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Tēnā kōrua

Supplementary Response to Further Information Request Received: COVID-19 Recovery (Fast-Track Consenting) Act 2020 – request for further information – Wairatahi Project

Introduction

This letter provides a further response from Heretaunga Tamatea Settlement Trust (**HTST**) in respect for the Minister's consideration in addition to HTST's earlier response (through the Property Group) of 21 December 2022 to the Ministry for the Environment's (**MfE**) request for further information dated 12 December 2022.

The need for this further response has arisen from the comments made by Hastings District Council (**HDC**) to MfE. As MfE is aware, HTST has been engaging in good faith with HDC throughout the process to date, which had previously culminated in a letter of support from HDC dated 27 October 2022. Late last week (on 13 January 2022) HDC provided HTST with a copy of the cover letter and comments that HDC had made to MfE (letter dated 10 January 2022, and comments dated 22 December 2022).

HDC initially agreed to provide HTST with a draft of its comments before sending them to MfE (consistent with HDC's statutory duty to act in a manner that is consistent with the principles of the Treaty of Waitangi), but then refused to do so for "legal reasons". HTST does not understand there to be any legal impediment in HDC engaging with good faith with HSTS around any comments it might wish to make to MfE, and is disappointed at HDC's position in this regard. The purpose of this letter is for HTST to respond to some of the key matters raised by HDC. It is not necessary to address every point made by HDC, at this stage however. Most, if not all, of HDC's detailed comments will be able to be resolved at further stages of the process, should the Project be referred.

Council's role at this stage

HDC was invited to make written comments on the application for referral under s21(2) of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (**FTCA**). The language of "comments" is important. "Submissions" were not invited. In addition, it is the territorial authority that is invited to make

comment, not any particular officer or team. HDC has advised that its comments were “co-ordinated and compiled by the Environmental Policy team “with inputs from across Council as part of a co-ordinated response”. It is not clear, however, if elected members had any input into the comments made on behalf of the Council, however. Best practice would be for elected members to have had input into the key matters being raised “by HDC”.

It is also important to understand the stage that the Project is at under the FTCA process. The particular decision to be made at this stage is whether the Project will be referred, and comments should be directed to that question rather than numerous matters of detail. Indeed, the FTCA process is intended to minimise the burden on the applicant to provide extensive detail too early in the process, and there are considerable opportunities for HDC to engage on the detail as the Project progresses under the FTCA (if referred). HTST remains committed at this point to working collaboratively with HDC as it advances its detailed design. A workshop has, for example, been set with elected members for 31 January 2023. There will also be ongoing engagement with officers prior to the lodgement of the application with the EPA. Once lodged, HDC will have further opportunities to comment on the Project generally, and will most likely be asked for some further information by the Panel, and will specifically be asked to comment on conditions. Most of the matters raised by HDC in its recent letter and comments are more appropriately addressed down the track.

Finally, in terms of context at this point, as MfE and Minister will be well aware, in a FTCA process, a territorial authority is not the consent authority. HDC is not a decision maker in the FTCA process. It's inputs into the process are carefully circumscribed. That said, as a functionary under the FTCA (ie exercising the function of providing written comments), HDC must, under s6 FTCA, act in a manner that is consistent with—

(a) the principles of the Treaty of Waitangi (including the principle of acting in the utmost good faith); and

(b) Treaty settlements (and noting that the site was partly acquired from the Crown as a deferred settlement property, to enable Heretaunga Tamatea to advance the social, economic, and cultural wishes of its people).

Regrettably, HDC appears to have lost sight of these above matters in the nature of its comments to MfE.

HDC's preference for a Plan Change first (or in parallel with a consent application)

HTST is pleased that HDC has confirmed its support for “urbanisation” of the site and that the Project “will make a significant contribution to the much needed housing capacity for the Hastings District”.

HDC's preference is for a Plan Change to proceed first (or perhaps in parallel). This appears to be for two reasons. The first is a concern, based on the current objectives and policies and the recent Flints' Park decision, that the Proposal may not be able to be consented. The second is a view that a plan change framework would be (in HDC's view) “more efficient and certain”. The “certainty” element appears to be a repeat of the first reason. As for efficiency, as explained below, requiring a Plan Change first will introduce significant additional delay, and cost, to the Proposal for no substantive benefit in terms of outcomes. So it is unclear how a Plan Change step would provide any additional “efficiency” as suggested by HDC.

While HDC had expressed, at an early stage, its preference for a Plan Change to proceed first, HTST had understood that HDC accepted HTST's decision to pursue referral into the FTCA process. In fact, HDC had said so in its letter of 27 October 2022, stating:

"The Council strongly supports residential development at Irongate York, and while such development would usually be appropriately pursued through a plan change process, Council supports the use of the Fast Track Consenting process in this particular case. This is primarily because, as discussed below, Irongate York is a high priority for growth for the District, and the timing benefits offered by the Fast Track process are considered to outweigh the District Plan integrity and administrative issues that Council is generally concerned about with large scale non-complying development."

