

FTC#176 Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions:

Application 2022-109 Oderings Brookvale Road MDR Project

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| Date submitted: | 19 January 2023 | Tracking #: BRF-2560 | |
| Security level | In-Confidence | MfE priority: | Urgent |

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|---|------------------------------|---------------------|
| | 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: 6 | Appendices: 1. Oderings Brookvale Road MDR application documents 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 Oderings Nurseries CHCH Limited 5. Section 17 Report (Databox link) 6. Comments received from Ministers, Hastings District Council and Hawke's Bay Regional Council (Databox link) |

Ministry for the Environment contacts

| Position | Name | Cell phone | 1 st contact |
|------------------|-------------------|------------|-------------------------|
| Principal Author | Max Gander-Cooper | | |
| Acting Manager | Madeleine Berry | s 9(2)(a) | ✓ |
| Director | Caroline Hart | s 9(2)(a) | |

FTC#176: 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 Oderings Nurseries CHCH Limited to refer the Oderings Brookvale Road MDR 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-2353) with your initial decisions annotated is in Appendix 2.
3. The project is to subdivide an approximately 2-hectare site and construct a housing development on approximately 1.53 hectares of the site at 55 and 57 Brookvale Road, Havelock North, Hawke's Bay. The project will create 35 residential lots and lots for access (including new public access to Guthrie Park), and include the construction of 35 residential units, private roads, a parking area for the existing Oderings Garden Centre operation, and infrastructure for three waters services. The Oderings Garden Centre is intended to continue operating, and has recently gained resource consent to establish and operate a café.
4. The project will involve activities such as:
 - a. demolishing existing buildings and infrastructure
 - b. subdividing land
 - c. carrying out earthworks (including disturbance of contaminated land)
 - d. diverting overland flow paths
 - e. diverting and discharging stormwater onto land and into water
 - f. constructing residential units
 - g. constructing or installing structures and infrastructure associated with the development, including roads, vehicle, pedestrian and cycle accessways and three-waters services
 - h. developing land for the purposes of public open space, including by landscaping and planting
 - i. any other activities that are –
 - i. associated with the activities described in a to h
 - ii. within the scope of the project as described in paragraph 3.
5. The project will require land use and subdivision consents under the partially operative Hastings District Plan (HDP); land use consents, and discharge and water permits under the Regional Resource Management Plan for Hawkes Bay, and a resource consent under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.
6. The key issues are whether resource consent applications for the project would be more appropriately considered under standard Resource Management Act 1991 (RMA) consent processes following a plan change to the HDP, and whether the project is inconsistent with the National Policy Statement for Highly Productive Land 2022 (NPS-HPL). The project may not be consistent with the purpose of the Plains Production Zone in the HDP and the NPS-HPL as it involves residential development rather than productive use of the project site. We do not consider that you should decline to refer the project on this basis as the site is subject to constraints that make productive use unlikely, particularly as the site is surrounded by land which is not zoned for productive use. The project site may also be exempt from restrictions

on the use of highly productive land under the NPS-HPL. These are matters that can be considered by a panel as part of the consent process.

7. 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 applicant and a panel, and notification of your decisions.

Assessment against statutory framework

8. 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.
9. 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, Hastings District Council (HDC) and Hawke's Bay Regional Council (HBRC) (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.
10. 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

11. In response to your request under section 22 of the FTCA the applicant provided further information including on project funding, time saved under the FTCA process, and how the project aligns with national direction.

Section 17 report

12. The Section 17 Report indicates there is one iwi authority, one Treaty settlement and one Treaty settlement entity relevant to the project area.
13. The report outlines Treaty settlement redress relevant to the project area, including acknowledgements and apologies relating to recognition of rangatiratanga which have implications for engagement and participation of iwi in resource management decision-making in their rohe and the specific cultural/commercial redress that would be affected by the project.
14. The relevant Treaty settlements do not create any new co-governance or co-management processes that would affect decision-making under the RMA for the project.

