

FTC#73 Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions:

Application 2021-051 – Tauranga Innovative Courthouse

Date Submitted:	5 August 2021	Tracking #: BRF-338
Security Level	In-Confidence	MfE Priority: Urgent

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

Actions for Minister's Office Staff	Return the signed briefing to MfE.
Number of appendices: 6	Titles of appendices: 1. Tauranga Innovative Courthouse application documents 2. Stage 1 Briefing Note and decisions 3. Statutory framework for making decisions 4. Draft Notice of Decisions letter to The Property Group Limited, on behalf of the Minister of Justice and the Ministry of Justice 5. Section 17 Report 6. Comments received from Ministers and Tauranga City Council

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FTC#73: Application for referred projects under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions

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 the Minister of Justice and the Ministry of Justice for referral of the Tauranga Innovative Courthouse project (the Project) to an expert consenting panel (a panel). A copy of the application is in Appendix 1.
2. This is the second briefing relating to this application. The first (Stage 1) briefing (BRF-226) with your initial decisions annotated is in Appendix 2. In the first briefing the Project was referred to as the Ministry of Justice Innovative Courthouse Tauranga and the sole applicant was the Minister of Justice. The Ministry of Justice has subsequently been added as a joint applicant and the Project name has been revised accordingly.
3. The Project site is located at 27 and 33 McLean Street, and 24, 28, 30 and 32 Monmouth Street, Tauranga, Bay of Plenty.
4. The Project is for the development of a new courthouse in central Tauranga adjacent to the existing courthouse. It will be the first courthouse developed under the Ministry of Justice's Innovative Courthouses Programme, designed in partnership with iwi, the local community, and other stakeholders to better enable operation and delivery of the justice system. It is intended to provide a model for future courthouse design in New Zealand.
5. The applicants are applying to fast-track a designation over the Project site, to be included in the Tauranga City Plan. The designation will allow for relevant activities associated with the construction and operation of the Tauranga Innovative Courthouse. The Project will provide certainty for the required investment and facilitate timely delivery.
6. The purpose of the designation will be "Tauranga Moana Innovative Courthouse - Judicial, court, tribunal and related purposes including collection of fines and reparation, administration, support, custodial services, and ancillary activities. Works include development and operation of land and buildings for the aforementioned purposes".
7. The Project activities may include:
 - a. site preparation works, including removal or demolition of buildings and earthworks
 - b. construction of a courthouse and associated facilities and infrastructure (including three waters services, roading and parking)
 - c. site landscaping, including planting of vegetation
 - d. operating the courthouse
 - e. any other activities that are -
 - i. associated with the activities described in 'a' to 'd'
 - ii. within the project scope.
8. The applicants have advised that none of these activities require Resource Management Act 1991 (RMA) consents under the relevant regional plans, but we have included them as we consider there may be a need to seek resource consents (for example under regional rules or national environmental standards) if unforeseen issues arise during further detailed design work. The applicants anticipate commencing physical site works in September 2022 and completing construction by October 2025.

9. Before commencing physical works, site purchase and detailed project design need to be completed. The applicants will submit outline plan/s to Tauranga City Council (TCC), in accordance with section 176A of the RMA should a panel receive a referral and approve the designation.
10. We recommend you accept the referral application under section 24 of the FTCA and refer the Project to a panel for fast-tracking. We seek your decision on this recommendation and on our recommendations for requirements of the applicants.

Assessment against Statutory Framework

11. 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 referral application and when deciding on any further requirements or directions associated with Project referral.
12. Before accepting the application, you must consider the application and any further information provided by the applicants (in Appendix 1), the Section 17 Report (in Appendix 5) and comments from Ministers and TCC (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.
13. 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.

Section 17 Report

14. The Section 17 Report indicates that there are four iwi authorities, three Treaty settlements and four Treaty settlement entities relevant to the Project site.
15. The report outlines Treaty settlement redress including the Crown's existing obligations to Ngāi Te Rangi under the Ngāi Te Rangi and Ngā Pōtiki Deed of Settlement in respect of the current courthouse site, that will not be altered by the Project.
16. No specific cultural redress provided under any of the settlements would be affected by the Project, and the 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

17. Comments were received from ^{s 9(2)(f)(i), s 9(2)(g)(i)} Ministers (named in section 21(6) of the FTCA) and TCC. The key points of relevance to your decision are summarised in Table A.
^{s 9(2)(f)(ii), s 9(2)(g)(i)}

