Limited

Appendix 5 – Section 17 Report

Appendix 6 – Comments received from Ministers, Napier City Council and Hawkes Bay Regional Council

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