Comments received

15. Comments were received from ^{s 9(2)(f)(ii), s 9(2)(g)(i)}, HDC and HBRC. The key points of relevance to your decision are summarised in Table A.
16. ^{s 9(2)(f)(ii), s 9(2)(g)(i)}
17. ^{s 9(2)(f)(ii), s 9(2)(g)(i)}

18. s 9(2)(f)(ii), s 9(2)(g)(i)
19. HBRC considered that the project could be assessed through a standard RMA consenting process and raised no significant issues.
20. HDC did not support project referral and considered the project is best managed through a plan change and subsequent resource consent or alternatively through a future development strategy. HDC identified a number of concerns, including that the project may be contrary to the NPS-HPL, runs directly counter to the clear direction of the HDP, that relevant hāpu and iwi have not been sufficiently engaged with, and some infrastructure concerns relating to sewerage and stormwater.
21. While HDC raised concerns that the project may not align with the NPS-HPL, they also acknowledged that the project site is unlikely to be successfully used for rural production activities as it is relatively small, is not adjacent to any other productive land, and the site shares many of the characteristics of the neighbouring residentially zoned land.
22. We note HDC's comments were received one working day late and under section 21(5) of the FTCA you are not required to consider comments received after the 10 working-day period but may do so at your discretion as you have not already made a decision on the application.
23. HBRC and HDC identified a number of reports and assessments which would normally be required for a project of this type. We consider these reports are generally covered by the requirements of clause 9 of Schedule 6 of the FTCA but recommend you require the applicant to submit to a panel certain specific information, as detailed in Table A, to assist with consideration of the application by a panel.

Section 18 referral criteria

24. 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)).
25. The project does not include any ineligible activities, as explained in Table A.
26. 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 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 creating approximately 127 direct full-time equivalent (FTE) jobs and 123 indirect FTE jobs over a 4-year period
 - b. increase housing supply by constructing approximately 35 residential units
 - c. progress faster than would otherwise be the case under standard RMA process.
27. 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

28. 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.

Section 23 FTCA matters

29. 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.
30. One of the key issues is whether resource consent applications for the project would be more appropriately considered under standard RMA consent processes following a plan change to the HDP.
31. While the HDP does not prohibit the activities proposed by the project in the Plains Production Zone (PPZ), the current planning framework does not support it as the proposal is a non-complying activity. The PPZ sets a minimum lot size of 12 hectares and promotes the use of PPZ land for productive purposes. We note that the project site is approximately 2 hectares and has been and will continue to be used in part for commercial activity. The project site is surrounded by residentially zoned land on 3 boundaries and a neighbourhood park on the fourth, making it unlikely that it would be used for productive purposes. The current zoning does not reflect the existing use of the site and the surrounding land uses.
32. The applicant states that the current zoning of the site is somewhat anomalous in the wider context, as most of the surrounding land has been rezoned for and is used for residential purposes and a neighbourhood park. The project site was not rezoned as it had been in long-term commercial use (the operation of the Oderings Garden Centre). However, the project would be consistent with the surrounding residential land uses.
33. Both HDC and HBRC favour proceeding under standard RMA processes of a plan change followed by consent applications to enable a more strategic and integrated approach to land use. The FTCA and RMA do not preclude consideration of resource consent applications in advance of re-zoning. While this is generally not regarded as good planning practice and can result in fragmented or poorly integrated development, we consider that the proposed use of the site is generally consistent with the surrounding land uses, and a panel can consider whether the proposed use is appropriate with the benefit of a full resource consent application.
34. We have also considered whether RMA consenting processes are more appropriate because they allow for wider public participation. HBRC considers the project does not appear to necessitate automatic limited or public notification. If you decide to refer the project, we note a panel must invite comments from adjacent landowners and occupiers under clauses 17(6)(g) and 17(6)(h), Schedule 6 of the FTCA. A panel also can invite comments from any person they consider appropriate (clause 17(8), Schedule 6 of the FTCA), so may consult as widely as they consider appropriate or necessary.
35. The NPS-HPL came into effect on 17 October 2022. The applicant has provided an assessment of the project against the NPS-HPL in their response to your request for further information.
36. The site includes land identified as Land Use Capability Class 3 and meets the definition of 'highly productive land' under the NPS-HPL. The NPS-HPL includes exemptions for restrictions on the use of highly productive land, including for land subject to permanent or long-term constraints, and the applicant considers that the land would be exempt from consideration as highly productive land because it is in long-term commercial use.
37. HDC noted that much of the land surrounding the urban areas of Hastings/Napier would be considered highly productive under the NPS-HPL and finding land for urban development is challenging. In this regard, HDC considered that there may be constraints on the potential productive use of the project site in future, particularly given the history of the site being used commercially and the surrounding uses. At this stage we cannot provide definitive advice on whether the project is exempt from, consistent with or inconsistent with the NPS-HPL, as that would require further detailed analysis of the project. We consider these matters can be appropriately determined by a panel with the benefit of appropriate information and we do