21. TCC considered that fast tracking the Project is appropriate. TCC noted that the Project site is located within the Residential Zone (ie City Living Zone) which is subject to proposed Plan Change 26 – Housing Choice (PC26) to the Tauranga City Plan which in part gives effect to the National Policy Statement on Urban Development 2020 (NPS-UD) by removing existing maximum residential densities and increasing permitted building height. TCC considers that significant weight can be applied to PC26 provisions in this location. TCC did not support the loss of residential zoned land which is suitable for higher residential densities, however they noted that this may be offset if the existing Ministry of Justice site were to be used for residential purposes.
22. TCC noted a number of positive benefits to the community from the Project including a new fit-for-purpose civic building and integration with the regeneration of the city centre. TCC identified three technical reports on transport, infrastructure and urban design/landscape that they consider appropriate for the applicants to provide with their notice of requirement to a panel. We recommend that you direct the applicants to provide a panel with these specific reports as the provision of this information will assist a panel with timely consideration of the notice of requirement.

Section 18 referral criteria

23. You may accept the application for referral of the Project 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)).
24. We confirm that the Project does not include ineligible activities, and therefore satisfies the requirements of section 18(3) of the FTCA, as explained in Table A.
25. 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 confirm that the Project will help to achieve the purpose of the FTCA, and thus satisfy the requirements of section 18(2) as it has the potential to:
- a. have positive effects on social wellbeing by providing more user-friendly and fit-for-purpose justice facilities
 - b. enable approximately 177 full-time equivalent (FTE) jobs over the 4-5 year design and construction period and 40 FTE ongoing jobs over an average 12-month period
 - c. progress faster by using the processes provided by the FTCA than would otherwise be the case under standard RMA processes, provided that the applicants lodge their notice of requirement with the EPA in a timely manner following Project referral.
26. We consider that any actual and potential adverse effects arising from the Project, together with any measures to avoid, remedy, mitigate, offset or compensate for adverse effects, can be considered and determined by a panel having regard to Part 2 of the RMA and the purpose of the FTCA.

Issues and Risks

27. 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

28. Section 23(5) of the FTCA provides further guidance on reasons to decline an application, and a summary of our analysis of these matters is in Table A. Note that you may accept an application even if one or more of those reasons apply.
29. The Project site is in the City Living Zone of the Tauranga City Plan. This zone provides for multi-unit, multi-level residential activities with the opportunity for mixed use development, with commercial at the ground floor and residential above. The Project site is also subject to PC26 which in part gives effect to the NPS-UD by providing for residential intensification of existing urban areas and increasing permitted building height. The applicants acknowledge that the Project will remove land earmarked for housing and mixed-use development under the Operative Tauranga City Plan and PC26, however they consider it is likely that the Project will trigger and promote opportunities for higher density residential development in and around the site upon completion.
30. Although an outcome of this Project may be a reduction in the number of residential units obtainable and some mixed-use opportunities in the short term, 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).

Other matters

31. TCC's view is that the loss of high density residential zoned land due to the proposed Project could be offset to a degree through the existing Ministry of Justice site being vacated as this will open up this existing parcel of commercially zoned land for a large-scale residential development in the future. We note there is no certainty that the existing courthouse site would be available for future large-scale residential development because the current courthouse site is subject to Treaty settlement obligations. The first Deed to Amend the Ngāi Te Rangi and Ngā Pōtiki Deed of Settlement¹ provides for the current Tauranga courthouse to be purchased by Ngāi Te Rangi and leased back to the Crown, once the Deed of Settlement is enacted. Any decision to build the courthouse on the proposed site will not affect the Crown's existing obligations under the Deed. We do not consider that this will limit the ability to fast-track the Project.
32. We have identified issues further to the matter identified above and our analysis of these is in Table A.

Conclusions

33. We do not consider there are any significant reasons for you to decline to refer the Project. We consider that you could accept the application under section 24 of the FTCA and that all of the Project could be referred to a panel.
34. If you decide to refer the Project, we consider that you should specify under section 24(2)(d) of the FTCA that the applicants must provide the following information, additional to the requirements of clause 13 of Schedule 6 of the FTCA, in a notice of requirement submitted to a panel:

¹ Ngāi Te Rangi and Ngā Pōtiki Deed to Amend the Deed of Settlement 6 Oct 2014

- a. an archaeological assessment of the project site
- b. a transport assessment assessing the likely parking demand and impact on the local transport network
- c. an infrastructure assessment providing details of proposed three waters servicing and identifying any effects on the capacity of Tauranga City Council infrastructure
- d. an urban design and landscape assessment including:
 - i. details of the anticipated site layout, building envelope and design
 - ii. details of any mitigating measures that will be incorporated into the design of the building to ensure that the building and activity are integrated with the surrounding land uses and the public/private interfaces (including movement, on-site amenity, safety and security, and culture and identity outcomes).

