

FTC #160: Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act 2020 – Stage 1 decisions

Application 2022-101 Beachside Mission Bay Project

Date submitted:	22 September 2022	Tracking #: BRF-2176	
Security level:	In-Confidence	MfE priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Decision on recommendations in Table A	To be advised

Actions for Minister's Office staff	<ol style="list-style-type: none"> Return the signed briefing to MfE. Send attached letter (if signed) with accompanying template and links to application documents.
Number of attachments: 3	Attachments: <ol style="list-style-type: none"> Application documents for Beachside Mission Bay Project (Databox link) Letter to Ministers – inviting comments on Beachside Mission Bay Project referral Template for ministerial comment

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Stephanie McNicholl		
Manager	Stephanie Frame	s 9(2)(a)	✓
Acting Director	Matthew Barbati-Ross	s 9(2)(a)	

FTC#160: Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act 2020 – Stage 1 decisions

Key messages

1. This briefing seeks your initial decisions on an application from Drive Holdings Limited to refer the Beachside Mission Bay Project (project) to an expert consenting panel (panel) under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (the FTCA).
2. The project is to develop a 6527 square metre site in Mission Bay, Auckland and construct a mixed-use development comprising 7 buildings (5 storeys high, to an allowable building height of 16 metres occupiable, 18 metres maximum) located above 2 basement carparking levels, that include:
 - a. approximately 140-170 residential units
 - b. approximately 2404 squares metres of commercial and retail tenancy space
 - c. private communal open space
 - d. vehicle and bicycle parking.
3. The project site is located over a block of 10 lots at 75-97 Tamaki Drive, 6-14 Patteson Avenue, and 26-30 Marau Crescent, Mission Bay, Auckland.
4. The project will involve activities such as:
 - a. demolishing existing buildings, infrastructure and structures
 - b. carrying out earthworks (including basement construction and disturbance of contaminated land)
 - c. constructing 7 buildings comprising 5 storeys and 2 basement carparking levels
 - d. constructing or installing structures and infrastructure including accessways for vehicles, loading and parking areas, and three-waters services
 - e. taking and diverting groundwater
 - f. discharging groundwater, stormwater and contaminants to land
 - g. landscaping and planting including removal of street trees
 - h. any other activities that are –
 - i. associated with the activities described in a to g
 - ii. within the scope of the project as described in paragraph 2.
5. The project will require land use consent and water discharge permits under the Auckland Unitary Plan (AUP) and land use consent under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS).
6. The project has restricted discretionary activity status under the AUP as it involves new buildings, infrastructure and associated construction activities, and disturbance of contaminated land.
7. The site is located within the Business - Local Centre Zone under the AUP. The project generally aligns with the zone purpose to enable commercial activity which primarily serves local convenience needs including retail, commercial services, office, food and beverage and small scale supermarkets, and provides residential living opportunities.

8. The applicant considers the project will not be contrary to the relevant AUP objectives and policies, and there will be no significant adverse effects.
9. We note the applicant previously sought resource consent from Auckland Council through the standard RMA consenting process for a mixed-use development on this project site. The development comprised over height buildings (to a maximum height of 28 metres) including a cinema, and had overall discretionary activity status. The application was publicly notified, declined consent by Independent Planning Commissioners and was subsequently appealed to and declined by the Environment Court. The applicant appealed to the High Court as they consider the Environment Court decision did not specify coherent reasons to decline. The High Court hearing was held in June 2022 but no decision has been released yet.
10. This project has been revised to comply with the height standard (to an occupiable height of 16 metres and a maximum height of 18 metres) under the AUP, and by not including a cinema, has an overall restricted discretionary activity status.
11. We have undertaken an initial (Stage 1) analysis of the referral application and this is presented along with our recommendations in Table A.
12. The project meets some of the eligibility criteria in section 18(3) of the FTCA, but more analysis is needed before we can advise you if it meets all the eligibility criteria and the purpose of the FTCA (thus satisfying section 18(2) of the FTCA) and to enable us to advise you on matters in section 23(5) which may influence your referral decision.
13. We recommend you progress consideration of the application to the next stage of analysis (Stage 2) and invite comments from specific Ministers listed in section 21(6) of the FTCA and Auckland Council
14. We recommend that you invite comments from Auckland Transport and Watercare Services Limited as additional parties under section 21(3) of the FTCA.
15. We also recommend you request further information from the applicant as detailed in Table A.

