



FTC#32: Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decision on:

Application 2020-24 – Nola Estate

Date Submitted:	10 December 2020	Tracking #: 2020-B-07283	
Security Level	In-Confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Decision	14 December 2020

Actions for Minister's Office Staff	Return the signed briefing to MfE.
Number of appendices and attachments	<p>Titles of appendices and attachments (ie, separate attached documents):</p> <ol style="list-style-type: none"> 1. Application for a project to be referred to an expert consenting panel and further information received on 14 October, 27 October, 4 November, and 27 November 2020 2. Stage 1 Briefing Note and Decision 3. Statutory Framework for making decisions 4. Draft Notice of Decision Letter to Civix on behalf of CPM 2019 Limited 5. Section 17 Treaty of Waitangi Report 6. Comments received from Ministers, Local Authority and Auckland Transport

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Rebecca Perrett		
Responsible Manager	Sara Clarke	s 9(2)(a)	✓
Director	Keita Kohere	s 9(2)(a)	

FTC#32: 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 under section 20 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) from CPM 2019 Limited for Nola Estate.
2. This application is for subdivision of a four-hectare block and construction of approximately 246 residential units, a small commercial centre, café, reserve areas, a communal centre and communal open space (the Project).
3. The application anticipates that KiwiBuild will be a partner in the development, with a share of approximately 140 lots and residential units. The application anticipates that the remaining approximately 106 lots and residential units be sold on the private market. A copy of the Project application is included in Appendix 1.
4. The Project is located at 460 to 465 West Coast Road, 467 to 478 West Coast Road, and 317 to 345 Glengarry Road, Glen Eden, Auckland.
5. This briefing seeks your decision on whether the Project should be referred to an expert consenting panel (Panel). This is the second briefing relating to this application. A copy of the first briefing (2020-B-07283) regarding this application is included in Appendix 2.
6. We recommend you accept the application for referral under section 24 of the FTCA and refer it to a Panel for fast-tracking.

Statutory Framework Summary

7. The statutory framework for making your decision is set out in Appendix 3. You must apply this framework when you are assessing the application. You may accept all or any part of a project for referral to a Panel if you are satisfied that the project meets the referral criteria in section 18, including that it will help to achieve the purpose of the FTCA.
8. Even if a project meets the referral criteria in section 18 of the FTCA, section 23(2) of the FTCA permits you to decline to refer a project for any other reason.

Analysis

Our Advice

9. A summary of our analysis for this application is provided in Table A. Before making your decision, in addition to considering our analysis in Table A, you must consider the application and any further information provided in time from CPM 2019 Limited (in Appendix 1), the Treaty of Waitangi report (in Appendix 5), local authority, Auckland Transport and Ministers' comments (in Appendix 6).
10. As our analysis in Table A demonstrates, we consider the Project meets the referral criteria in section 18 and has the potential to achieve the purpose of the FTCA.
11. We recommend you accept the application under section 24 of the FTCA and that the Project be referred to a Panel.
12. We consider that directions should also be made to require the applicant to provide information in an application submitted to a Panel under section 24(2)(d) of the FTCA regarding transport, infrastructure, urban design, landscape and visual effects to inform a Panel of actual and potential effects of the development and support a Panel to identify any other parties to invite comments.

13. We consider that directions should also be made that a Panel must invite comments from Auckland Transport, Watercare, Ngāti Te Ata Claims Support Whānau Trust and Hoani Waititi Marae on a consent application under section 24(2)(e) of the FTCA, as:
 - a. Comments from Auckland Transport and Watercare are to inform the assessment of actual and potential effects of the development including on transport, infrastructure services and other relevant matters.
 - b. The Crown is currently in Treaty settlement negotiations with Ngāti Te Ata Claims Support Whānau Trust, and although it may have an interest in the project area it is not identified through the FTCA as a relevant Treaty settlement entity.
 - c. Comments are sought from Hoani Waititi Marae as it is a significant neighbouring Māori community complex (pan-tribal marae) that is not represented by the iwi authorities or Treaty settlement entities identified in the Section 17 report.

Next Steps

14. 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 FTCA. We have attached a letter to the applicant based on our recommendations (refer Appendix 4). The Ministry will work with your office to give notice to the persons invited to comment on your behalf.
15. To refer a project, you must recommend that a referral order be made by way of an Order in Council (OIC).
16. Cabinet has agreed that you can issue drafting instructions to PCO without the need for a policy decision to be taken by Cabinet in the first instance¹. Final decisions on an OIC will still be taken to the Cabinet Legislation Committee, followed by Cabinet confirmation.

