

In Confidence

Office of the Minister for the Environment

Chair, Cabinet

COVID-19 Recovery (Fast-track Consenting) Referred Projects Amendment Order (No. 4) 2020

Proposal

1. This paper seeks authorisation for submission to the Executive Council of the COVID-19 Recovery (Fast-track Consenting) Referred Projects Amendment Order (No. 4) 2020 (the No. 4 Amendment Order).
2. The No.4 Amendment Order amends the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020 to include Kāinga Ora – Homes and Communities and Porirua City Council's, Eastern Porirua Regeneration Project – Infrastructure Works as a project referred to an expert consenting panel.
3. This paper also seeks agreement to delegate authority to the Minister of Finance, Minister for the Public Service and Minister for the Environment to submit directly to the Executive Council, any further Orders in Council referring a project to an expert consenting panel under the COVID-19 Recovery (Fast-track Consenting) Act 2020 over the period starting on 16 December 2020 and ending 26 January 2021.

Executive Summary

4. The COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) is one of the Government's actions to support New Zealand's economic recovery from COVID-19. The FTCA enables any person to apply to the Minister for the Environment to access the fast-track process for their project. If the Minister accepts an application, it is referred by Order in Council allowing an applicant to lodge, via the Environmental Protection Authority (EPA), a resource consent or notice of requirement for a designation with an expert consenting panel (Panel) for consideration.
5. Kāinga Ora – Homes and Communities and Porirua City Council have applied for the Eastern Porirua Regeneration Project – Infrastructure Works to be referred to a Panel.
6. I have considered whether this project helps achieve the purpose of the FTCA, the Treaty of Waitangi report prepared under the FTCA, and I sought written comments from relevant Ministers, local authorities, Te Rūnanga o Toa Rangatira Incorporated, Wellington Water Limited and Waka Kotahi NZ Transport Agency. I have also requested and considered further information from the applicants.
7. I have accepted the Kāinga Ora – Homes and Communities and Porirua City Council's Eastern Porirua Regeneration Project – Infrastructure Works for referral as it has the potential to:

- 7.1 provide local employment opportunities including in civil construction
- 7.2 increase the capacity of three waters infrastructure in eastern Porirua, supporting future urban growth and improving the existing capacity and performance of infrastructure
- 7.3 contribute to improving environmental outcomes for freshwater quality in the long term.
8. I consider that this project will help to achieve the purpose of the FTCA and any adverse effects and mitigation measures can be considered and determined by a Panel having regard to Part 2 of the Resource Management Act 1991 (RMA) and the purpose of the FTCA.
9. I now seek authorisation for submission to the Executive Council of the No. 4 Amendment Order.

Background

10. The FTCA enables any person to apply to the Minister for the Environment (the Minister) to fast-track a resource consent or designation for their project. If the Minister accepts an application, it is referred by Order in Council allowing an applicant to lodge a resource consent or notice of requirement for a designation with a Panel for consideration.
11. As of 03 December 2020, I have received 31 applications for projects to be considered for referral to a Panel through an Order in Council, of which:
 - 11.1 seven applications have been referred and Orders in Council gazetted. We expect the consent applications or notices of requirement for designations for these projects to be lodged early next year
 - 11.2 eight applications have been declined for a range of reasons including that they do not meet the purpose of the FTCA and it would be more appropriate for them to go through the standard consenting process under the Resource Management Act (RMA)
 - 11.3 two applications have been withdrawn
 - 11.4 fourteen applications are still being processed.