35. Our recommendations for your decisions follow.

Next Steps

- 36. You must give notice of your decisions on the referral application, and the reasons for them, to the applicants and the persons, entities and groups listed in section 25 of the FTCA.
- 37. We have attached a notice of decisions letter to the applicants based on these requirements and our recommendations (refer Appendix 4). We will assist your office to give copies to all relevant parties.
- 38. To refer the Project, you must recommend that a referral order be made by way of an Order in Council (OiC).
- 39. 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.²

² Following the first OIC, the Minister for the Environment (and Minister of Conservation for projects in the Coastal Marine Area) can issue drafting instructions directly to the Parliamentary Counsel Office. Cabinet has also agreed that a Regulatory Impact Assessment is not required for 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** that section 23(1) of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) requires you to decline this application for referral unless you are satisfied that the Project meets the referral criteria in section 18 of the FTCA including that it would help to achieve the FTCA's purpose.
- b. **Note** that when assessing whether the Project would achieve the FTCA's purpose, you may consider a number of matters under section 19, including the Project's economic benefits and costs, and effects on social or cultural well-being; whether it may result in a public benefit (such as generating employment) and also whether it could have significant adverse effects.
- c. **Note** that if you are satisfied that all or part of the Project meets the referral criteria in section 18 of the FTCA you may:
 - i. refer all or part of the Project to an expert consenting panel (a panel)
 - ii. refer the initial stages of the Project to 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.
- d. **Note** that if you do refer all or part of the Project you may:
 - i. specify restrictions that apply to the Project
 - ii. specify the information that must be submitted to a panel
 - iii. specify the persons or groups from whom a panel must invite comments
 - iv. set specific timeframes for a panel to complete their process.
- e. **Note** that before deciding to accept an application for 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 received
 - iv. any further information requested and provided within the required timeframe.
- f. **Agree** that the Tauranga Innovative Courthouse Project meets the referral criteria in section 18 (3) of the FTCA.

Yes/No

- g. **Agree** that 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. have positive effects on social wellbeing by providing more user-friendly and fit-for-purpose justice facilities
 - ii. enable approximately 177 full-time equivalent (FTE) jobs over the 4-5 year design and construction period and 40 FTE ongoing jobs over an average 12-month period

- iii. progress faster by using the processes provided by the FTCA than would otherwise be the case under standard Resource Management Act 1991 (RMA) processes, provided that the applicants lodge their notice of requirement in a timely manner following Project referral.

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 applicants must submit with any notice of requirement application lodged with the Environmental Protection Authority:
- i. an archaeological assessment of the project site
 - ii. a transport assessment assessing the likely parking demand and impact on the local transport network
 - iii. an infrastructure assessment providing details of proposed three waters servicing and identifying any effects on the capacity of Tauranga City Council infrastructure
 - iv. an urban design and landscape assessment including:
 1. details of the anticipated site layout, building envelope and design
 2. details of any mitigating measures that will be incorporated into the design of the building to ensure that the building and activity are integrated with the surrounding land uses and the public/private interfaces (including movement, on-site amenity, safety and security, and culture and identity outcomes).

Yes/No

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

Yes/No

- k. **Sign the attached (Appendix 4)** notice of decisions to the Minister of Justice and the Ministry of Justice.

Yes/No

- I. **Note** that to ensure your compliance with section 25(3) of the FTCA, the Ministry for the Environment will publish the decisions, the reasons, and the Section 17 Report on the Ministry for the Environment's website.

