

FTC#18 Applications for referred projects under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decision on:

Application 2020-015 – Mitre 10 MEGA Development Pāpāmoa

Date Submitted:	7 October 2020	Tracking #: 2020-B-07193	
Security Level	In-Confidence	MfE Priority:	Urgent
		Action sought:	Response by:
To Hon David Parker, Minister for the Environment		Decision	TBA
Actions for Minister's Office Staff	Return the signed report to MfE.		
Number of appendices and attachments	Titles of appendices and attachments (ie, separate attached documents): 1. Mitre 10 MEGA Development Pāpāmoa - Application and additional information received 2. Stage 1 Briefing Note and Decision 3. Section 17 Treaty of Waitangi Report 4. Notice of Decision Letter to Mitre 10 Holdings Limited 5. Comments received from Local Authorities		

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Sara Clarke	s 9(2)(a)	
Responsible Manager	Sara Clarke	s 9(2)(a)	✓
Director	Liz Moncrieff	s 9(2)(a)	

FTC#18: Application for referred projects under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decision

Key Messages

1. This briefing relates to the application received from Mitre 10 Holdings Limited for Mitre 10 MEGA Development Pāpāmoa (refer to Appendix 1).
2. Having considered the information provided, officials recommend declining this application and not referring it to an expert consenting panel (Panel) for fast-tracking.
3. This is the second briefing relating to this application. A copy of the first briefing (2020-B-07117) regarding this application is included in Appendix 2.
4. The application is to construct and operate a Mitre 10 MEGA store and a medical centre, and carry out associated activities including landscaping, access road construction, signage and earthworks.
5. The application site (site) is located at 160 Domain Road, Pāpāmoa, Tauranga.
6. As the decision-maker you may now decide whether to accept all or part of a project for referral to an expert consenting panel (Section 24 of the Act) or decline the application (Section 23 of the Act).
7. If you decide to accept an application for referral, you must consider:
 - a. the application;
 - b. the Treaty of Waitangi report (prepared under section 17);
 - c. any comments received (under section 21); and
 - d. any further information requested¹ and provided on an application.
8. A summary of our analysis and advice for this application is provided in Table A. To meet your obligations under section 24 of the Act, full details of the application, along with the Treaty of Waitangi report (Appendix 3), and local authority comments, and the further information provided by Mitre 10 Holdings Limited are provided in the appendices.

Issues

9. The following issues have been identified through feedback on the proposal:
 - There is potential for the project to have adverse effects on the wider transport network by creating traffic congestion and degradation of the existing level of service in relation to traffic movements.
 - TCC has indicated that there is limited capacity to supply potable water to the site. TCC's network planning has not anticipated a commercial development on the site.
 - TCC advises that the site functions as a floodplain storing water and receives water from the State Highway 2 in flood events. Developing this site has the potential to displace and divert water.
 - TCC comments that the infrastructure solutions proposed in the application for wastewater rely on servicing through private land and Council owned land. TCC has not

¹ Section 22

provided landowner approval and advises that the services are likely to be non-compliant (at least in part) with TCC's infrastructure standards.

- There are natural hazard risks given that the site is subject to flooding, liquefaction, lateral spread, and tsunami.
- The proposal may limit any future use and development of the neighbouring properties because there are potential adverse effects due to the increased depth of floodwater.
- The proposal does not appear to align with the Rural Zone of the Tauranga City Plan and there is likely to be a public interest in an out-of-zone development of this scale.
- The development of the site and surrounding area is not provided for in either the Tauranga City Council's (TCC) SmartGrowth Strategy, draft Future Development Strategy or Urban Form and Transport Initiatives as an existing or planned future development area. However, there was some support for a development in this location from the regional council although they were concerned about hydrological issues.
- There are three existing zoned commercial centres in the immediate Pāpāmoa/Wairakei area with an adequate supply of commercial land within these existing zones.

Next steps

10. Once you make your decision on an application, you must give notice of this decision, and the reasons for it, to the applicant and the persons, entities and groups listed in section 25 of the Act. We have attached a letter to the applicant based on our recommendations (Appendix 4).
11. To refer a 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 Parliamentary Counsel Office (PCO) without the need for a policy decision to be taken by Cabinet in the first instance². Final decisions on an OiC will still be taken to the Cabinet Legislation Committee, followed by Cabinet confirmation.

² 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 OiC relating to projects to be referred to a Panel [ENV-20-MIN-0033 and CAB-20-MIN-0353 refer].

Recommendations

1. We recommend that you:

- a. **Note** that section 23 of the Act requires you to decline an application for referral unless you are satisfied that the project meets the referral criteria in section 18 of the COVID-19 Recovery (Fast-track Consenting) Act 2020.
- b. **Note** that before deciding to accept an application for referral you must consider:
 - i. the application;
 - ii. the Treaty of Waitangi report obtained under section 17;
 - iii. any comments received; and
 - iv. any further information requested and provided.
- c. **Agree** that the Mitre 10 MEGA Development Pāpāmoa does not meet the purpose of the Act, as:
 - There is potential for significant adverse effects, including in relation to hydrological matters and impacts on existing infrastructure, and these effects would be difficult to resolve within the constraints of the fast-track process.
 - The local planning framework does not support a commercial centre development of this scale outside the urban boundary.
 - An out of zone development of this scale in this location is unlikely to be supported with the appropriate servicing infrastructure to enable the development to proceed quickly. This casts doubt as to whether the project meets the Act's purpose and particularly whether the project will contribute to well-functioning urban environments (section 19(d)(iii)).

Therefore, the project is not suitable for fast-tracking.

Yes/No


- d. **Decline** Mitre 10 Holdings Limited's application for the Mitre 10 MEGA Development Pāpāmoa to be referred to an expert consenting panel.