Statutory framework summary

16. You are the sole decision maker for the referral application as the project will not occur in the coastal marine area.
17. You may decline the referral application before seeking comments from the relevant local authorities and any relevant Ministers:
 - a. if you are satisfied the project does not meet the referral criteria in section 18 of the FTCA, (which include helping to achieve the purpose of the FTCA) (see sections 18(2) and 23(1) of the FTCA)
 - b. for any other reason (see section 23(2) of the FTCA).
18. If you do not decline the referral application at this stage:
 - a. you must provide the application to, and invite comments from, the relevant local authorities and the relevant Ministers prescribed by section 21(6) of the FTCA
 - b. you may provide the application to and invite comments from any other person.
19. You are also able to request further information from the applicant or any relevant local authority at any time before you decide to decline or accept the referral application (see section 22 of the FTCA).

Action sought

20. Please indicate your decisions on the recommendations in Table A.

Signature

A handwritten signature in black ink, appearing to read 'S. Frame', is written on a light gray rectangular background.

Stephanie Frame
Manager – Fast-track Consenting

Table A: Stage 1 initial assessment of project eligibility – projects where the Minister for the Environment is the only decision maker

Project to progress

Project details	Project description	Project funding	Is project eligible for referral? [section 18(3)]	Will project help to achieve the purpose of the FTCA? [section 18(2)]						Recommendations	Minister's decisions
				Economic benefits and costs for people or industries affected by COVID-19 [section 19(a)]	Effect on social and cultural wellbeing of current and future generations [section 19(b)]	Likelihood project will progress faster under the FTCA than would otherwise be the case [section 19(c)]	Public benefit [section 19(d)]	Potential for significant adverse environmental effects, including greenhouse gas emissions [section 19(e)]	Any other relevant matters [section 19(f)]		
<p>Name Beachside Mission Bay Project</p> <p>Applicant Drive Holdings Limited</p> <p>c/- Barker & Associates</p> <p>Location 75-79, 81-87 and 89-97 Tamaki Drive, 6, 8-10, 12 and 14 Patteson Avenue, and 26, 28 and 30 Marau Crescent, Mission Bay, Auckland.</p>	<p>The project is to develop a 6527 square metre site in Mission Bay, Auckland and construct a mixed-use development comprising 7 buildings (5 storeys high, to an allowable building height of 16 metres occupiable, 18 metres maximum) located above 2 basement carparking levels, that include:</p> <ul style="list-style-type: none"> • approximately 140-170 residential units • approximately 2404 squares metres of commercial and retail tenancy space • private communal open space • vehicle and bicycle parking. <p>The project site is located over a block of 10 lots at 75-97 Tamaki Drive, 6-14 Patteson Avenue, and 26-30 Marau Crescent, Mission Bay, Auckland.</p> <p>The project will involve activities such as:</p> <ul style="list-style-type: none"> • demolishing existing buildings, infrastructure and structures • carrying out earthworks (including 	<p>Based on available information at this stage, we note:</p> <p>Drive Holdings is the registered owner of all the lots comprising the project site.</p> <p>Drive Holdings Limited and its ultimate holding company Capital Solutions Holding Limited are both registered New Zealand companies.</p> <p>The applicant has not indicated whether they have financial capability to fund and deliver the project within the delivery expectations of the FTCA.</p> <p>We recommend you seek supporting evidence from the applicant on their ability to finance and deliver the project.</p>	<p>Based on available information at this stage, we consider the project is eligible for referral because:</p> <ul style="list-style-type: none"> • it does not include any prohibited activities • it does not include land returned under a Treaty settlement • it does not occur in a customary marine title area or protected customary rights area under the Marine and Coastal Area (Takutai Moana) Act 2011. 	<p>Based on the information provided by the applicant we consider the project may result in the following economic benefits:</p> <ul style="list-style-type: none"> • provide approximately 955 direct, indirect and induced (not solely construction-related) full time equivalent (FTE) jobs over an 8-year design and construction period • contribute approximately \$344 million to regional GDP. <p>The application outlines job numbers as total FTE years and as direct, indirect and induced. We recommend you seek clarification from the applicant of the number of direct FTE jobs per year of the project.