Project for referral: Kāinga Ora – Homes and Communities and Porirua City Council's, Eastern Porirua Regeneration Project – Infrastructure Works

12. Kāinga Ora – Homes and Communities (Kāinga Ora) and Porirua City Council (the joint applicants) have applied to use the fast-track consenting process for the Eastern Porirua Regeneration Project – Infrastructure Works. Ngāti Toa, a partner in the wider Eastern Porirua Regeneration Project (EPRP), have elected not to be an applicant.
13. This project will upgrade wastewater, water and stormwater infrastructure in eastern Porirua to support the EPRP and other urban growth anticipated in the area. The EPRP was announced by the Government in October 2018. The EPRP is a joint project between Kāinga Ora, Porirua City Council and Ngāti Toa that aims to replace 2,000 existing state homes and build 2,300 new state homes and 1,500 affordable homes. The consenting of these houses does not form part of this application.
14. The Eastern Porirua Regeneration Project – Infrastructure Works consists of:

- 14.1 the replacement of approximately three kilometres of wastewater main from Bothamley Park to State Highway 1 to address existing wastewater performance issues and ensure there is sufficient capacity to deal with future flows
- 14.2 the construction of an additional water reservoir, near to an existing reservoir in Whitby, Porirua, to ensure there is sufficient capacity to meet current and future demand
- 14.3 the construction of a wetland in Cannons Creek Park to mitigate current and future flood risks and treat stormwater prior to discharge to Kenepuru Stream.
15. Under standard RMA processes this project would require a land use consent, discharge permit and water permit from Greater Wellington Regional Council, and a land use consent, potentially a new designation and an alteration to an existing designation from Porirua City Council. The applicant notes the FTCA provides the opportunity for these applications to be considered together and progressed faster.
16. To better understand the environmental effects and job creation potential of this project, I sought further information from the joint applicants under Section 22 of the FTCA.

Comments received

17. In accordance with section 21 of the FTCA, I sought written comments on this application from relevant Ministers, local authorities, Te Rūnanga o Toa Rangatira Incorporated (Ngāti Toa's iwi authority), Wellington Water Limited and Waka Kotahi NZ Transport Agency.

18. [REDACTED] s 9(2)(f)(ii), s 9(2)(g)(i)

19. [REDACTED] s 9(2)(f)(ii), s 9(2)(g)(i)

20. [REDACTED] s 9(2)(f)(ii), s 9(2)(g)(i)

21. [REDACTED] s 9(2)(f)(ii), s 9(2)(g)(i)

22. [REDACTED] s 9(2)(f)(ii), s 9(2)(g)(i)

23.

24. Porirua City Council, in its capacity as a consenting authority, supports this project being referred as it will:

24.1 upgrade critical infrastructure to support urban growth, including the EPRP

24.2 enable all applications to be considered by one decision-making body, as opposed to two separate councils. This will ensure all information is considered as a whole, while providing a streamlined and efficient process.

25. Greater Wellington Regional Council noted that the project has the potential to improve freshwater outcomes for the Kenepuru Stream in the long term.

26. Greater Wellington Regional Council confirmed two past prosecutions of Porirua City Council (2014), and Wellington Water Limited (2018), relating to the illegal discharge of contaminants into Titahi Bay from Porirua City Council's wastewater treatment plant. These prosecutions were raised by the joint applicants in their application and they noted that actions have been taken to prevent these illegal discharges occurring and this project will contribute to reducing discharges in the future.

27. Wellington Water Limited supports the application being referred as it has the potential to provide employment and upskilling in civil construction, improve freshwater outcomes, and support future urban growth.

28. Waka Kotahi NZ Transport Agency supports the proposal in principle as it will provide enabling infrastructure for the EPRP. They note that they have an interest in this project as it affects State Highway 1 and their support for this application does not show their support for other development that this project may enable. They note that while this project is focused on three waters infrastructure, it could be carried out in a way that enables future transport. To address this, and in response to recommendations made by Porirua City Council, I have directed the joint applicants to provide a master plan to a Panel showing how this project will integrate with other infrastructure in the area including cycleways, safety upgrades and improved access.

29. I sought comment from Te Rūnanga o Toa Rangatira Incorporated on this application but received no response. However, the joint applicants provided me with a letter from Te Rūnanga o Toa Rangatira Incorporated supporting the referral of this project. Under Schedule 6, Clause 17 of the FTCA a Panel is required to invite the relevant iwi authorities to comment.