not consider that you should decline the referral application on the basis of section 23(5)(c) of the FTCA (inconsistency with a relevant national policy statement).

38. On this basis, if you decide to refer the project, we recommend you require the applicant to submit to a panel an assessment of the productive capacity of the land, as set out in the recommendations below. We also note that a consent application is required to include an assessment of the activity against any relevant provisions of a national policy statement (clause 9(1)(h), Schedule 6 of the FTCA).
39. Finally, we considered whether anticipated adverse effects arising from the project indicate that it may be more appropriate to be consented under standard RMA process. The project has non-complying activity status under the HDP, meaning that a panel is required to consider whether any resource consent application for the project meets the 'gateway tests' in section 104D of the RMA. The applicant has provided an assessment which states that the adverse effects arising from the project would not be more than minor and the project would pass the 'gateway test' in section 104D(1)(a) of the RMA. We note that any adverse effects resulting from the project and alignment with the local and national policy framework are matters that can be considered by a panel in a merit-based assessment under the FTCA process.

Other matters

40. HDC raised concerns about potential flooding effects arising from the project displacing water onto neighbouring sites. We consider that these effects can be addressed by appropriate design and mitigation, and recommend you require the applicant to provide a flood hazard and mitigation assessment with their application to a panel.
41. HDC identified that there may be capacity constraints in the wastewater network and upgrades would be required for the project to discharge to the wastewater network. The applicant has proposed the construction of a wastewater pump station within the project site and a new rising main in the adjacent Guthrie Park (we note that HDC have indicated support for these works within Guthrie Park), but this does not resolve the issue of constraints in the wider system. As HDC have not yet undertaken a full assessment of the capacity in the wastewater network to service the project, the applicant has proposed that the project include wastewater holding capacity on-site which would enable discharge to the network at off-peak times when there is additional capacity in the network. We consider that this provides a viable pathway for project delivery, and the appropriateness of the solution can be determined by a panel with the benefit of a full resource consent application.

Conclusions

42. 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, provided the applicant provides appropriate information (including the information we recommend you specify) to a panel. You could accept the application under section 24 of the FTCA and refer all of the project to a panel.
43. 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 the following information to a panel with their consent applications, in addition to the requirements of clause 9 of Schedule 6 of the FTCA:
 - a. an integrated transport assessment
 - b. an assessment of the effect of the proposed activity on flooding, erosion and stream dynamics
 - c. a stormwater assessment
 - d. a land productivity assessment

- e. a three waters infrastructure assessment
 - f. a flood hazard and mitigation assessment
 - g. an urban design assessment
 - h. an archaeological assessment
44. The above information (including the information required by the FTCA) will inform a panel's assessment of the project's effects and whether to invite comments from any additional persons or groups. This does not preclude a panel from requiring the applicant to provide any additional information on any application lodged with the EPA under the FTCA.
45. 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:
- a. Heretaunga Tamatea Settlement Trust
 - b. Associate Minister for the Environment (urban policy)

Next steps

46. 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 in paragraph 44.
47. 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.
48. 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.
49. 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
50. 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.
51. 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 Oderings Nurseries CHCH Limited unless you are satisfied that the Oderings Brookvale Road MDR 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** 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 increasing housing supply); and whether it could have significant adverse effects.
- c. **Note** 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** 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 (panel)
 - ii. refer the initial stages of the project to a 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** 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. **Agree** the project meets the referral criteria in section 18(3) of the FTCA.

Yes/No
- g. **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 creating approximately 127 direct full-time equivalent (FTE) jobs and 123 indirect FTE jobs over a 4-year period
 - ii. increase housing supply by constructing approximately 35 residential units
 - iii. progress faster than would otherwise be the case under standard Resource Management Act 1991 process.

Yes/No
- h. **Agree to refer** all of the project to a panel.

Yes/No

- i. **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. an integrated transport assessment that
 - 1. identifies the provision of safe spaces for active modes of transport, such as walking and cycling
 - ii. an assessment of the effect of the proposed activity on flooding, erosion and stream / river dynamics
 - iii. a stormwater assessment including:
 - 1. details of the likely contaminants that may enter the stormwater system
 - 2. details of the proposed treatment of the stormwater to maintain water quality standards
 - iv. a soil quality and productive potential assessment of the project site, including a detailed assessment of the soil types and an assessment of whether the productive capacity of the site could be improved
 - v. an assessment of the relevant infrastructure for three-waters services that:
 - 1. identifies the existing condition and capacity of the relevant infrastructure
 - 2. identifies any upgrades to the relevant infrastructure that are required in connection with the subdivision and housing development
 - 3. identifies any funding required to carry out those upgrades (including who will provide that funding)
 - 4. contains information on any discussions held, and any agreements made, between the applicant and Hastings District Council and/or Hawkes Bay Regional Council about the relevant infrastructure
 - vi. a flood hazard assessment, including:
 - 1. a site-specific hydrological study to identify flood risk to the project, including whether minimum ground levels are required to avoid the flooding hazard
 - 2. any measures proposed to mitigate flood hazard
 - vii. a landscape and urban design assessment
 - viii. an archaeological assessment of the project site.

Yes/No

- j. **Agree** to specify under section 24(2)(e) of the FTCA that a panel must invite comments from the following persons or groups:
- i. Heretaunga Tamatea Settlement Trust
 - ii. the Associate Minister for the Environment (urban policy)

Yes/No

- k. **Agree** to copy the application and notice of decisions to the parties listed in paragraph j.

Yes/No

- l. **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

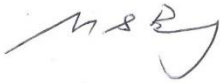
- m. **Sign** the notice of decisions letter to the applicant (attached in Appendix 4).

Yes/No

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

Yes/No

Signatures



Madeleine Berry
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 Oderings Brookvale Road MDR Project Applicant Oderings Nurseries CHCH Limited c/- JGH Advisory Location 55 & 57 Brookvale Road, Havelock North, Hawke's Bay | <p>The project is to subdivide an approximately 2-hectare site and construct a housing development at 55 and 57 Brookvale Road, Havelock North, Hawke's Bay. The project will create 35 residential lots and lots for access (including new public access to Guthrie Park), and include the construction of 35 residential units, private roads, a parking area for the existing Oderings Garden Centre operation, and infrastructure for three waters services. The Oderings Garden Centre is intended to continue operating and has recently gained resource consent to establish and operate a café.</p> <p>The project will involve activities such as:</p> <ol style="list-style-type: none"> demolishing nursery buildings and infrastructure subdividing land carrying out earthworks (including disturbance of contaminated land) diverting overland flow paths diverting and discharging stormwater onto land and into water constructing residential units constructing or installing structures and infrastructure | <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 under the Marine and Coastal Area (Takutai Moana) Act it does not include activities in protected customary rights area under the Marine and Coastal Area (Takutai Moana) Act 2011 that would have a more than minor adverse effect on the exercise of the protected customary right [and that has not been agreed. | <p>Economic benefits for people or industries affected by COVID-19 (19(a))</p> <p>Based on the information provided by the applicant we consider that the project may result in the following economic benefits:</p> <ul style="list-style-type: none"> creating approximately 127 direct full-time equivalent (FTE) jobs and 123 indirect FTE jobs over a 4-year period contributing approximately ^{s 9(2)(b)(ii)} through the construction phases to GDP. <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 project has the potential for positive effects on social wellbeing of current and future generations as it will:</p> <ul style="list-style-type: none"> generate employment by providing 127 direct full-time equivalent (FTE) jobs and 123 indirect FTE jobs over a 4-year period increase housing supply by enabling 35 residential units. <p>Is the project likely to progress faster by using this Act? (19(c))</p> <p>The applicant estimates that under a standard Resource Management Act 1991(RMA) consenting process it may take over 2 years to gain consent for the project due to the likelihood of notification and possible appeals. The applicant has not quantified the time that could be saved</p> | <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>Local authorities</p> <p>Hawke's Bay Regional Council (HBRC) considered that the project could be assessed through a standard RMA consenting process and noted that the applicant had not undertaken any pre-lodgement consultation with HBRC. HBRC also noted that the property is subject to a number of natural hazards, but none appear to be particularly significant. HBRC noted that the project is likely to trigger several rule triggers under the TANK Plan Change (Plan Change 9) to the Hawkes Bay Regional Resource Management Plan.</p> <p>Hastings District Council (HDC) does not support project referral and considers the project is best managed through a plan change or alternatively through the Future Development Strategy. HDC identified a number of concerns, including that it is likely to be contrary to the NPS-HPL, runs directly counter to the clear direction of the District Plan, relevant hapū and iwi have not been sufficiently engaged with, and some infrastructure concerns relating to sewerage and stormwater.</p> | <p>Section 23(5) matters:</p> <p>Insufficient information (23(5)(a))</p> <p>The applicants have 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>One of the key issues is whether resource consent applications for the project would be more appropriately considered under standard RMA consent processes following a plan change to the HDP.</p> <p>While the HDP does not prohibit the activities proposed by the project in the Plains Production Zone (PPZ), the current planning framework does not support it as the proposal is a non-complying activity. The project would be a non-complying activity as it involves subdivision and residential development. We note that the project site is 2 hectares, which is well below the 12-hectare minimum size for lots in the Plains Production Zone, and is surrounded by land zoned for residential use and a neighbourhood park. It may therefore be unlikely that the site is suitable for future productive use.</p> <p>Both HDC and HBRC favour proceeding under standard RMA processes of a plan change followed by consents to enable a more strategic and integrated approach for land use. The FTCA does not preclude consideration of resource consent applications in advance of re-zoning although this is generally not good planning practice due to risks of fragmented or poorly integrated development.</p> <p>We have also considered whether RMA consenting processes are more appropriate because they allow for wider public participation. HBRC considers the project does not appear to necessitate</p> | <p>In response to key comments:</p> <ul style="list-style-type: none"> we agree with the request that the applicants be required to provide an archaeological assessment, but note that the FTCA already requires the applicant to provide cultural impact assessments and a panel to invite comment from local hapū and the Heretaunga Tamatea Settlement Trust we agree with the request that you require the applicant to provide information showing the provision of bicycle parking and cycle ways throughout the development. we note that HDC and HBRC identified a number of reports and assessments which would normally be required for a project of this type. We consider these reports are generally covered by the requirements of clause 9 Schedule 6 of the FTCA <p>We do not consider that you should decline to refer the project on the basis of the issues and risks identified in this table. We recommend that you accept the application under section 24 of the FTCA and refer all of the project to a panel.</p> <p>We recommend you require the applicants to provide the following information with their resource consent applications to a panel:</p> <ol style="list-style-type: none"> an integrated transport assessment that <ol style="list-style-type: none"> identifies provision of safe spaces for active modes of transport, such as walking and cycling an assessment of the effect of the proposed activity on flooding, erosion and stream / river dynamics a stormwater assessment |

| Project details | Project description | Does all or part of the project meet the referral criteria in section 18? | | Summary of comments received <i>(Note: for analysis and/or recommended responses to these comments refer to column 7)</i> | 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)? | | | |
| | <p>associated with the development, including roads, vehicle, pedestrian and cycle accessways and three-waters services</p> <p>h. developing land for the purposes of public open space, including by landscaping and planting</p> <p>i. any other activities that are –</p> <p>i. associated with the activities described in a to h</p> <p>ii. within the scope of the project as described above.</p> <p>The project will require land use and subdivision consents under the partially operative Hastings District Plan (HDP); land use consents, and discharge and water permits under the Regional Resource Management Plan for Hawkes Bay, and resource consent under the Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011.</p> | | <p>through the FTCA process, but they are intending to start construction upon obtaining resource consent and therefore the applicant considers the project is likely to progress faster under the FTCA.</p> <p>Will the project result in a public benefit? (19(d))</p> <p>Based on the information provided by the application we consider that the project may result in the following public benefits:</p> <ul style="list-style-type: none"> • generating employment • increasing housing supply. <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 arising from:</p> <ul style="list-style-type: none"> • earthworks • construction activities • increased loading on three waters infrastructure • traffic • loss of potentially productive rural land (LUC3) • disturbance of contaminated land • noise and reverse sensitivity effects from the continued operation of the garden centre. <p>The applicant has stated that the project will not have significant adverse effects and has provided some preliminary assessments in support of their view.</p> <p>We note that you do not require a full Assessment of Environment Effects and supporting evidence to make a referral decision, and a panel can consider this and any appropriate mitigation, offsetting or compensation to manage</p> | <p>HDC considered that the project is not consistent with the purpose of the Plains Production Zone (PPZ) to promote productive use of land, but also acknowledged that the project site is subject to constraints (small size, surrounded by non-productive land use) which make it unlikely to be suitable for productive use in future, and identified that the site has many of the same characteristics as the surrounding residentially-zoned land.</p> <p>We note HDC's comments were received one working day late and under section 21(5) of the FTCA you are not required to consider comments received after the 10 working-day period but may do so at your discretion as you have not already made a decision on the application.</p> <p>HBRC and HDC identified a number of reports and assessments which would normally be required for a project of this type. We consider these reports are generally covered by the requirements of clause 9 of Schedule 6 of the FTCA but recommend you require the applicant to submit to a panel certain specific information, as detailed in Table A, to assist with consideration of the application by a panel.</p> <p>All responses received by parties invited to comment are attached in Appendix 6.</p> | <p>automatic limited or public notification. If you decide to refer the project, we note a panel must invite comments from adjacent landowners and occupiers under clauses 17(6)(g) and 17(6)(h), Schedule 6 of the FTCA. A panel also can invite comments from any person they consider appropriate (clause 17(8), Schedule 6 of the FTCA), so may consult as widely as they consider appropriate or necessary.</p> <p>Inconsistency with a national policy statement (23(5)(c))</p> <p>The NPS-HPL came into force on 17 October 2022. The applicant has provided an assessment of the project against the NPS-HPL in their response to your request for further information.</p> <p>HDC and HBRC have noted the site includes land identified as Land Use Capability Class 3 and therefore the site meets the definition of 'highly productive land' under the NPS-HPL. HDC acknowledged that much of the land surrounding the urban areas of Hastings/Napier would be considered highly productive under the NPS-HPL, and finding land for urban development is challenging. In this regard, HDC considered that land may not be suitable for future productive use, particularly given the history of the site being used commercially and potential constraints from surrounding uses. We note that a panel can consider this as part of their merits assessment with the benefit of appropriate information.</p> <p>On this basis, if you decide to refer the project, we recommend you require the applicant to submit to a panel an assessment of the productive capacity of the land, as set out in the recommendations below. We also note that a consent application is required to include an assessment of the activity against any relevant provisions of a national policy statement (clause 9(1)(h), Schedule 6 of the FTCA).</p> | <p>including:</p> <ol style="list-style-type: none"> 1. details of the likely contaminants that may enter the stormwater system 2. details of the proposed treatment of the stormwater to maintain water quality standards. <p>iv. a soil quality and productive potential assessment, including a detailed assessment of the soil types and whether the productive potential/ economic viability of the site could be improved.</p> <p>v. an assessment of the relevant infrastructure for three-waters services that:</p> <ol style="list-style-type: none"> 1. identifies the existing condition and capacity of the relevant infrastructure 2. identifies any upgrades to the relevant infrastructure that are required in connection with the subdivision and housing development 3. identifies any funding required to carry out those upgrades (including who will provide that funding) 4. contains information on any discussions held, and any agreements made, between the applicant and Hastings District Council and/or Hawkes Bay Regional Council about the relevant infrastructure <p>vi. a flood hazard assessment, including:</p> <ol style="list-style-type: none"> 1. a site-specific hydrological study to identify flood risk to the project, including whether minimum ground levels are required to avoid the flooding hazard 2. any measures proposed to mitigate flood hazards <p>vii. a landscape and urban design assessment</p> <p>viii. an archaeological assessment of the project site.</p> <p>We recommend you provide a copy of</p> |

| Project details | Project description | Does all or part of the project meet the referral criteria in section 18? | | Summary of comments received <i>(Note: for analysis and/or recommended responses to these comments refer to column 7)</i> | 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)? | | | |
| | | | <p>adverse effects of the development. [insert detail] or N/A</p> <p>Other relevant matters (19(f))</p> <ul style="list-style-type: none"> N/A | | <p>Inconsistent with a Treaty settlement (23(5)(d))</p> <p>The project does not directly affect any Treaty settlement redress.</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>HBRC noted no record of enforcement action being taken against Oderings Nurseries CHCH Limited or David Reid Homes.</p> <p>Insufficient time for the project to be referred and considered before FTCA repealed (23(5)(g))</p> <p>There is sufficient time for the application to be referred and considered before the FTCA is repealed.</p> <p>Other issues and risks:</p> <p>We have considered whether anticipated adverse effects arising from the project indicate that it may be more appropriate to be consented under standard RMA process. The project has non-complying activity status under the HDP, meaning that a panel is required to consider whether any resource consent application for the Project meets the 'gateway tests' in section 104D of the RMA. We note that any adverse effects resulting from the project and alignment with the local and national policy framework are matters that can be considered by a panel in a merit-based assessment under the FTCA process.</p> <p>HDC identified that there may be capacity constraints in the wastewater network and upgrades would be required to service the project. The applicant has proposed the construction of a wastewater pump station within the project site and a new rising main in the adjacent Guthrie Park, but this does not</p> | <p>the application and your notice of decisions to, and direct a panel to invite comments on any resource consent applications for the project from:</p> <ul style="list-style-type: none"> Heretaunga Tamatea Settlement Trust the Associate Minister for the Environment (urban policy) |

| Project details | Project description | Does all or part of the project meet the referral criteria in section 18? | | Summary of comments received <i>(Note: for analysis and/or recommended responses to these comments refer to column 7)</i> | Section 23 assessment – potential reasons for declining | Referral conclusions & recommendations |
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| | | 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)? | | | |
| | | | | | resolve the issue of constraints in the wider system. Since HDC have not yet undertaken a full assessment of the capacity in the wastewater network to service the project, the applicant has proposed that the project include wastewater holding capacity on-site which would enable discharge to the network at off-peak times when there is additional capacity in the network. We consider that this provides a viable pathway for project delivery, and the appropriateness of the solution can be determined by a panel with the benefit of a full resource consent application. | |