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

Recommendations

1. We recommend that you:

- a. **Note** that section 23(1) of the FTCA 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 if you are satisfied that all or part of a project meets the referral criteria in section 18 of the FTCA you may:
 - i. decline an application for any reason under section 23(2) of the FTCA;
 - ii. refer all or part of a project to an expert consenting panel; or
 - iii. refer the initial stages of a project to the panel while deferring decisions about the project's remaining stages.
- c. **Note** that if you do refer all or part of a project you may:
 - i. specify restrictions that apply to the project;
 - ii. specify the information that must be submitted to the panel;
 - iii. specify the persons or groups from whom the panel must invite comments; and/or
 - iv. set specific timeframes for the panel to complete their process.
- d. **Note** that before deciding to accept an application for referral under section 24(1) of the FTCA you must consider:
 - i. the application; and
 - ii. the Treaty of Waitangi report obtained under section 17; and
 - iii. any comments received; and
 - iv. any further information requested and provided within the required timeframe.
- e. **Agree** that Nola Estate project meets the referral criteria in section 18 of the FTCA.

Yes/No
- f. **Agree** that the Nola Estate project will help achieve the purpose of the FTCA as it has the potential to:
 - i. provide employment opportunities for an estimated 609 Full Time Equivalent (FTE) construction jobs and ongoing additional permanent jobs, along with wider economic benefits accruing from construction employment and having more people introduced to the area
 - ii. Increases housing supply by enabling the development of 2, 3 and 4 bedroom residential units, in response to the housing supply shortage in Auckland
 - iii. enable construction to start sooner than if consents were sought through standard Resource Management Act (RMA) processes.

Yes/No
- g. **Agree** to refer all of Nola Estate project to an expert consenting panel.

Yes/No

- h. **Agree** that for the purposes of clause 9(6)(c) of Schedule 6 of the FTCA the applicant is required to include the following information in any consent application lodged with the Environmental Protection Authority:
- i. Integrated transport assessment
 - ii. Stormwater assessment
 - iii. Infrastructure assessment
 - iv. Urban design assessment
 - v. Landscape and visual assessment
- Yes/No
- i. **Agree** that an expert consenting panel be required to invite comments from the following additional persons or groups under section 24(2)(e) of the FTCA:
- i. Auckland Transport
 - ii. Watercare
 - iii. Hoani Waititi Marae
 - iv. Ngāti Te Ata Claims Support Whānau Trust
- Yes/No
- j. **Agree** to send the notice of decision to Ngāti Te Ata Claims Support Whānau Trust & Hoani Waititi Marae.
- Yes/No
- k. **Agree** to the Ministry for the Environment issuing drafting instructions to the Parliamentary Counsel Office for an Order in Council to refer Nola Estate project to an expert consenting panel in accordance with your decisions recorded herein.
- Yes/No
- l. **Sign the attached (Appendix 4)** notice of decision to Civix on behalf of CPM 2019 Limited.
- Yes/No
- m. **Note** that the Ministry for the Environment is required to publish the decision, the reasons, and the section 17 Treaty of Waitangi report on the Ministry's website as required by section 25(3) of the FTCA.

Signatures



Sara Clarke
Manager – Fast Track Consenting

Date: 10 December 2020

Hon David Parker
Minister for the Environment

Date:

Table A: Stage 2 - Project Summary Analysis

Project details	Project description	Does all or part of the Project meet the referral criteria in section 18?		Summary of comments received and assessment	Does the Project help achieve the purpose of the Act (sections 18(2) and 19)?	Section 24 Assessment
		Is the Project ineligible for referral? (section 18(3a - d))	Treaty of Waitangi report (section 17) – summary of key findings			
<p>Project name Nola Estate</p> <p>Applicant CPM 2019 Limited</p> <p>Location 460 to 465 West Coast Road, 467 to 478 West Coast Road, and 317 to 345 Glengarry Road, Glen Eden Auckland.</p>	<p>This application is for the construction of a residential land use and subdivision development for:</p> <ul style="list-style-type: none"> • approximately 246 residential units • a small commercial centre • a café • reserve areas • a community centre. <p>The application anticipates KiwiBuild will be a partner in the development, with a share of approximately 140 lots and residential units, and the remaining approximately 106 lots and residential units to be sold on the private market.</p> <p>The activities involved in the Project include:</p> <ul style="list-style-type: none"> • subdivision of land and construction of buildings • earthworks (including bulk earthworks) and discharges associated with the earthworks • landscaping, including plantings • the construction of roading, walkways, and other transportation infrastructure required for the development • the construction of water, wastewater and stormwater infrastructure • any other works that are associate with these works and within the Project scope. 	<p>The Project is not ineligible under section 18(3)(a-d) as based on available information:</p> <ul style="list-style-type: none"> • it does not include any prohibited activities • it does not include land returned under a Treaty settlement • 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>The section 17 report identifies the matters in section 17(3) including the relevant iwi authorities. Full report attached at Appendix 5.</p>	<p>Ministers</p> <p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>Local authority Auckland Council noted significant concerns with the Project, in summary:</p> <ul style="list-style-type: none"> • it would warrant public notification due to the intensity of development proposed within the Single House Zone • it is contrary to the high-level policy framework in the Auckland Plan and Auckland Unitary Plan • potentially warrants public notification, with potential adverse effects on the transport network, infrastructure and character and amenity, particularly 	<p>We consider the Project will help to achieve the purpose of the FTCA by:</p> <ul style="list-style-type: none"> • providing employment opportunities for an estimated 609 FTE construction jobs and ongoing additional permanent jobs, including wider economic benefits accruing from construction employment and having more people introduced to the area • Increasing housing supply by enabling the development of 2, 3 and 4 bedroom residential units, in response to the housing supply shortage in Auckland • enabling construction to start sooner than if consents were sought through standard Resource Management Act (RMA) processes. <p>Any potential adverse effects arising from the application and mitigation measures can be tested through the expert consenting panel having regard to Part 2 of the RMA and the purpose of the FTCA.</p>	<p>In response to Ministers comments, we advise:</p> <ul style="list-style-type: none"> • The section 17 report identifies Treaty settlement entities that should be consulted, including Te Kawerau Iwi Settlement Trust and Te Akitai Waiohau Iwi Authority • The Crown is currently in Treaty settlement negotiations with Ngāti Te Ata Claims Support Whānau Trust, and although Ngāti Te Ata Claims Support Whānau Trust may have an interest in the project area they are not identified through the FTCA as a relevant Treaty settlement entity. It is therefore recommended that comments are invited from Ngāti Te Ata Claims Support Whānau Trust • The request that there is ongoing and meaningful engagement on this project with Te Kawerau a Maki, and that the development helps achieve their aspirations such as housing is not a matter of consideration in decision for referral. It is however noted that the applicant appears committed to ongoing engagement and advancing an affordable housing development in partnership with KiwiBuild • The applicant is required to provide (in support of any formal application to a panel) in-depth assessment and testing of any potential adverse effects arising from the application, under the information requirements in clauses 9, 10 and 12 of Schedule 6. If the project is referred, the Ministers listed in Clause 17(4)(h), including Minister of Conservation, will have the opportunity to make comments on any application submitted. <p>In response to local authority comments, we advise:</p> <ul style="list-style-type: none"> • a Panel can assess the merits of an application including non-compliance with the Unitary Plan's rules and resulting effects • the comments raise relevant matters requiring assessment, including transport generation and network, stormwater management, infrastructure services, urban design,