Decision

30. In making my decision I considered the application and further information received, comments received from relevant Ministers, Porirua City Council, Greater Wellington Regional Council, Wellington Water Limited and Waka Kotahi NZ Transport Agency and the eligibility criteria in section 18 of the FTCA¹. I also considered the report prepared under

¹ In accordance with section 24, Decision to accept application for referral, of the FTCA.

section 17 of the FTCA, which did not identify any Treaty of Waitangi considerations that would preclude this application being referred to a Panel.

31. I have decided to accept the joint applicants' Eastern Porirua Regeneration Project – Infrastructure Works for referral to a Panel. I consider the project is not disqualified under section 18 of the FTCA and that it achieves the purpose of the FTCA by:
- 31.1 providing 55 to 110 jobs in its first two years of construction and up to 260 in the third and fourth years of construction
 - 31.2 increasing the capacity of three waters infrastructure in eastern Porirua, enabling future urban growth in Porirua and addressing existing capacity and performance issues for infrastructure
 - 31.3 improving environmental outcomes for freshwater quality in the long term as it will reduce wastewater overflows and may improve stormwater quality
 - 31.4 ensuring potential adverse effects and mitigation measures can be considered and determined by a Panel having regard to Part 2 of the RMA and the purpose of the FTCA.
32. To address the matters raised by s 9(2)(f)(ii), s 9(2)(g)(i) Porirua City Council and Greater Wellington Regional Council, I have decided to direct the applicant to provide a Panel with detailed information on the project. This includes information on the potential positive effects of the project and how the potential adverse effects including on the Kenepuru and Porirua Streams and the Porirua Harbour will be managed. To meet the Crown's Treaty settlement obligations to Ngāti Toa I have directed the applicant to prepare some of this information in consultation with Te Rūnanga o Toa Rangatira Incorporated. The full list of information I have decided to direct the applicant to provide a Panel is provided in Appendix one.
33. The FTCA requires that a Panel invite comments from the relevant local authorities, relevant iwi authorities, Treaty settlement entities, specific Ministers, owners and occupiers of adjacent land and specific non-governmental organisations and other groups listed in the FTCA including Infrastructure New Zealand and the Property Council of New Zealand. In addition to these requirements, I have decided to direct a Panel to seek comment from the Porirua Harbour and Community Trust and three residents' associations (see Appendix one).
34. I consider there are no other reasons under s24(2) of the FTCA to:
- 34.1 limit the scope of the project by referring it only in part
 - 34.2 refer the application in stages
 - 34.3 place any restrictions on the project
 - 34.4 impose specific timeframes for panel consideration.

Delegation of authority to submit Amendment Orders to the Executive Council

35. I seek Cabinet approval to delegate authority to the Minister of Finance, Minister for the Public Service and Minister for the Environment to submit any further Orders in Council referring a project to a Panel under the FTCA, direct to the Executive Council without requiring prior authorisation from Cabinet Committee or Cabinet. This would be for the period starting 16 December 2020 and ending 26 January 2021.

36. This will enable referred projects to progress to a Panel without delay in the absence of scheduled Cabinet meetings over the Christmas recess period. Relevant Ministers will have already received these applications for comment as under the FTCA, the Minister for the Environment is required to invite comments from other relevant Ministers on whether to proceed to an Order in Council.

Timing and 28-day rule

37. Cabinet has agreed to waive the 28-day rule for Orders in Council relating to projects to be referred to a Panel². Therefore, the No. 4 Amendment Order will come into force as the day after it is notified in the New Zealand Gazette. This will enable applications for resource consents and notices of requirement to be lodged with the Environmental Protection Authority, for consideration by a Panel, once the Order has been gazetted.