Yes/No

- e. **Sign the attached (Appendix 4)** notice of decision to Mitre 10 Holdings Limited.

- f. **Note** that the Ministry for the Environment is required to publish your decision, the reasons, and the section 17 Treaty of Waitangi report on the Ministry's website as required by section 25(3) of the Act.

Signature



Sara Clarke
Manager – Fast Track Consenting

Date: 7 October 2020

Hon David Parker
Minister for the Environment

Date:

Released under the provision of
the Official Information Act 1982

Table A: Stage 2 - Project Summary Analysis

Project name, applicant and location	Project description	Does the project meet the eligibility criteria (s18)?	Treaty of Waitangi report (s17) – summary of key findings	Summary of comments received	Does the project help achieve the purpose of the Act (s19)?	Section 24 Assessment
<p>Mitre 10 MEGA Development Pāpāmoa</p> <p>Mitre 10 Holdings Limited</p> <p>160 Domain Road, Pāpāmoa, Tauranga</p>	<p>Construct and operate a Mitre 10 MEGA store and a medical centre, and carry out associated activities including landscape planting, access road construction, signage and earthworks.</p> <p>Full copy of the application attached at Appendix 1.</p>	<p>The project meets the eligibility criteria in section 18 (3) (a-d) as:</p> <ol style="list-style-type: none"> 1. Based on the information available, it does not include any prohibited activities. 2. It does not include land returned under a Treaty settlement. 3. The works do not occur in a customary marine title area or protected customary rights area under the Marine and Coastal Area (Takutai Moana) Act 2011. 	<p>There are at least 4 iwi authorities and Treaty settlement entities with RMA interests in the area.</p> <p>Further consultation is required to confirm if the Tapuika Iwi Authority and the Te Maru o Kaituna – the Kaituna River Authority - should also be included, and whether the project would be affected by the Kaituna River co-governance arrangements. The co-governance arrangements include provisions relating to appointment of hearing commissioners for resource consent applications in the Kaituna River catchment.</p> <p>Full report attached at Appendix 3.</p>	<p>Ministers</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>Local Authorities</p> <p>Tauranga City Council (TCC) and Bay of Plenty Regional Council (BOPRC) noted that the application is not appropriate to be fast-tracked.</p> <p>A summary of their comments is noted below:</p> <ul style="list-style-type: none"> • TCC considers the proposal is unlikely to promote the sustainable management of natural and physical resources or contribute to the development of a well-functioning urban environment. • There are potential adverse effects of the proposal on the wider transport network in terms of traffic congestion and the degradation of the level of service. • The catchment in the area is unlikely to be able to accept additional wastewater discharges from unplanned development. • There is limited capacity to supply potable water to the site. The applicant would need to demonstrate an alternative source of water is available for the proposed use and construction earthworks. • Filling of the site has the potential to displace and divert water because the site functions as a floodplain storing water and receives water from the State Highway 2 in flood events. • The applicant's flood modelling report does not include a natural hazard risk assessment required by the Bay of Plenty Regional Policy Statement to consider effects of the neighbouring properties. • The infrastructure solutions proposed in the application for stormwater and other water matters are likely to be non-compliant (at least in part) with TCC's standards. • There are natural hazard risks given that the site is subject to flooding, liquefaction, lateral spread, and tsunami. • The BOPRC Regional Policy Statement states that new large-scale business activities of this nature are inappropriate outside of the urban limits line. • TCC noted that the site is zoned Rural and the community has an interest in the proposal given the magnitude of this out-of-zone development. • The site is not identified as a present or future urban area and TCC has not considered the rezoning of this site or broader area. Therefore, appropriate infrastructure is not planned for this area. • The scale and size of the proposal is likely to create an out of zone centre (in its own right) which is likely to undermine the three existing commercial centres in the immediate Pāpāmoa/Wairakei area. • BOPRC considers that the proposal has minor additional employment or economic benefits for the region given that the proposal is for a relocation of an existing Mitre 10 store. • BOPRC also noted that the urban limits approach needs to be amended to give effect to the National Policy Statement on Urban Development. <p>A full summary of comments received is provided in Appendix 5.</p>	<ul style="list-style-type: none"> • The project may have some public benefits but there is also the potential for significant adverse effects, including in relation to hydrological matters and impacts on existing infrastructure. These effects would be difficult to resolve within the constraints of the fast-track process. • The local planning framework does not support a commercial centre development of this scale outside the urban boundary. • An out of zone development in the location is unlikely to be supported with the appropriate servicing infrastructure to enable the development to proceed quickly. <p>These above issues cast doubt as to whether the project will achieve the Act's purpose including contributing to well-functioning urban environments (section 19(d)(iii)). In these circumstances, it is appropriate that the broader community is able to participate in the consent process.</p>	<p>We recommend that you decline the project to be referred to an expert consenting panel as the proposal does not meet the purpose of the Act.</p> <p>Notwithstanding the above, if you decide to refer the application, officials will work with your office to provide the appropriate paperwork, including paperwork for the Order in Council process.</p>

Schedule of Appendices and Attachments

Appendix 1 – Mitre 10 MEGA Development Pāpāmoa – Application form and Additional Information Received

Appendix 2 – 2020-B-07117 FTC#8 – Application for referred project under the COVID-Recovery Act - Stage 1 decision on Application Mitre 10 MEGA Development Pāpāmoa

Appendix 3 – Section 17 Treaty of Waitangi Report

Appendix 4 – Notice of Decision letter to Mitre 10 Holdings Limited

Appendix 5 – Comments received from Local Authorities

Released under the provision of
the Official Information Act 1982