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				<p>on neighbours and public travelling along West Coast Road.</p> <ul style="list-style-type: none"> consideration of effects is required on Auckland Transport and Watercare assets comments should be sought on Hoani Waititi Marae a significant neighbouring Māori community complex (pan-tribal marae) <p>Auckland Council referred the application onto Auckland Transport, Healthy Waters, Watercare and the Waitakere Ranges Local Board, Auckland Councillors and the Independent Māori Statutory Board, and include their comments in the local authority response.</p> <p>Other Person/entity Auckland Transport advised it did not currently have enough information to determine whether the development will result in adverse transport effects, or whether any potential mitigation measures will be suitable to manage effects. Auckland Transport noted:</p> <ul style="list-style-type: none"> that West Coast Road is an arterial road and any new vehicle access to the road requires consent concerns regarding the proposed vehicle access points to West Coast Road and matters that need to be addressed as part of the consent application to the EPA, including the requirement of an Integrated Transport Assessment that includes traffic modelling to determine mitigate measures that may be required. <p>No comments were received from Te Kawerau ā Maki.</p> <p>All responses received by parties invited to comment are attached in Appendix 6.</p>		<p>landscape values and visual amenity. The provision of this information would inform the assessment of actual and potential effects of the development including on transport, infrastructure services and other relevant matters and support a Panel to identify any other parties to invite comments</p> <ul style="list-style-type: none"> Inviting comments from Auckland Transport and Watercare would further inform the assessment of actual and potential effects. <p>In response to Auckland Transport comments, we advise that the provision of an integrated transport assessment would inform actual and potential effects of the development.</p> <p>With respect to the considerations under section 24(2) of the FTCA, no reasons have been identified in the comment/assessment process to:</p> <ul style="list-style-type: none"> limit the scope of the Project by referring it only in part refer the application in stages place any restrictions on the Project impose specific timeframes for a Panel consideration. <p>We recommend that the applicant is required to provide information in an application submitted to a Panel under section 24(2)(d) of the FTCA regarding:</p> <ul style="list-style-type: none"> transport stormwater infrastructure urban design landscape and visual effects. <p>We recommend comments are invited under section 24(2)(e), in addition to those listed in clause 17, Schedule 6, from:</p> <ul style="list-style-type: none"> Auckland Transport Watercare Ngāti Te Ata Claims Support Whānau Trust Hoani Waititi Marae.

Schedule of Appendices and Attachments

Appendix 1 – Nola Estate – Application form and Additional Information Received

Appendix 2 – 2020-B-07283 FTC#24 – Application for referred project under the COVID-Recovery Act - Stage 1 decision on Nola Estate Application

Appendix 3 – Statutory Framework for making decisions

Appendix 4 – Draft Notice of Decision letter to Civix

Appendix 5 – Section 17 Treaty of Waitangi Report

Appendix 6 – Comments received from Ministers, Local Authority and Auckland Transport

Released under the provision of
the Official Information Act 1982