Signatures



Stephanie Frame
Manager – Fast Track Consenting

Date

Hon David Parker
Minister for the Environment

Date

Released under the provision of
the Official Information Act 1982

Table A: Stage 2 - Project Summary and Section 24 Assessment

Project details	Project description	Does all or part of the Project meet the referral criteria in section 18?		Summary of comments received	Section 23 assessment – potential reasons for declining	Referral conclusions & recommendations
		Project eligibility for referral (section 18(3a - d))	Section 18(2) - Does the Project help achieve the purpose of the FTCA (as per section 19)?			
Project name Tauranga Innovative Courthouse Applicants Minister of Justice and the Ministry of Justice [c/- The Property Group Limited] Location 27 and 33 McLean Street, and 24, 28, 30 and 32 Monmouth Street, Tauranga, Bay of Plenty	The Project is for the development of a new courthouse in central Tauranga adjacent to the existing courthouse. The applicants are applying to fast-track a designation over the Project site, to be included in the Tauranga City Plan. The designation will allow for relevant activities associated with the construction and operation of the Tauranga Innovative Courthouse. The purpose of the designation will be "Tauranga Moana Innovative Courthouse - Judicial, court, tribunal and related purposes including collection of fines and reparation, administration, support, custodial services, and ancillary activities. Works include development and operation of land and buildings for the aforementioned purposes". The Project activities may include: - site preparation works, including removal or demolition of buildings and earthworks - construction of a courthouse and associated facilities and infrastructure (including three waters services, roading and parking) - site landscaping, including planting of vegetation	The Project is eligible under section 18(3)(a-d) as: - 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)): The applicants estimate that the Project will: - enable approximately 177 full-time equivalent (FTE) jobs over the 4-5 year design and construction period - enable approximately 40 FTE ongoing jobs over an average 12-month period. Economic costs for people or industries affected by COVID-19 (19(a)): N/A Effect on the social and cultural well-being of current and future generations (19(b)): The applicants consider that the Project will provide for the social wellbeing of current and future generations as it will: - replace the existing courthouse which is in need of a major upgrade or replacement - be co-designed with mana whenua and informed by Te Ao Māori values - provide court buildings designed to create a welcoming and safe environment to influence the social and justice outcomes for the people using the buildings and the wider community - contribute to New Zealand's efforts to mitigate climate change through environmentally friendly sustainable design and construction, and building operational efficiency. The applicants note that engagement with mana whenua, stakeholders and the community in relation to social and cultural wellbeing has been undertaken and is ongoing. Is the Project likely to progress faster by using this Act (19(c))? The applicants consider that using the FTCA process will allow the Project to progress faster than under standard RMA processes, due to the uncertain nature of the standard RMA processes and timeframes for a project of this scale. Will the Project result in a public benefit (19(d))? Based on the information provided we consider the Project may result in public benefits by	Ministers s 9(2)(f)(ii), s 9(2)(g)(i)	Section 23(5) matters: Insufficient information (23(5)(a)) The applicants have 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)) We do not consider it would be more appropriate for all or part of the Project to proceed through the standard consenting process under the RMA. Inconsistency with a national policy statement (23(5)(c)) The applicants acknowledge that the Project will remove land earmarked for housing and mixed-use development under the Operative Tauranga City Plan and PC26, however they consider it is likely that the Project will promote opportunities for higher density residential development in and around the site upon completion. We consider that an outcome of this Project may be a reduction in the number of residential units obtainable and some mixed-use opportunities, however for the purpose of making your decision on this referral application. We do not consider that you should decline the referral application on the basis of inconsistency with the National Policy Statement on Urban Development 2020. We do not consider that the Project is inconsistent with any national policy statements. Inconsistent with a Treaty settlement (23(5)(d)) The Project does not directly affect any Treaty settlement redress.	In response to Ministers' and Associate Minister's comments: s 9(2)(f)(ii), s 9(2)(g)(i) In response to Tauranga City Council comments: - we note that there is no certainty that the existing courthouse site would be available for a large-scale residential development in the future because the current courthouse site is subject to Treaty settlement obligations. The first Deed to Amend the Ngāi Te Rangi and Ngā Pōtiki Deed of Settlement provides for the current Tauranga courthouse to be purchased by Ngāi Te Rangi and leased back to the Crown, once the Deed of Settlement is enacted. Any decision to build the courthouse on the proposed site will not affect the Crown's existing obligations under the Deed. We do not consider that this will limit the ability to fast-track the Project - we agree that further discussions with the applicants in respect of a residential 'offset' are important to ensure that issues associated with the loss of residential zoned (City Living Zone) land are appropriately managed. Recommendations Note that section 23(1) of the COVID-19 Recovery FTCA requires you to decline this application for referral unless you are satisfied that the Project meets the referral criteria in section 18 of the FTCA including that it would help to achieve the FTCA's purpose.