</p>	<p>The project has the potential for positive effects on the social wellbeing of current and future generations as it will:</p> <ul style="list-style-type: none"> • generate employment by providing approximately 955 FTE jobs over an 8-year period • increase housing supply through the construction of approximately 140-170 residential units in a location well-served by public transport and where there is a high housing demand. 	<p>The applicant considers that the fast-track process will allow the project to progress approximately 22 months faster than under standard Resource Management Act 1991 (RMA) processes, due to the possibility of a potential hearing and appeal.</p> <p>We recommend seeking comment from Auckland Council on the appropriateness of using the FTCA process.</p>	<p>Based on the information provided by the applicant we consider that the project may result in the following public benefits:</p> <ul style="list-style-type: none"> • generating employment over an 8-year design and construction period • increasing housing supply in a region experiencing high housing demand • contributing to a well-functioning urban environment • positively contributing to social wellbeing by providing a variety of housing sizes, accessibility to jobs, access to public transport and open spaces • providing housing supply in proximity to active multi-modal transport options and connections, including public transport, supporting transition to a low-emissions economy, including reduced reliance on 	<p>The applicant has advised that the project has the potential for adverse environmental effects arising from:</p> <ul style="list-style-type: none"> • construction activities (including traffic, noise, vibration, sediment control, geotechnical/ retaining basement walls) • ground contamination (from historic activities – vehicle servicing, fill material including potential asbestos) • transport (interfaces and intersections) • natural hazards and flooding (coastal inundation and sea level rise) • stormwater runoff (receiving coastal environment) <p>and may include adverse effects on:</p> <ul style="list-style-type: none"> • streetscape character and visual amenity (interface with surrounding environment), urban design and local neighbourhood character • existing and proposed infrastructure, including within the wider network and upgrades. <p>The applicant has provided some preliminary technical assessments in support of their view that the</p>	<p>The location of the project site within a high-profile urban environment, and the scale of the proposed built form is likely to result in high public interest. We note the applicant previously sought resource consent from Auckland Council through the standard RMA consenting process between 2018 and 2022 for a mixed-use development on this project site. The development comprised of over height buildings (maximum height of 28 metres) and included a cinema and had an overall discretionary activity status. The application was publicly notified, declined consent by Independent Planning Commissioners and was subsequently appealed to and declined by the Environment Court.</p> <p>The applicant appealed to the High Court as they consider the Environment Court decision did not specify coherent reasons to decline. The High Court hearing was held in June 2022 but no decision has been released yet.</p> <p>We understand the matters of contention in the original application related to the cinema activity and the overall project height of 28 metres.</p> <p>This project is now substantially altered from the original council application. It will have an occupiable height of 16 metres and a maximum height of 18 metres, does</p>	<p>a. Note that section 23(3) of the FTCA permits you to decline the referral application without inviting comments from the relevant local authorities and any relevant Ministers.</p> <p>b. Note that you have not yet provided the application to, nor sought any comments on it from, relevant local authorities or relevant Ministers but that you are required to do so if you do not decline the application under section 23(3) of the FTCA.</p> <p>c. Note that section 21(3) of the FTCA permits you to forward an application to, and invite written comments from, any other person.</p> <p>d. Note that section 22 of the FTCA permits you to request further information from the applicant or relevant local authorities at any time before you decide whether to accept or decline an application.</p> <p>e. Agree to progress the Beachside Mission Bay Project to our Stage 2 analysis. The project warrants further analysis because it has potential to achieve the purpose of the FTCA but we need to consider some matters further before providing you with our final advice on the referral application.</p> <p>f. Agree to provide the application to, and invite comments from:</p> <ol style="list-style-type: none"> i. the Ministers listed in section 21(6)(a)–(m) of the FTCA ii. Auckland Council iii. the following additional 	<p>Yes/No</p> <p>Yes/No</p>

