

FTC#260 Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions:

Application 2023-156 Hobsonville Road Retirement Village Project

Date submitted:	6 June 2023	Tracking #: BRF-3087	
Security level	In-Confidence	MfE priority:	Urgent

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

Actions for Minister's Office staff	Return the signed briefing to MfE. Send the attached notice of decisions letter (if signed).
Number of appendices: 7	Appendices: 1. Hobsonville Road Retirement Village Project and further information received (Databox link) 2. Stage 1 Briefing Note and decisions (Databox link) 3. Statutory framework for making decisions (Databox link) 4. Draft Notice of Decisions letter to Kings Heights Group Limited 5. Section 17 Report (Databox link) 6. Comments received from Ministers, Auckland Council, New Zealand Defence Force, Auckland Transport, Watercare Services Limited and Waka Kotahi New Zealand Transport Agency (Databox link) 7. Further information received post-consultation (Databox link).

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
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FTC#260: Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions

Key messages

1. This briefing seeks your final decisions on the application received under section 20 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) from Kings Heights Group Limited to refer the Hobsonville Road Retirement Village Project (project) to an expert consenting panel (panel). A copy of the application is in Appendix 1.
2. This is the second briefing on this application. The first (Stage 1) briefing (BRF-2851) with your initial decisions annotated is in Appendix 2.
3. The project is to construct and operate a retirement village on a 4-hectare site at 82 Hobsonville Road, West Harbour, Auckland. The retirement village will include approximately 354 residential units, including approximately 42 single storey villas, approximately 267 independent-living apartments in six buildings between four and six storeys in height (excluding basement car parking levels), and 45 care units in one building of three storeys in height (excluding basement car parking levels). The retirement village also includes an amenities building of two storeys in height and one basement level, containing a reception, health and well-being facilities, a pool and café.
4. The project includes works within the Hobsonville Road road reserve to upgrade the site access and within the Hobsonville Road and Westpoint Drive road reserves to construct infrastructure. The project also includes the development of outdoor recreation areas, landscaping and planting, car parking areas, and construction of accessways and three-waters services infrastructure.
5. The project will involve activities such as:
 - a. demolishing buildings
 - b. carrying out earthworks (including disturbing potentially contaminated soils)
 - c. trimming and removing vegetation
 - d. placing structures in overland flow paths
 - e. diverting and discharging stormwater (which may contain contaminants) onto land or into water
 - f. taking, using, damming and diverting surface water and groundwater
 - g. constructing and operating a retirement village (including its ancillary facilities)
 - h. landscaping and planting (including for private open space and for restoring and enhancing a stream)
 - i. constructing or installing infrastructure or structures, including private accessways for vehicles, pedestrian and cycle accessways, and infrastructure for three-waters services, including culverts (in the bed of a stream and in drains)
 - j. carrying out other activities that are:
 - i. associated with the activities described in paragraphs (a) to (i); and
 - ii. within the scope of the project as described in paragraphs 3 and 4.
6. The project will require land use consent, and water and discharge permits under the Auckland Unitary Plan (AUP), and resource consent under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to

Protect Human Health) Regulations 2011 (NES-CS).

7. The project site is in the AUP's Future Urban Zone (FUZ), which applies to greenfield land identified as suitable for urbanisation. The AUP provides for FUZ land to be used for a range of general rural activities but aims to avoid urbanisation until sites have been rezoned for urban purposes. The AUP promotes structure planning as a precursor to rezoning and urban development in the FUZ. The Whenuapai Structure Plan (WSP) was adopted by Auckland Council in 2016 and sets out the framework for transforming Whenuapai from a semi-rural environment to an urbanised community over a 10 to 20-year period. The WSP provides for high and medium density residential development, and a neighbourhood park, on the project site, and indicated the area including the project site could be 'development-ready' between 2018 and 2026.
8. A plan change process to implement the zoning changes indicated by the WSP over an area including the project site was progressed to an advanced stage but not successfully completed. Considering the project via a resource consenting process in advance of a plan change is generally not considered to be good planning practice because it may result in fragmented urban development or misalignment with provision of infrastructure. This point has been made by s 9(2)(f)(ii), s 9(2)(g)(i), Auckland Council, Auckland Transport and Waka Kotahi New Zealand Transport Agency (Waka Kotahi) who all opposed project referral.
9. We note the FTCA does not preclude project referral on such grounds, and a panel has previously granted consents for a referred project in the AUP FUZ – The Botanic Riverhead – although this decision is now under appeal and likely will not be decided until after repeal of the FTCA.
10. The project has non-complying activity status under the AUP, meaning that under clause 32 of schedule 6 of the FTCA a panel is required to consider whether any resource consent application for the project meets at least one of the two 'gateway tests' in section 104D of the Resource Management Act 1991 (RMA). Objective H18.2(4) of the AUP states that urbanisation is to be avoided until sites have been rezoned for urban purposes. Even if a panel were to decide the project fails to meet the gateway test in relation to alignment with this objective, it would still be able to consider the proposal provided that the project's adverse effects (subject to imposition of conditions) were no more than minor. The applicant considers that the project's adverse effects will be no more than minor.
11. The project site is located approximately 1.6 kilometres to the south-east of the Royal New Zealand Air Force (RNZAF) Base Auckland (Whenuapai Airbase) and is covered wholly by AUP Designation 4311 - Whenuapai Airfield Approach and Departure Path Protection. s 9(2)(f)(ii), s 9(2)(g)(i) is the requiring authority. s 9(2)(f)(ii), s 9(2)(g)(i) the New Zealand Defence Force (NZDF) opposed project referral and noted Designation 4311 sets obstacle height restrictions through an Obstacle Limitation Surface (OLS) to protect flight operations at the RNZAF Base Auckland. s 9(2)(f)(ii), s 9(2)(g)(i) NZDF noted Designation 4311 provides the OLS cannot be breached without prior written approval from the NZDF, and s 9(2)(f)(ii), s 9(2)(g)(i) raised a concern that the project includes buildings that appear to breach the OLS. The NZDF noted it would not approve such a breach.
12. We consider the project meets the purpose of the FTCA and that concerns raised by parties opposed to referral, including the effects of out-of-sequence development, adverse effects on flight operations of the RNZAF Base Auckland, and issues relating to the capacity of infrastructure networks to both service the development and cope with its effects, can be appropriately considered and decided by a panel with the benefit of a full resource consent application and the supporting information required by the FTCA. To address the concerns raised by s 9(2)(f)(ii), s 9(2)(g)(i) the NZDF we recommend you should require the applicant to provide a report confirming that no buildings or structures will breach the OLS in AUP Designation 4311 without the prior approval of the New Zealand Defence Force, with its resource consent applications to a panel.

13. We recommend you accept the referral application under section 24 of the FTCA and refer the project to a panel for fast-track consenting. We seek your decision on this recommendation and on recommendations for directions to the applicants and a panel, and notification of your decisions.

Assessment against statutory framework

14. 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 application and when deciding on any further requirements or directions associated with project referral.
15. 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, Auckland Council, Auckland Transport, Watercare Services Limited (Watercare), Waka Kotahi New Zealand Transport Agency (Waka Kotahi) and NZDF (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.
16. 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 application.
17. 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 applicant

18. In response to your request under section 22 of the FTCA the applicant provided further information on project funding, ongoing direct FTE jobs and consideration of a neighbourhood park on the project site. We have taken this information into account in our analysis and advice.

Section 17 report

19. The Section 17 report identifies 10 iwi authorities, 5 Treaty settlements and 8 Treaty settlement entities relevant to the project area. The report also identifies 4 other parties that may have an interest in the project.
20. No specific cultural or commercial redress provided under the settlements would be affected by the project and the relevant Treaty settlements do not create any new co-governance or co-management processes that would affect decision-making under the Resource Management Act 1991 (RMA) for the project.

Comments received

21. Comments were received from ^{s 9(2)(f)(ii), s 9(2)(g)}_(i) Auckland Council, Auckland Transport, Watercare, Waka Kotahi and NZDF. The key points of relevance to your decision are summarised in Table A.
22. ^{s 9(2)(f)(ii), s 9(2)(g)(i)}


23. s 9(2)(f)(ii), s 9(2)(g)(i) [redacted] NZDF opposed project referral and noted the project site is located within AUP Designation 4311 that sets obstacle height restrictions through an OLS to protect flight operations at the RNZAF Base Auckland. s 9(2)(f)(ii), s 9(2)(g)(i) [redacted] NZDF noted Designation 4311 provides the OLS cannot be breached without prior written approval from the NZDF (and this is also an express requirement in the RMA), and s 9(2)(f)(ii), s 9(2)(g)(i) [redacted] raised a concern that the project includes buildings that appear to breach the OLS by approximately 20 metres. The NZDF noted it would not approve such a breach and considered the project cannot proceed as currently proposed. The NZDF also noted concerns that the application incorrectly describes the NZDF's position in regard to managing reverse sensitivity effects.
24. s 9(2)(f)(ii), s 9(2)(g)(i) [redacted]
25. s 9(2)(f)(ii), s 9(2)(g)(i) [redacted]
26. s 9(2)(f)(ii), s 9(2)(g)(i) [redacted]
27. s 9(2)(f)(ii), s 9(2)(g)(i) [redacted]
28. Auckland Council opposed project referral and considered it potentially contributes to misalignment between infrastructure delivery and the urbanisation of greenfield areas. Auckland Council noted there is no immediate funding solution to respond to the cumulative effects from unplanned urbanisation in the area. Auckland Council also considered the project is inconsistent with the AUP and although the project aligns with the timeframe in the Future Urban Land Supply Strategy (FULSS), there are significant concerns about infrastructure capacity. Auckland Council also identified potential reverse sensitivity issues and the lack of public open space as required under the open space provision policy. Auckland Council noted several reports and assessments that would normally be required for a project of this type.
29. Auckland Transport opposed project referral and considered the project is contrary to provisions of the AUP requiring FUZ land to be re-zoned for urban purposes and restricting residential dwellings to only one per site. Auckland Transport noted the FULSS identifies the site as "development ready" in 2018-2022, however the funding of necessary transport

infrastructure and services needed to enable growth has not been confirmed. Auckland Transport also noted the NOR application to upgrade Hobsonville Road is only to provide route protection at this stage and there is no funding confirmed for construction in the Regional Land Transport Plan 2021-2031 (RLTP). Auckland Transport requested if the project is referred you require the applicant to provide an integrated transport assessment with its resource consent applications to a panel, and that you direct a panel to invite comment from Auckland Transport.

30. Watercare neither supported nor opposed project referral and noted the project is within the FUZ and therefore Watercare has no commitment to service the project at this stage. Watercare noted the wastewater and water supply capacity constraints will need to be mitigated by the developer through public network extensions or upgrades, depending on the agreed solution with Watercare as part of the resource consent process.
31. Waka Kotahi opposed project referral on the basis that the project does not consider the accessibility needs of the residents or provide any multi modal connections to the wider community resulting in an isolated private vehicle dependent community. Waka Kotahi advised that a NOR application has been lodged on the road frontage of this development on Hobsonville Road, noting that this has not been taken account in the proposed design and that the proposal is reliant on the successful consenting and implementation of the Hobsonville Road upgrade to provide required multi modal facilities. Waka Kotahi requested if the project is referred you direct a panel to invite comment from Waka Kotahi.

Amendments to the project

32. Following the close of comments, the applicant amended the project by reducing the height of two apartment buildings to comply with the AUP Designation 4311 OLS. The project amendments involved a reduction of two storeys for apartment block 'E', a reduction of one storey for apartment block 'B', and redesign of the rooves of apartment blocks 'A', 'B', 'E' and 'G'. We estimate the design amendments may impact approximately 30 residential units within the apartment buildings, however the applicant has advised there is the ability to achieve the same yield of residential units elsewhere on the project site. The applicant has not provided an updated economic assessment to confirm whether there will be any impacts on the project's economic benefits, however we do not consider this is necessary as section 20(2)(b) of the FTCA only requires an application to include a general level of detail, sufficient to inform your decision on the referral application.
33. The amendments to the project reduced the height of the apartment buildings and we do not consider the changes materially alter the initial residential unit yield projection in the context of the project nor do they materially alter environmental effects (other than potentially a reduction in effects). We therefore do not consider it necessary to invite further comments on the referral application from the parties identified above. We also note that if you decide to refer the project the parties will be invited to comment on the applicant's resource consent applications to a panel and will therefore have an opportunity to raise any issues or concerns at that stage.

Section 18 referral criteria

34. You may accept the application for project referral 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)).
35. The project does not include any ineligible activities, as explained in Table A.
36. 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 consider the project will help to achieve the purpose of the FTCA, and thus meet the requirements of section 18(2), as it has the potential to:

- a. generate employment by providing approximately 675 direct full-time equivalent (FTE) jobs over a 2-year design and construction period, and approximately 121 ongoing FTE jobs through the ongoing operation of the retirement village.
- b. increasing housing supply for aged persons through the construction of approximately 354 residential units
- c. progress faster than would otherwise be the case under standard RMA process.

37. We consider any actual and potential effects arising from the project, together with any measures to avoid, remedy, mitigate, offset or compensate for adverse effects, could be tested by a panel against Part 2 of the RMA and the purpose of the FTCA.

Issues and risks

38. 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.

Out of sequence development

39. The project site is in the AUP's FUZ, meaning that it has been identified as suitable for future urbanisation once it has been rezoned for such purposes. The standard approach under the RMA involves undertaking structure planning prior to rezoning through a plan change process, to identify constraints and opportunities for development and to align land use provisions with three-waters and transport infrastructure planning so that a well-functioning urban environment is created.

40. s 9(2)(f)(ii), s 9(2)(g)(i), Auckland Council, Auckland Transport and Waka Kotahi are concerned that progressing resource consents for a project that is out of sequence with usual planning processes may result in misalignment with the timing of projected delivery of transport infrastructure in the wider area. Both Auckland Transport and Waka Kotahi also put emphasis on the importance of an integrated approach to the wider land use and transport network.

41. Urbanisation of the area where the project site is located was signalled through structure planning with development of the WSP in 2016. The WSP also identified the area including the project site as likely to be 'development-ready' between 2018 and 2026, while the FULSS released in 2017 included the site in the Whenuapai Stage 1 area scheduled to be live-zoned between 2018 and 2022. Proposed Plan Change 5 (PPC5), to implement part of the WSP, was notified in 2017 and provided for the project site to be rezoned Residential - Mixed Housing Urban. PPC5 progressed through a public consultation including hearings but was withdrawn in full in June 2022.

42. Auckland Council's reasons for withdrawing PPC5 included lack of budgeted funding for transport network upgrades to address traffic effects arising from development of land in PPC5 and lack of integration of infrastructure provision and rezoning of land.

43. Retirement villages are categorised as a form of residential land use activity under the AUP and residential use of the project site is generally consistent with the urbanisation signalled by WSP, although we note that neither the WSP (nor former PPC5) provisions have legal weight.

44. The applicant states that increased demand on infrastructure as a result of the project can be addressed via upgrades or on-site solutions, and considers the project does not require any major infrastructure installation or off-site upgrades to the surrounding road network. Watercare considers upgrades to Council infrastructure will be required for the project. The

applicant has confirmed that all infrastructure within the site, and any off-site upgrades required, will be fully funded and established by the applicant.

45. We consider the matters associated with out-of-sequence development, including infrastructure provision, can be tested with the benefit of a full resource consent application and can be appropriately considered and determined by a panel. We therefore do not consider that you should decline the referral application on this basis. However, if you decide to refer the project it will be important that Auckland Transport, Waka Kotahi and Watercare have an opportunity to provide comments to assist the panel with consideration of infrastructure matters.

Section 23(5) FTCA matters

46. Section 23(5) of the FTCA provides further guidance on reasons to decline an application, and our analysis of these matters is summarised in Table A. Note that you may accept an application even if one or more of those reasons apply.
47. We have considered whether the project would be more appropriately considered under standard RMA processes as provided for by section 23(5)(b) of the FTCA, in particular to potentially allow for wider public involvement.
48. Although consideration of the project under FTCA process could be viewed negatively by the wider community, who may expect greater public involvement in the consenting process under the standard RMA processes, we note that the public had an opportunity to have input to urban development proposals for the area including the project site since 2016. This has been through involvement in development of the WSP and through the PPC5 process, and the project is generally consistent with the anticipated urbanisation on the project site. As noted above, PPC5 does not have legal weight, and there has been no further indication from Auckland Council about next steps to progress development in this area despite the indications given by the WSP and FULSS.
49. If you decide to refer the project, a panel must invite comments from adjacent landowners and occupiers. A panel also can invite comments from any person they consider appropriate, and so can consult as widely as it considers necessary and appropriate.
50. Therefore, we do not consider that you should decline the referral application on the basis that it would be more appropriate for the project to go through standard RMA consenting processes.
51. Section 23(5)(g) enables you to decline a project if there is insufficient time for the application to be referred and considered before the FTCA is repealed. At this stage we consider there is sufficient time before 8 July 2023 for you to progress an Order in Council through Cabinet and for it to be authorised by the Executive Council, should you decide to refer the project. Therefore, we consider you should not decline to refer the project on the basis that there is insufficient time for the project to be referred and considered before the FTCA is repealed (23(5)(g)).

Other matters

52. The project has non-complying activity status under the AUP and as such it must pass at least one of the two limbs of the 'gateway test' in section 104D of the RMA if it is to be determined under FTCA process. This means that either it must not be contrary to the objectives and policies of the AUP, or it must result in adverse environmental effects that are no more than minor. We note Objective H18.2(4) of the AUP states that urbanisation is to be avoided until sites have been rezoned for urban purposes. Even if a panel were to decide the project fails to meet the gateway test in relation to alignment with this objective, it would still be able to consider the proposal provided that the project's adverse effects (subject to

imposition of conditions) were no more than minor. The applicants consider that the effects of the project will be no more than minor.

53. s 9(2)(f)(ii), s 9(2)(g)(i) the NZDF opposed project referral and noted the project site is located within AUP Designation 4311 that sets obstacle height restrictions through an OLS to protect flight operations at the RNZAF Base Auckland. s 9(2)(f)(ii), s 9(2)(g)(i) the NZDF noted Designation 4311 provides the OLS cannot be breached without prior written approval from the NZDF (and this is also a requirement in the RMA), and s 9(2)(f)(ii), s 9(2)(g)(i) raised a concern that the project includes buildings that appear to breach the OLS by approximately 20 metres. The NZDF noted it would not approve such a breach and considered the project cannot proceed as currently proposed.
54. Following the close of comments, the applicant amended the project by reducing the height of two apartment buildings to comply with the OLS. The project amendments involved a reduction of two storeys for apartment block 'E', a reduction of one storey for apartment block 'B', and redesign of the rooves of apartment blocks 'A', 'B', 'E' and 'G'. To address the concerns raised by s 9(2)(f)(ii), s 9(2)(g)(i) the NZDF we recommend you should require the applicant to provide a report confirming that no buildings or structures will breach the OLS in AUP Designation 4311 without the prior approval of the New Zealand Defence Force, with its resource consent applications to a panel.
55. s 9(2)(f)(ii), s 9(2)(g)(i), Auckland Transport and Waka Kotahi raised concern the application has not taken into account the NOR application which impacts the Hobsonville Road frontage of the project site. The applicant notes the development of the site will occur outside of the NOR and we note if you refer the project, the applicant will need to address any implications of the NOR on the project in its resource consent applications to a panel. We consider this is a matter a panel will consider in a merit-based assessment and we do not consider it is a reason to decline the referral application.
56. On 21 April 2023, Auckland Council lodged an appeal on a panel's decision to grant consents for the Botanic Riverhead referred project. The reasons for the appeal include that the panel made an error in law relating to interpretation and application of FUZ provisions. The Botanic Riverhead site is also zoned Future Urban but unlike the current project site has not been subject to a structure planning process that has identified it as suitable for urbanisation.

Conclusions

57. We do not consider that you should decline to refer the project in whole or in part on the basis of the risks and issues identified above. You could accept the application under section 24 of the FTCA and refer all of the project to a panel.
58. If you decide to refer the project, we consider you should specify under section 24(2)(d) of the FTCA that the applicant must submit a report confirming that no buildings or structures will breach the OLS in AUP Designation 4311 without the prior approval of the New Zealand Defence Force, with its resource consent applications, in addition to the requirements of clause 9 of Schedule 6 of the FTCA.
59. If you decide to refer the project, we consider you should specify under section 24(2)(e) of the FTCA that a panel must invite comments on consent applications for the project from the following parties:
 - a. Auckland Transport
 - b. Watercare Services Limited
 - c. Waka Kotahi New Zealand Transport Agency
 - d. New Zealand Defence Force

- e. Ngāti Manuhiri Settlement Trust
- f. Ngāti Paoa Iwi Trust
- g. Ngāti Paoa Trust Board
- h. Ngāti Koheriki Claims Committee

Next steps

- 60. If you decide to refer the project, you must give notice of your decisions on the referral application, and the reasons for them, to the applicant, anyone invited to comment under section 21, and the persons, entities and groups listed in section 25(2) of the FTCA. We consider you should also give the notice of decisions together with a copy of the application to the parties listed in paragraph 59(e)–(h).
- 61. If you decide to decline project referral, you must give the notice of your decisions, and the reasons for them, to the applicant and anyone invited to comment under section 21.
- 62. We have attached a notice of decisions letter to the applicant based on our recommendations (refer Appendix 4). We will provide you with an amended letter if required. Once you have signed the letter we will assist your office to copy it to all relevant parties.
- 63. To refer the project, you must recommend that a referral order be made by way of an Order in Council (OiC). 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
- 64. As required by section 25(3) of the FTCA, you must ensure that your decisions on the referral application, the reasons and the Section 17 report are published on the Ministry for the Environment's website. We will undertake this task on your behalf in accordance with your direction.
- 65. Our recommendations for your decisions follow.

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** section 23(1) of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) requires you to decline the referral application from Kings Heights Group Limited unless you are satisfied that the Hobsonville Road Retirement Village Project (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 improving environmental outcomes) and whether it could have significant adverse effects.
- c. **Note** that before deciding to accept the application for project 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 and further information sought and provided within the required timeframe.
- d. **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 the 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.
- e. **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.
- f. s 9(2)(f)(ii), s 9(2)(g)(i)
- g. **Agree** the project meets the referral criteria in section 18(3) of the FTCA.

Yes/No
- h. **Agree** 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. generate employment by providing approximately 675 direct full-time equivalent (FTE) jobs over a 2-year design and construction period, and approximately 121 ongoing FTE jobs through the ongoing operation of the retirement village.
 - ii. increasing housing supply for aged persons through the construction of approximately 354 residential units

- iii. progress faster than would otherwise be the case under standard Resource Management Act 1991 process.

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 applicant must submit with any resource consent application lodged with the Environmental Protection Authority:

- i. a report that confirms that no buildings or structures will breach the Obstacle Limitation Surface in Auckland Unitary Plan designation 4311 without the prior approval of the New Zealand Defence Force.

Yes/No

- k. **Agree** to specify under section 24(2)(e) of the FTCA that a panel must invite comments from the following persons or groups in addition to those specified in clause 17 of Schedule 6 of the FTCA:

- i. Auckland Transport
 - ii. Watercare Services Limited
 - iii. Waka Kotahi New Zealand Transport Agency
 - iv. New Zealand Defence Force
 - v. Ngāti Manuhiri Settlement Trust
 - vi. Ngāti Paoa Iwi Trust
 - vii. Ngāti Paoa Trust Board
 - viii. Ngāti Koheriki Claims Committee

Yes/No

- l. **Agree** to copy the application and notice of decisions to the following parties, in addition to those parties specified in section 25 of the FTCA:

- i. Ngāti Manuhiri Settlement Trust
 - ii. Ngāti Paoa Iwi Trust
 - iii. Ngāti Paoa Trust Board
 - iv. Ngāti Koheriki Claims Committee

Yes/No

- m. **Agree** to the Ministry for the Environment issuing drafting instructions to the Parliamentary Counsel Office for an Order in Council to refer the project to a panel in accordance with your decisions recorded herein.

Yes/No

- n. **Sign** the notice of decisions letter to the applicants (attached in Appendix 4).

Yes/No

- o. **Require** the Ministry for the Environment to publish your decisions, reasons and the Section 17 report on the Ministry for the Environment's website.

Signatures



Rebecca Perrett
Acting Manager – Fast-track Consenting

Hon David Parker
Minister for the Environment

Date:

Table A: Stage 2 - Project summary and section 24 FTCA assessment for projects where the Minister for the Environment is the sole decision maker

Project details	Project description	Does all or part of the project meet the referral criteria in section 18?		Summary of comments received (Note: for analysis and/or recommended responses to these comments refer to column 7)	Section 23 assessment – potential reasons for declining	Referral conclusions & recommendations
		Project eligibility for referral (section 18(3)(a)–(d))	Section 18(2) - does the project help achieve the purpose of the FTCA (as per section 19)?			
Name Hobsonville Road Retirement Village Project Applicant Kings Heights Group Limited c/- Campbell Brown Planning Limited Location 82 Hobsonville Road, West Harbour, and Hobsonville Road and Westpoint Drive road reserves	<p>The project is to construct and operate a retirement village on a 4-hectare site at 82 Hobsonville Road, West Harbour, Auckland. The retirement village will include approximately 354 residential units, including approximately 42 single storey villas, approximately 267 independent-living apartments in six buildings between four and six storeys in height (excluding basement car parking levels), and 45 care units in one building of three storeys in height (excluding basement car parking levels). The retirement village also includes an amenities building of two storeys in height and one basement level, containing a reception, health and well-being facilities, a pool and café.</p> <p>The project includes works within the Hobsonville Road road reserve to upgrade the site access and within the Hobsonville Road and Westpoint Drive road reserves to construct infrastructure. The project also includes the development of outdoor recreation areas, landscaping and planting, car parking areas, and construction of accessways and three-waters services infrastructure.</p> <p>The project will involve</p>	<p>The project is eligible for referral under section 18(3)(a)–(d) as:</p> <ul style="list-style-type: none"> 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 	<p>Economic benefits for people or industries affected by COVID-19 (19(a))</p> <p>The applicant estimates the project will:</p> <ul style="list-style-type: none"> provide approximately 675 direct full-time equivalent (FTE) jobs over a 2-year design and construction period provide approximately 121 on-going FTE jobs. <p>Economic costs for people or industries affected by COVID-19 (19(a))</p> <ul style="list-style-type: none"> N/A <p>Effect on the social and cultural well-being of current and future generations (19(b))</p> <p>The applicant considers the project will contribute to the overall wellbeing of the area from the economic benefits and employment opportunities, and increase retirement housing supply.</p> <p>Is the project likely to progress faster by using this Act? (19(c))</p> <p>The applicant estimates the FTCA process will allow the project to progress 25 months faster than under standard RMA processes due to the likelihood of notification, a hearing and potential for appeals under standard process. We consider the applicant's estimate is reasonable.</p> <p>Will the project result in a public benefit? (19(d))</p> <p>Based on the applicant's information we consider the project may result in the following public benefits:</p> <ul style="list-style-type: none"> generate approximately 675 direct full-time equivalent (FTE) jobs and 1,242 indirect FTE jobs over a 5-year construction period generating employment increasing housing supply. 	<p>Ministers</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p>	<p>Section 23(5) matters:</p> <p>Insufficient information (23(5)(a))</p> <p>The applicant has provided sufficient information for you to determine whether the project meets the criteria in section 18 of the FTCA.</p> <p>More appropriate to go through standard RMA process (23(5)(b))</p> <p>Although consideration of the project under FTCA process could be viewed negatively by the wider community, who may expect greater public involvement in the consenting process under the standard RMA processes, we note that the public had an opportunity to have input to urban development proposals for the area including the project site since 2016. This has been through involvement in development of the WSP and through the PPC5 process, and the project is generally consistent with the urbanisation of these proposals. As noted above, PPC5 does not have legal weight, and there has been no further indication from Auckland Council about next steps to progress development in this area despite the indications given by the WSP and FULSS.</p> <p>If you decide to refer the project, a panel must invite comments from adjacent landowners and occupiers. A panel also can invite comments from any person they consider appropriate, and so can consult as widely as it considers necessary and appropriate.</p> <p>Therefore, we do not consider that you should decline the referral application on the basis that it would be more appropriate for the project to go through standard RMA consenting processes.</p> <p>Inconsistency with a national policy statement (23(5)(c))</p> <p>We do not consider the project is inconsistent with any relevant national policy statements.</p> <p>Inconsistent with a Treaty settlement (23(5)(d))</p> <p>The project does not directly affect any Treaty settlement redress.</p>	<p>In response to key comments:</p> <ul style="list-style-type: none"> s 9(2)(f)(ii), s 9(2)(g)(i) in relation to s 9(2)(f)(ii), s 9(2)(g)(i) NZDF's comments on adverse effects, we consider these can be adequately assessed and tested by a panel with the benefit of a full consent application. To address the concerns raised by the Minister of Defence and the NZDF we recommend you should specify under section 24(2)(c) of the FTCA that the scope of the project must not include any buildings or structures that penetrate the AUP Designation 4311 approach and departure path obstacle limitation surfaces. s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) we note Auckland Council's, Auckland Transport's, Waka Kotahi's and Watercare's concerns on potential misalignment between the timing of transport infrastructure and the urbanisation of greenfield areas, but consider this matter can be appropriately considered and tested by a panel in a merits-based assessment. <p>We do not consider that you should decline to refer the project in whole or in part on the basis of the risks and issues identified. We recommend that you</p>

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	<p>activities such as:</p> <p>a. demolishing buildings</p> <p>b. carrying out earthworks (including disturbing potentially contaminated soils)</p> <p>c. trimming and removing vegetation</p> <p>d. diverting the entry or exist point, piping or reducing capacity and placing structures within or over overland flow paths</p> <p>e. diverting and discharging stormwater (which may contain contaminants) onto land or into water</p> <p>f. taking, using, damming and diverting surface water and groundwater</p> <p>g. constructing and operating a retirement village (including its ancillary facilities)</p> <p>h. landscaping and planting (including for private open space and for restoring and enhancing a stream)</p> <p>i. constructing or installing infrastructure or structures, including private accessways for vehicles, pedestrian and cycle accessways, and infrastructure for three-waters services, including culverts (in the bed of a stream and in drains)</p>		<p>Potential to have significant adverse environmental effects, including greenhouse-gas emissions (19(e))</p> <p>The project has the potential for adverse environmental effects including:</p> <ul style="list-style-type: none"> • earthworks effects • temporary effects associated with construction such as traffic, noise and vibration • traffic and transport effects • reverse sensitivity effects related to noise • soil contamination effects • natural hazard and flooding effects • streetscape, amenity and visual effects. <p>The applicant has confirmed that specialists have prepared technical assessments on the above matters. The applicant considers the project will not result in significant adverse environmental effects.</p> <p>We note that you do not require a full Assessment of Environment Effects and supporting evidence to make a referral decision, and that a panel will consider the significance of effects and appropriate mitigation should the project be referred.</p> <p>Other relevant matters (19(f))</p> <ul style="list-style-type: none"> • N/A 	<p>• s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>Local authorities</p> <p>Auckland Council opposed project referral and considered it potentially contributes to misalignment between infrastructure delivery and the urbanisation of greenfield areas. Auckland Council noted there is no immediate funding solution to respond to the cumulative effects from unplanned urbanisation in the area. Auckland Council also considered the project is inconsistent with the AUP and although the project aligns with the timeframe in the Future Urban Land Supply Strategy (FULSS), there are significant concerns about infrastructure capacity. Auckland Council also identified potential reverse sensitivity issues and the lack of public open space as required under the open space provision policy. Auckland Council noted several reports and assessments that would normally be required for a project of this type.</p> <p>Other parties</p> <p>Auckland Transport opposed project referral and considered the project is contrary to provisions of the AUP requiring FUZ land to be re-zoned for urban purposes and restricting residential dwellings to only one per site. Auckland Transport noted the FULSS identifies the site as “development ready” in 2018-2022, however the funding of necessary transport infrastructure and services needed to enable growth has not been confirmed. Auckland Transport also noted the NOR application to upgrade Hobsonville Road is only to provide route protection at this stage and there is no funding confirmed for construction in the Regional Land Transport Plan 2021-2031 (RLTP). Auckland Transport requested if the project is referred you require the applicant to provide an integrated transport assessment with its resource consent applications to a panel, and that</p>	<p>Involves land needed for Treaty settlements (23(5)(e))</p> <p>The project site does not include any land needed for Treaty Settlement purposes.</p> <p>Applicant has poor regulatory compliance (23(5)(f))</p> <p>Auckland Council noted that there has been no enforcement action against either of the applicants and there are no significant outstanding compliance concerns in respect of the applicants.</p> <p>Insufficient time for the project to be referred and considered before FTCA repealed (23(5)(g))</p> <p>The FTCA will be repealed on 8 July 2023, meaning that a referral order must exist for the project by this date if the project's resource consent applications are to be considered by a panel under FTCA process. The timeframe for completing a referral order following a decision to refer the project is dependent on certain statutory obligations, process steps and the capacity and resourcing of officials. This is becoming increasingly time-pressured as the 8 July deadline approaches.</p> <p>At this stage we consider there is still sufficient time for an Order in Council to be considered by Cabinet and (if approved) authorised by the Executive Council, should you decide to refer the project.</p> <p>Other issues and risks:</p> <p><i>Out of sequence development</i></p> <p>The project site is in the AUP's FUZ, meaning that it has been identified as suitable for future urbanisation once it has been rezoned for such purposes. The standard approach under the RMA involves undertaking structure planning prior to rezoning through a plan change process, to identify constraints and opportunities for development and to align land use provisions with three-waters and transport infrastructure planning so that a well-functioning urban environment is created.</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i) Auckland Council, Auckland Transport and Waka Kotahi are concerned that progressing resource consents for a project that is out</p>	<p>accept the application under section 24 of the FTCA and refer all of the project to a panel.</p> <p>If you decide to refer the project, we consider you should specify under section 24(2)(d) of the FTCA that the applicant must submit a report confirming that no buildings or structures will breach the OLS in AUP Designation 4311 without the prior approval of the New Zealand Defence Force, with its resource consent applications, in addition to the requirements of clause 9 of Schedule 6 of the FTCA.</p> <p>We recommend you direct a panel to invite comment on any resource consent applications for the project from:</p> <ul style="list-style-type: none"> • Auckland Transport • Watercare Services Limited • Waka Kotahi New Zealand Transport Agency • New Zealand Defence Force • Ngāti Manuhiri Settlement Trust • Ngāti Paoa Iwi Trust • Ngāti Paoa Trust Board • Ngāti Koheriki Claims Committee <p>We recommend you provide a copy of the application and the notice of decision to the following parties in addition to those specified in section 25 of the FTCA:</p> <ul style="list-style-type: none"> • Ngāti Manuhiri Settlement Trust • Ngāti Paoa Iwi Trust • Ngāti Paoa Trust Board • Ngāti Koheriki Claims Committee

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	<p>j. carrying out other activities that are:</p> <p>i. associated with the activities described in paragraphs (a) to (i); and</p> <p>ii. within the scope of the project as described above.</p> <p>The project will require land use consent, and water and discharge permits under the Auckland Unitary Plan (AUP), and resource consent under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS).</p> <p><i>Amendments to the project</i></p> <p>Following the close of comments, the applicant amended the project by reducing the height of two apartment buildings to comply with the AUP Designation 4311 OLS. The project amendments involved a reduction of two storeys for apartment block 'E', a reduction of one storey for apartment block 'B', and redesign of the rooves of apartment blocks 'A', 'B', 'E' and 'G'. We estimate the design amendments may impact approximately 30 residential units within the apartment buildings, however the</p>			<p>you direct a panel to invite comment from Auckland Transport.</p> <p>Watercare neither supported nor opposed project referral and noted the project is within the FUZ and therefore Watercare has no commitment to service the project at this stage. Watercare noted the wastewater and water supply capacity constraints will need to be mitigated by the developer through public network extensions or upgrades, depending on the agreed solution with Watercare as part of the resource consent process.</p> <p>Waka Kotahi opposed project referral on the basis that the project does not consider the accessibility needs of the residents or provide any multi modal connections to the wider community resulting in an isolated private vehicle dependent community. Waka Kotahi advised that a NOR application has been lodged on the road frontage of this development on Hobsonville Road, noting that this has not been taken account in the proposed design and that the proposal is reliant on the successful consenting and implementation of the Hobsonville Road upgrade to provide required multi modal facilities. Waka Kotahi requested if the project is referred you direct a panel to invite comment from Waka Kotahi.</p> <p>All responses received by parties invited to comment are attached in Appendix 6.</p> <p>Amendments to the project</p> <p>Following the close of comments, the applicant amended the project by reducing the height of two apartment buildings to comply with the AUP Designation 4311 OLS. The project amendments involved a reduction of two storeys for apartment block 'E', a reduction of one storey for apartment block 'B', and redesign of the rooves of apartment blocks 'A', 'B', 'E' and 'G'. We estimate the design amendments may impact approximately 30 residential units within the apartment buildings, however the applicant has advised there is the ability to achieve the same yield of residential units elsewhere on the project site. The applicant has not provided an updated economic assessment to confirm whether there will be any impacts on the project's economic benefits, however we do not consider this is necessary as section 20(2)(b) of the FTCA only requires an application to include a general level of detail, sufficient to inform your decision on the referral application.</p> <p>The amendments to the project reduced the height of the apartment buildings and we do not consider the changes materially alter the initial residential unit yield projection in the context of the project nor do they materially alter environmental effects (other than potentially a reduction in effects). We therefore do not consider it necessary to invite further comments on the referral application from the parties identified above. We also note that if you decide to refer the project the parties will be invited to comment on the applicant's resource consent</p>	<p>of sequence with usual planning processes may result in misalignment with the timing of projected delivery of transport infrastructure in the wider area. Both Auckland Transport and Waka Kotahi also put emphasis on the importance of an integrated approach to the wider land use and transport network.</p> <p>Urbanisation of the area where the project site is located was signalled through structure planning with development of the WSP in 2016. The WSP also identified the area including the project site as likely to be 'development-ready' between 2018 and 2026, while the FULSS released in 2017 included the site in the Whenuapai Stage 1 area scheduled to be live-zoned between 2018 and 2022. Proposed Plan Change 5 (PPC5), to implement part of the WSP, was notified in 2017 and provided for the project site to be rezoned Residential - Mixed Housing Urban. PPC5 progressed through a public consultation including hearings but was withdrawn in full in June 2022.</p> <p>Auckland Council's reasons for withdrawing PPC5 included lack of budgeted funding for transport network upgrades to address traffic effects arising from development of land in PPC5 and lack of integration of infrastructure provision and rezoning of land.</p> <p>Retirement villages are categorised as a form of residential land use activity under the AUP and residential use of the project site is generally consistent with the urbanisation signalled by WSP, although we note that neither the WSP (nor former PPC5) provisions have legal weight.</p> <p>The applicant states that increased demand on infrastructure as a result of the project can be addressed via upgrades or on-site solutions, and considers the project does not require any major infrastructure installation or off-site upgrades to the surrounding road network. The applicant also notes the infrastructure within the site will be fully funded and established by the applicant. We note Watercare considers upgrades to Council infrastructure will be required for the project.</p> <p>We consider the matters associated with out-of-sequence development, including infrastructure provision, can be tested</p>	

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	<p>applicant has advised there is the ability to achieve the same yield of residential units elsewhere on the project site. The applicant has not provided an updated economic assessment to confirm whether there will be any impacts on the project's economic benefits, however we do not consider this is necessary as section 20(2)(b) of the FTCA only requires an application to include a general level of detail, sufficient to inform your decision on the referral application.</p> <p>The amendments to the project reduced the height of the apartment buildings and we do not consider the changes are material in the context of the project and the referral application. We therefore do not consider it necessary to invite further comments on the referral application from the parties identified above. We also note that if you decide to refer the project the parties will be invited to comment on the applicant's resource consent applications to a panel and will therefore have an opportunity to raise any additional matters at that stage.</p>			<p>applications to a panel and will therefore have an opportunity to raise any issues or concerns at that stage.</p>	<p>with the benefit of a full resource consent application and can be appropriately considered and determined by a panel. We therefore do not consider that you should decline the referral application on this basis. However, if you decide to refer the project it will be important that Auckland Transport, Waka Kotahi and Watercare have an opportunity to provide comments to assist the panel with consideration of infrastructure matters.</p> <p><i>Other matters</i></p> <p>The project has non-complying activity status under the AUP and as such it must pass at least one of the two limbs of the 'gateway test' in section 104D of the RMA if it is to be determined under FTCA process. This means that either it must not be contrary to the objectives and policies of the AUP, or it must result in adverse environmental effects that are no more than minor. We note Objective H18.2(4) of the AUP states that urbanisation is to be avoided until sites have been rezoned for urban purposes. Even if a panel were to decide the project fails to meet the gateway test in relation to alignment with this objective, it would still be able to consider the proposal provided that the project's adverse effects (subject to imposition of conditions) were no more than minor. The applicants consider that the effects of the project will be no more than minor.</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i) the NZDF opposed project referral and noted the project site is located within AUP Designation 4311 that sets obstacle height restrictions through an Obstacle OLS to protect flight operations at the RNZAF Base Auckland. s 9(2)(f)(ii), s 9(2)(g)(i) the NZDF noted Designation 4311 provides the OLS cannot be breached without prior written approval from the NZDF, and s 9(2)(f)(i) raised a concern that the project includes buildings that appear to breach the OLS by approximately 20 metres. The NZDF noted it would not approve such a breach and considered the project cannot proceed as currently proposed.</p> <p>Following the close of comments, the applicant amended the project by reducing the height of two apartment buildings to comply with the OLS. The project amendments involved a reduction of two storeys for apartment block 'E', a</p>	

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					<p>reduction of one storey for apartment block 'B', and redesign of the rooves of apartment blocks 'A', 'B', 'E' and 'G'. To address the concerns raised by s 9(2)(f) the NZDF we recommend you should require the applicant to provide a report confirming that no buildings or structures will breach the OLS in AUP Designation 4311 without the prior approval of the New Zealand Defence Force, with its resource consent applications to a panel.</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i), Auckland Transport and Waka Kotahi raised concern the application has not taken into account the NOR application which impacts the Hobsonville Road frontage of the project site. The applicant notes the development of the site will occur outside of the NOR and we note if you refer the project, the applicant will need to address any implications of the NOR on the project in its resource consent applications to a panel. We consider this is a matter a panel will consider in a merit-based assessment and we do not consider it is a reason to decline the referral application.</p> <p>On 21 April 2023, Auckland Council lodged an appeal on a panel's decision to grant consents for the Botanic Riverhead referred project. The reasons for the appeal include that the panel made an error in law relating to interpretation and application of FUZ provisions. The Botanic Riverhead site is also zoned Future Urban but unlike the current project site has not been subject to a structure planning process that has identified it as suitable for urbanisation.</p>	