Compliance

38. The proposed Amendment Order complies with:
- 39.1 the principles of the Treaty of Waitangi
 - 39.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993
 - 39.3 the principles and guidelines set out in the Privacy Act 1993
 - 39.4 relevant international standards and obligations
 - 39.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

40. I do not consider that there are grounds for the Regulations Review Committee to draw this Order in Council to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

41. The No. 4 Amendment Order has been certified by the Parliamentary Counsel Office (PCO) as being in order for submission.

Impact Analysis

Regulatory Impact Assessment

42. The Regulatory Impact Assessment (RIA) requirements for this proposal have been waived. Cabinet has agreed that a RIA is not required for Orders in Council relating to projects to be referred to a Panel³.

² ENV-20-MIN-0033 and CAB-20-MIN-0353 refer.

³ ENV-20-MIN-0033 and CAB-20-MIN-0353 refer.

Climate Implications of Policy Assessment

43. The Climate Implications of Policy Assessment (CIPA) team at the Ministry for the Environment has been consulted and confirms that the CIPA requirements do not apply to this project.
44. The decision to refer the Eastern Porirua Regeneration Project – Infrastructure Works to a Panel will not have direct emissions impacts. Likely emissions implications of the project have been considered at a high-level during the formal application process and are also expected to be considered by a Panel in their assessment of any adverse effects arising from the application.

Publicity

45. The No.4 Amendment Order will be available on the New Zealand Legislation website following its notification in the New Zealand Gazette.
46. As required under section 25 of the FTCA, my decision to refer the application to a Panel for consideration, the reasons for this decision, and the Treaty of Waitangi report obtained under section 17 will be made available to the public on the Ministry for the Environment's website.

Proactive Release

47. I intend to proactively release this paper on the Ministry for the Environment's website subject to redaction as appropriate under the Official Information Act 1982.

Consultation

48. I have considered the matters raised by the relevant Ministers, Greater Wellington Regional Council, Porirua City Council, Wellington Water Limited and Waka Kotahi NZ Transport Agency and am satisfied that the project meets the purpose of the FTCA. Any specific issues raised can be addressed by a Panel in their substantive decision-making role.
49. The Ministry for the Environment sought comment on this paper from the Department of Conservation, Ministry for Housing and Urban Development, Ministry for Culture and Heritage, Te Puni Kōkiri, Ministry of Education, Department of Corrections, Land Information New Zealand, Treasury, Ministry of Transport, Ministry of Business, Innovation and Employment, Ministry for Primary Industries, Department of Prime Minister and Cabinet, Ministry of Health, Ministry of Defence, Department of Internal Affairs and Te Arawhiti.

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

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

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

Recommendations

I recommend that Cabinet:

1. **note** that the Minister for the Environment has decided under section 24 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 to accept Kāinga Ora – Homes and Communities and Porirua City Council's Eastern Porirua Regeneration Project – Infrastructure Works for referral to a Panel
2. **note** that Kāinga Ora – Homes and Communities and Porirua City Council's Eastern Porirua Regeneration Project – Infrastructure Works meets the eligibility criteria in section 18 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 and is considered to help achieve the purpose of the Act by:
 - 2.1. providing 55 to 110 jobs in its first two years of construction and up to 260 jobs in the third and fourth years of construction
 - 2.2. increasing the capacity of three waters infrastructure in eastern Porirua, enabling future urban growth in Porirua and addressing existing capacity and performance issues for infrastructure
 - 2.3. improving environmental outcomes for freshwater quality in the long term as it will reduce wastewater overflows and may improve stormwater quality
 - 2.4. ensuring any potential adverse effects and mitigation measures can be considered and determined by a Panel having regard to Part 2 of the Resource Management Act 1991 and the purpose of the COVID-19 Recovery (Fast-track Consenting) Act 2020
3. **note** that the COVID-19 Recovery (Fast-track Consenting) Referred Projects Amendment Order (No. 4) 2020 directs Kāinga Ora – Homes and Communities and Porirua City Council to provide to a Panel the additional information as listed in Appendix one.
4. **note** that the COVID-19 Recovery (Fast-track Consenting) Referred Projects Amendment Order (No. 4) 2020 directs the expert consenting panel appointed to consider Kāinga Ora – Homes and Communities and Porirua City Council's Eastern Porirua Regeneration Project – Infrastructure Works to seek comments from the groups listed in Appendix one.
5. **authorise** the submission to the Executive Council of the COVID-19 Recovery (Fast-track Consenting) Referred Projects Amendment Order (No. 4) 2020
6. **agree** to delegate authority to the Minister of Finance, Minister for the Public Service and Minister for the Environment to submit directly to the Executive Council, any further Orders in Council referring a project to an expert consenting panel under the COVID-19 Recovery (Fast-track Consenting) Act 2020 over a period starting on 16 December 2020 and ending 26 January 2021.
7. **note** that on 27 July 2020, Cabinet agreed [CAB-20-MIN-0353 refers] to waive the 28-day rule so that Orders in Council made under the COVID-19 Recovery (Fast-track Consenting) Act 2020 can come into force as soon as they are notified in the New Zealand Gazette
8. **note** that the COVID-19 Recovery (Fast-track Consenting) Referred Projects Amendment Order (No. 4) 2020 will come into force when notified in the New Zealand Gazette.

Authorised for lodgement

Hon David Parker
Minister for the Environment

Released under the provision of
the Official Information Act 1982

Appendix one – Additional requirements: Kāinga Ora – Homes and Communities and Porirua City Council's Eastern Porirua Regeneration Project – Infrastructure Works application

Kāinga Ora and Porirua City Council are directed to provide to an expert consenting panel:

1. an Ecological Assessment that specifically includes the assessment of short and long term effects on the Porirua Stream and Kenepuru Stream, the Significant Natural Areas within Bothamley Park and Cannons Creek Park, and downstream effects on Porirua harbour
2. a Contaminated Sites Assessment
3. a Traffic Impact Assessment which includes Traffic Management Plans
4. a Cultural Impact Assessment carried out by an author approved by the mana whenua of the Kenepuru Stream
5. an assessment on whether the proposed infrastructure will meet current and future demand from urban growth
6. an assessment outlining the effects the proposed works may have on the hydrology of Kenepuru and Porirua Stream, including flooding, erosion and scour
7. an assessment of positive effects of the proposal, supported by appropriate technical information, including any net benefits to water quality from the proposed wetland in Cannons Creek Park
8. an assessment of any adverse effects from dewatering
9. a landscape and visual assessment of the proposed reservoir
10. a Construction Management Plan and a detailed Erosion and Sediment Control Plan, prepared in consultation with Te Rūnanga o Toa Rangatira Incorporated, that specifically outline what measures will be taken to avoid or mitigate adverse effects, including:
 - 10.1. the discharge of sediment on Kenepuru and Porirua Streams
 - 10.2. the Significant Natural Areas
 - 10.3. any natural wetlands
 - 10.4. Porirua Harbour
9. a master plan of Bothamley Park and Cannons Creek Park to ensure integration of wastewater trunk main upgrade and the wetland with the wider improvements being considered for the park including cycleways, recreational areas and facilities, Crime Prevention Through Environmental Design, and safety upgrades and improved access.

An expert consenting panel must invite comments from:

1. Porirua Harbour and Catchment Community Trust. The objective of this trust is to promote the sustainable management of the Porirua Harbour and its catchment.
2. Ranui Residents Association Incorporated, a resident's association with interests in the project and areas it will affect.

3. Creeksiders (Cannons Creek) Residents Association, a resident's association with interests in the project and areas it will affect.
4. Aotea Residents Association Incorporated, a resident's association with interests in the project and areas it will affect.

Released under the provision of
the Official Information Act 1982