Project details	Project description	Project funding	Is project eligible for referral? [section 18(3)]	Will project help to achieve the purpose of the FTCA? [section 18(2)]						Recommendations	Minister's decisions
				Economic benefits and costs for people or industries affected by COVID-19 [section 19(a)]	Effect on social and cultural wellbeing of current and future generations [section 19(b)]	Likelihood project will progress faster under the FTCA than would otherwise be the case [section 19(c)]	Public benefit [section 19(d)]	Potential for significant adverse environmental effects, including greenhouse gas emissions [section 19(e)]	Any other relevant matters [section 19(f)]		
	<p>basement construction and disturbance of contaminated land)</p> <ul style="list-style-type: none"> constructing 7 buildings comprising 5 storeys and 2 basement carparking levels constructing or installing structures and infrastructure including accessways for vehicles, loading and parking areas, and three-waters services taking and diverting groundwater discharging groundwater, stormwater and contaminants to land landscaping and planting including removal of street trees any other activities that are: <ul style="list-style-type: none"> associated with the activities described above within the scope of the project as described above. <p>The project will require land use consent and water discharge permits under the Auckland Unitary Plan (AUP) and land use consent under the Resource</p>						<p>private vehicle use.</p> <p>The applicant has provided a traffic and transport assessment which states that the project will provide 240 carparks and bike storage on site and is situated close to active public transport networks.</p>	<p>project will not have any significant adverse 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 a panel consider this and any appropriate mitigation, offsetting or compensation to manage adverse effects, should the project be referred.</p>	<p>not include a cinema and complies with the AUP. We also note the applicant intends to give effect to this project if fast track consent is granted, regardless of the outcome of the High Court appeal.</p> <p>We note there were several external parties including 35 submitters and 3 residents associations involved in the Environment Court appeal. It may be appropriate for a panel to invite comment from these parties if the project is referred, however we will provide you with advice on this matter as part of our stage 2 analysis.</p> <p>The applicant did not identify any requirement for unit title subdivision consent. We recommend seeking further information from the applicant on whether a subdivision consent is likely to be required within the scope of the project description.</p> <p>The application indicates consultation is yet to commence on this project with Ngāti Whātua Orakei and Ngāti Paoa or the numerous other relevant iwi with whom the applicant will need to engage. This has the potential to affect the applicant's readiness to lodge resource consent applications with the EPA, should the project be referred. We recommend that you seek additional information from the applicant on how long they anticipate it will take to undertake the consultation (or obtain agreements that a cultural impact assessment is unlikely to</p>	<p>entities/persons under section 21(3) of the FTCA: Auckland Transport and Watercare Services Limited</p> <p>g. Agree to seek further information from the applicant on:</p> <ol style="list-style-type: none"> financial capability to fund and deliver the project the number of direct FTE jobs which will be created per year time required to address FTCA consultation requirements including engagement with all relevant iwi authorities whether the project will include any subdivision <p>h. Sign the attached letters to Ministers.</p> <p>i. Note that while awaiting comments from invited parties and further information, the Ministry for the Environment will, in consultation with the Office of Māori Crown Relations – Te Arawhiti, prepare a report for the purpose of section 17 of the FTCA.</p>	<p>Yes/No</p> <p>Yes/No</p>

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	Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS).								<p>be sought by iwi) required under the FTCA process.</p> <p>The project site is subject to several easement and right of way instruments, encumbrances and land interests recorded on multiple records of title. The application states: Generally, the legal interests present on the Records of Title are internal to the site – such as those relating to party walls, drainage rights, and right of way. There are a number of encumbrances with Auckland Council. None of the legal interests will preclude the redevelopment of the site.</p> <p>As the project involves the installation of new transport and three waters infrastructure, we recommend that you invite comments from Auckland Transport and Watercare Services Limited as they administer transport, potable water and wastewater infrastructure in Auckland.</p>		

Signed:

Hon David Parker
Minister for the Environment

Date: