

FTC#256: Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions:

Application 2022-158 Peachgrove Mixed-use Precinct Project

Date submitted:	1 June 2023	Tracking #: BRF-3088	
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: 6	Appendices: 1. Peachgrove Mixed-use Precinct Project 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 Hamilton Campground Limited. 5. Section 17 Report (Databox link) 6. Comments received from Ministers, Waikato Regional Council and Hamilton City Council (Databox link)

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
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Acting Manager	Rebecca Perrett	s 9(2)(a)	✓
Acting Director	Lorena Stephen	s 9(2)(a)	

FTC#256: 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 Hamilton Campground Limited to refer the Peachgrove Mixed-use Precinct 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-2898) with your initial decisions annotated is in Appendix 2.
3. The Peachgrove Mixed-use Precinct Project is to subdivide land and construct a mixed-use development on an approximately 2.8-hectare site located on land fronting Peachgrove Road, Ruakura Road and Emmadale Lane, and within the road reserve (Ruakura Road and Peachgrove Road) in Hamilton East.
4. The project includes construction of:
 - a. up to 170 residential units in a variety of typologies, including apartments and terraced houses up to 4 storeys high
 - b. a commercial hotel up to 5 storeys high
 - c. two commercial units comprising:
 - i. a recreational gym facility
 - ii. a dairy
 - d. associated facilities and supporting infrastructure including roads, vehicle and pedestrian accessways, car-parking areas and three-waters services
 - e. landscaping and ancillary works.
5. The project will involve activities such as:
 - a. subdividing land
 - b. carrying out earthworks (including earthworks that disturb potentially contaminated soils)
 - c. discharging stormwater onto land
 - d. works in proximity to scheduled trees as defined in the Hamilton City Operative District Plan
 - e. constructing units
 - f. landscaping and planting of open space
 - g. constructing or installing infrastructure or structures including roads and accessways and infrastructure for three waters services
 - h. any other activities that are:
 - i. associated with the activities described in paragraphs a to g
 - ii. within the project scope
6. The project will require subdivision and land use consents, and water and discharge permits under the Hamilton City Council District Plan (HCCDP), and land use consents, and water

and discharge permits under the Waikato Regional Plan. The project will also require consents under the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS).

7. The project is located in the General Residential Zone of the HCCDP. The proposed activities have overall discretionary activity status.
8. 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

9. 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.
10. 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 and local authorities (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.
11. 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

12. You did not request any further information from the applicant under section 22 of the FTCA].

Section 17 report

13. The Section 17 Report indicates that there are two iwi authorities, two Treaty settlements and three Treaty settlement entities relevant to the project area. The report also identifies additional parties which may have an interest in the project area.
14. The project site is subject to the co-governance and co-management arrangements applying to waterways, lakes and wetlands in the Waikato River catchment under the Waikato River Treaty settlement. These requirements have the potential to influence the composition of a hearings panel for certain resource consent applications under standard Resource Management Act 1991 (RMA) process. This means that should you decide to refer the project, the EPA will need to carefully assess any applications for water or discharge permits in the context of these arrangements before a panel is appointed and advise the Panel Convener accordingly.

Comments received

15. Comments were received from ^{s 9(2)(f)(ii), s 9(2)(a)(i)} Hamilton City Council (HCC) and Waikato Regional Council (WRC). The key points of relevance to your decision are summarised in Table A.
16. ^{s 9(2)(f)(ii), s 9(2)(g)(i)}

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. HCC supports project referral and has had engagement with the applicant prior to lodgement, and provided a letter of support for the project with the referral application.
20. WRC made no comment on whether the project should be referred but noted that decisions on resource consents under the fast-track process should be cognisant of the ability of a local government authority to fund infrastructure needed to materialise benefits from the proposal under the long-term plan process pursuant to the Local Government Act 2002.

Section 18 referral criteria

21. 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)).
22. The project does not include any ineligible activities, as explained in Table A.
23. 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 providing approximately 439 Full Time Equivalent (FTE) jobs over an approximately 3-year development period and 114 FTE jobs through the ongoing project activities
 - b. increase housing supply through the construction of approximately 170 residential units
 - c. progress faster than would otherwise be the case under standard Resource Management Act 1991 process
24. 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

25. 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

26. 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.

27. There is a risk that referring the project could be viewed negatively by the wider community who may expect to be involved in a standard consenting process under the RMA. The site is zoned General Residential Zone under the HCCDP. We consider a panel will be best placed to assess the project's effects with the benefit of a complete resource consent application and appropriate supporting information. If you decide to refer the project, 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) and so may consult as widely as they consider necessary. 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 the standard consenting process under the RMA (section 23(5)(b)).
28. 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

29. The applicant has advised that they may require approval from Hamilton City Council under section 176 of the RMA for any works to be undertaken within the boundaries of the existing designation A101 along Ruakura Road needed to provide appropriate access and infrastructure to the project. As noted, HCC does not foresee any significant issues with the applicant gaining s176 approval from HCC as requiring authority for Designation A101. Therefore, we do not consider that you should decline the referral application on the basis that consent will be required from HCC to undertake works within a designation.

Conclusions

30. 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.
31. If you decide to refer the project, we do not consider that you need to specify any additional information that the applicants must submit to a panel under s 24(2)(d) of the FTCA. Our reasons are detailed in Table A
32. 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. Ngaa Puna o Wairere
 - b. Te Haa o te whenua o Kirikiriroa.

Next steps

33. 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 Ngaa Puna o Wairere and Te Haa o te whenua o Kirikiriroa.
34. 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.
35. 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.

36. 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
37. 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.
38. 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 Hamilton Campground Limited unless you are satisfied that the Peachgrove Mixed-use Precinct 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 providing approximately 439 FTE jobs over an approximately 3-year development period and 114 FTE jobs through the ongoing project activities
 - ii. increase housing supply through the construction of approximately 170 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)(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. Ngaa Puna o Wairere
- ii. Te Haa o te whenua o Kirikiriroa.

Yes/No

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

- i. Ngaa Puna o Wairere
- ii. Te Haa o te whenua o Kirikiriroa.

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 the project to a panel in accordance with your decisions recorded herein.

Yes/No


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

Yes/No

- m. **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



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 <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)?			
Name Peachgrove Mixed-use Precinct Project Applicant Hamilton Campground Limited c/- Berry Simons Environmental Lawyers Location 104, 104A, 106, 106A, 108, 108A, 110, 110A, 112, 112A, 114, 114A, 116 and 118 Peachgrove Road, 14 Ruakura Road, and 1- 16 Emmadale Lane, Hamilton East, Hamilton	The Peachgrove Mixed-use Precinct Project is to subdivide land and construct a mixed-use development on an approximately 2.8-hectare site located on land fronting Peachgrove Road, Ruakura Road and Emmadale Lane, and within the road reserve (Ruakura Road and Peachgrove Road) in Hamilton East. The project includes construction of: a. up to 170 residential units in a variety of typologies, including apartments and terraced houses up to 4 storeys high b. a commercial hotel up to 5 storeys high c. two commercial units comprising: i. a recreational gym facility ii. a dairy d. associated facilities and supporting infrastructure including roads, vehicle and pedestrian accessways, car-parking areas and three-waters services e. landscaping and ancillary works. The project will involve activities such as:	The project is eligible for referral under section 18(3)(a)–(d) as: <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 	Economic benefits for people or industries affected by COVID-19 (19(a)) Based on the information provided by the applicant we consider the project may result in the following economic benefits: <ul style="list-style-type: none"> provide approximately 439 FTE jobs over an approximately 3-year development period and 114 FTE jobs through the ongoing project activities contribute approximately \$58.9 million to GDP. Economic costs for people or industries affected by COVID-19 (19(a)) <ul style="list-style-type: none"> N/A Effect on the social and cultural well-being of current and future generations (19(b)) The project has the potential for positive effects on the social wellbeing of current and future generations as it will: <ul style="list-style-type: none"> generate employment by providing approximately 439 FTEs over an approximately 3-year development period and 114 FTEs through the ongoing project activities increase housing supply through the construction of approximately 170 residential units. Potential effects on cultural wellbeing are unknown. The applicant acknowledges that if the project is referred, any consent application must be accompanied by a cultural impact assessment from relevant iwi authorities Is the project likely to progress faster by using this Act? (19(c)) The applicant considers the fast-track process will allow the project to progress approximately 12- 18 months faster than under standard Resource Management Act 1991 (RMA) processes due to the	Ministers s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) Local authorities Hamilton City Council (HCC) supports the project and has had engagement with the applicant prior to lodgement, and provided a letter of support for the project with the referral application. HCC has identified wastewater capacity constraints within the catchment of the proposed development. They noted there are potential interim solutions and suggest the applicant engages further on this matter. HCC noted that without pre-empting a proper assessment and subsequent decision they do not foresee any significant issues with the applicant gaining s176 approval from HCC as Requiring Authority for Designation A101. Waikato Regional Council (WRC) made no comment on whether the project should be referred but noted that decisions on resource consents under the fast-track	Section 23(5) matters: Insufficient information (23(5)(a)) We consider the applicant has provided sufficient information for you to determine whether the project meets the criteria in section 18 of the FTCA. More appropriate to go through standard RMA process (23(5)(b)) There is a risk that referring the project could be viewed negatively by the wider community who may expect to be involved in a standard consenting process under the RMA. The site is zoned General Residential Zone under the HCCDP. We consider a panel will be best placed to assess the project's effects with the benefit of a complete resource consent application and appropriate supporting information. If you decide to refer the project, 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) and so may consult as widely as they consider necessary. 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 the standard consenting process under the RMA (section 23(5)(b)). Inconsistency with a national policy statement (23(5)(c)) We do not consider the project is inconsistent with any relevant national policy statements. Inconsistent with a Treaty settlement (23(5)(d)) The project is not inconsistent with Treaty Settlement redress. Involves land needed for Treaty settlements (23(5)(e)) The project is located on private land which is not available for Treaty settlement purposes. Applicant has poor regulatory compliance (23(5)(f))	In response to key comments: <ul style="list-style-type: none"> s 9(2)(f)(ii), s 9(2)(g)(i) s 9(2)(f)(ii), s 9(2)(g)(i) in response to HCC's comments regarding infrastructure required to service the project, we consider these effects could be assessed by a panel. HCC identified a number of reports and assessments which would normally be required for a project of this type. We consider the provision of this information is appropriately provided for by the requirements of clauses 9–11 of Schedule 6 of the FTCA HCC identified a number of reports and assessments which would normally be required for a project of this type. We consider the provision of this information is appropriately

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)?			
	a. subdivision of the development areas b. carrying out earthworks (including earthworks that disturb potentially contaminated soils) c. discharging stormwater onto land d. works in proximity to scheduled trees e. constructing units f. landscaping and planting of open space g. constructing or installing infrastructure or structures including roads and accessways and infrastructure for three waters services h. subdivision following construction for individual fee simple or unit titles i. any other activities that are: <ul style="list-style-type: none"> i. associated with the activities described in paragraphs a to h ii. within the project scope 		<p>likelihood of public notification and possible appeal under the latter.</p> <p>Will the project result in a public benefit? (19(d))</p> <p>Based on the information provided, 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 applicant considers the project has the potential for adverse environmental effects:</p> <ul style="list-style-type: none"> • during earthworks • during construction activities (including traffic, noise, vibration, sedimentation) • on existing access and traffic volumes • on existing water, stormwater and wastewater services • on landscape and visual amenity values. <p>The applicant has provided some preliminary technical assessments in support of their view that the project will not have any significant adverse 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 a panel can consider this and any appropriate mitigation, offsetting or compensation to manage adverse effects of the development.</p> <p>Other relevant matters (19(f))</p> <ul style="list-style-type: none"> • N/A 	<p>process should be cognisant of the ability of a local government authority to fund infrastructure needed to materialise benefits from the proposal under the long-term process pursuant to the Local Government Act 2002.</p> <p>WRC noted that from a transport perspective the project promotes higher intensity land-use activities near public transport interchange locations, and that the project has the potential to contribute to transport emissions reduction.</p> <p>WRC also noted that there is a moderate overland flow path on the proposal site, and that potential issues could arise depending on how this is managed and whether there is any displacement of this water. It considered any potential flooding issues can be resolved with appropriate flood modelling and engineering design.</p> <p>All responses received by parties invited to comment are attached in Appendix 6.</p>	<p>Hamilton City Council and Waikato Regional Council have not raised concerns to indicate the applicant has a poor history of environmental regulatory compliance.</p> <p>Insufficient time for the project to be referred and considered before FTCA is 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>The applicant has advised that they may require approval from Hamilton City Council under section 176 of the RMA for any works to be undertaken within the boundaries of the existing designation A101 along Ruakura Road needed to provide appropriate access and infrastructure to the project. As noted, HCC does not foresee any significant issues with the applicant gaining s176 approval from HCC as requiring authority for Designation A101. Therefore, we do not consider that you should decline the referral application on the basis that consent will be required from HCC to undertake works within a designation.</p>	<p>provided for by the requirements of clauses 9–11 of Schedule 6 of the FTCA.</p> <p>On the basis of the risks and issues identified above, we do not consider you should decline to refer the project. 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 a panel to invite comments from:</p> <ul style="list-style-type: none"> • Ngaa Puna o Wairere • Te Haa o te whenua o Kirikiriroa. <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"> • Ngaa Puna o Wairere • Te Haa o te whenua o Kirikiriroa.