Project details	Project description	Does all or part of the Project meet the referral criteria in section 18?		Summary of comments received	Section 23 assessment – potential reasons for declining	Referral conclusions & recommendations
		Project eligibility for referral (section 18(3a - d))	Section 18(2) - Does the Project help achieve the purpose of the FTCA (as per section 19)?			
	d. operating the courthouse e. any other activities that are - i. associated with the activities described in 'a' to 'd' ii. within the project scope.		generating new employment over an approximately 4-5 year design and construction period. Potential to have significant adverse environmental effects, including greenhouse gas emissions (19(e)): The Project has the potential for adverse environmental effects related to dust, traffic, and other construction effects, visual effects, social impact effects, character and amenity effects on the neighbouring residential area, safety, parking, and contaminated land. The applicants consider the Project is not anticipated to give rise to significant adverse environmental effects. We note that you do not require a full Assessment of Environmental Effects and supporting evidence to make a referral decision, and a panel will consider the significance of effects and appropriate mitigation should the Project be referred. Other relevant matters (19(f)): The Project site is subject to Proposed Plan Change 26 – Housing Choice (PC26), that closed to further submissions on 25 June 2021. The applicants advise that the design details for the Project are intended to be consistent with the bulk and location expectations for the City Living Zone reflected in PC26, which includes provision for six storey apartment buildings in the City Living Zone.	Local authorities Tauranga City Council (TCC) did not support the loss of residential zoned land, however they considered that it is appropriate to fast track the Project to a panel given that it promotes the sustainable management of natural and physical resources and contributes to the development of a well-functioning urban environment. TCC noted that while the application site is located within a Residential Zone and it is an out of zone activity, replacing the existing courthouse would vacate the existing Ministry of Justice designated 'City Centre' zoned land and open up this parcel of commercial zoned land to enable a large scale residential development with business activities at ground floor. TCC showed interest in further discussions with the applicants in respect of a residential 'offset', and the possible means of achieving it. TCC considered that the Project will provide positive benefits to the community, including a new civic building which is fit for purpose and valued by the community, integration with the regeneration of the Tauranga City Centre, and opportunity for further large-scale comprehensive development. TCC noted that Tauranga Central Police Station is also designated within the City Living Zone and located almost opposite the site. TCC advised that they do not have information about geotechnical matters to suggest whether the land is suitable for a development of this scale but confirmed that there are no significant issues associated with wastewater, stormwater, and the water and transport network. Bay of Plenty Regional Council did not provide any comment on this application. All responses received by parties invited to comment are attached at Appendix 6.	Involves land needed for Treaty settlements (23(5)(e)) The Project site does not include land needed for Treaty settlement purposes. Applicants have poor history of environmental regulatory compliance (23(5)(f)) Tauranga City Council advised that there is no compliance history of direct relevance to the application. Insufficient time for the Project to be referred and considered before FTCA repealed (23(5)(g)) There is sufficient time for the application to be referred and considered before the FTCA is repealed. Other issues & risks: N/A	There are no reasons to 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. We recommend that you do not place any restrictions on the Project, nor impose any specific timeframes for panel consideration. We also recommend that you require the applicants to submit the following information with any Notice of Requirement application lodged with the Environmental Protection Authority: • an archaeological assessment of the project site • a transport assessment assessing the likely parking demand and impact on the local transport network • an infrastructure assessment providing details of proposed three waters servicing and identifying any effects on the capacity of Tauranga City Council infrastructure • an urban design and landscape assessment including: i. details of the anticipated site layout, building envelope and design ii. details of any mitigating measures that will be incorporated into the design of the building to ensure that the building and activity are integrated with the surrounding land uses and the public/private interfaces (including movement, on-site amenity, safety and security, and culture and identity outcomes).

Schedule of Appendices and Attachments

Appendix 1 – Tauranga Innovative Courthouse – Application documents

Appendix 2 – BRF-226 FTC#73 – Application for referred project under the COVID-Recovery FTCA - Stage 1 decisions on Tauranga Innovative Courthouse project

Appendix 3 – Statutory framework for making decisions

Appendix 4 – Draft Notice of Decisions letter to The Property Group Limited on behalf of the Minister of Justice and the Ministry of Justice

Appendix 5 – Section 17 Report

Appendix 6 – Comments received from Ministers and Tauranga City Council

Released under the provision of
the Official Information Act 1982