The "about turn" appears to have resulted from the Flint's Park decision, and, with respect, is misguided.

As a first point, as MfE/ the Minister will well understand, one Panel decision does not bind any future Panel and cannot prevent the Minister from deciding to refer a subsequent application into the FTCA process. In addition, the Flint's Park decision has been appealed (and judicially reviewed), and so should not be taken as any binding (or even persuasive) authority in the meantime.

Furthermore, there are numerous differences between the Flint's Park proposal and HTST's Wairatahi project. For example, at a high level HTST understands the following to be key differences between the applications:

	Flint's Park	Wairatahi
1.	Proposal was outside Urban Growth Boundary (UGB), a blunt tool.	No UGB: the Urban Strategy and Plains SMA are more sophisticated in their approach.
2.	Development included aspects within and in front of an Outstanding Natural Feature (ONF).	No ONF or other landscape issues.
3.	No recognition of the Spatial Plan or the Ladies Mile Masterplan in the PDP (or RPS).	HPUDS is recognised in the RPS (and District Plan), and has been for a significant period of time.
4.	Not recognised as part of the Urban Environment by the Panel.	Is within the Flaxmere Residential Environment as defined in s9.1.1.2 of the District Plan. (Section 9.1.1.2 describes the residential environment of Flaxmere is being contained within the boundaries of Portsmouth Road to the west; part of State Highway 50A to the south, Plains Production land to the northern and eastern limits, as well as industrial land to the north.)
5.	Advanced ahead of a Variation, which sought to implement a Masterplan across land under multiple ownership into the District Plan, and resolve infrastructure issues.	The land is all owned by the same entity (an Iwi Authority/ PSGE), so there is no need for a Masterplan/ Structure Plan to ensure integrated management across multiple land holdings, and no infrastructure servicing issues to address.
6.	Effects more than minor, including as to Traffic, Landscape.	No serious suggestion of effects more than minor.

7.	Private applicant.	Iwi Authority (and PSGE) applicant: the Minister, EPA, and Panel must act in a manner consistent with the principles of Te Tiriti, and Treaty Settlements (noting the land is in part a Te Tiriti settlement property). (So too must the Council in making any comments on an application.)
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In respect of being “contrary” to objectives and policies, as HTST understands it, the s104D question requires consideration of the objectives and policies *as a whole*.

Given HDC’s request for the Minister to refuse to refer the Proposal, to allow a Plan Change to proceed, the consequences of, and “need” perceived by HDC for, a Plan Change to proceed first need to be carefully considered.

Time delays of proceeding with a Plan Change first

As a first point, for the Wairatahi Project site, it has been “in” HDC’s urban development strategy now since 1993. In terms of recent strategy, the original HPUDS strategy was adopted in 2010 and was reviewed in 2016. This resulted in the Heretaunga Plains Urban Development Strategy 2017 (**HPUDS2017**) being adopted by the three partner councils - HDC, Hawke's Bay Regional Council and Napier City Council, in early 2017. The Project site was identified in the HPUDS2010 as being suitable for greenfield development within Flaxmere.

HDC has failed to advance a Plan Change in this time period for the Project site. While the site may be HDC’s “number one plan change workstream priority”, it has made no commitment as to the timing of any plan change it might wish to pursue. It could also have included the Site within its Plan Change 5, but did not.

So, if HTST does not have its Project referred, then if it wishes to have any control over the timing of any Plan Change it will need to prepare a private plan change. HDC has not addressed in its comments to MfE whether HDC would adopt such a plan change, or whether it would request that the Minister direct a Streamlined Planning Process (**SPP**) to finalise the plan provisions more quickly than under the usual Schedule 1 process.

If HTST were to have to proceed with a Plan Change, even with a SPP (the most favourable process in terms of timing), it would likely take until at least somewhere near the end of 2024 for that process to be completed. It would, for example, take some 2-3 months for HTST to “reverse engineer” its FTCA consent work into a private plan change proposal. Even with the best will in the world, it would then take a further 2-3 months for HDC to resolve whether to adopt the plan change, and some further months for it to make any application for the SPP process to the Minister. We would then most likely be into the election period, and, as has happened previously with an SPP request, the Minister could be expected to pause in making any decision until after the election. In any event, MfE has advised previously that it can take some 6 months for the Minister to make a decision to put a SPP application into train. The SPP process (which necessarily involves notification, submissions, evidence exchange, a hearing, a Panel recommendation, and then the Minister’s decision on the recommendation) will itself likely take 9 months from start to finish.

It would only then be that HTST could start to seek resource consents, obtain them, and then complete detailed design and award contracts etc. The reality is that site works would be unlikely to commence until at least 2026. In comparison, HTST considers that it should obtain consent under the FTCA process in late 2023 (if referred), and could be commencing works in 2024.

Is a plan change needed

The intent of a plan change under the Hastings District Plan (including HPUDS) and in accordance with the policies set out in Section 3.1B of the Regional Policy Statement (RPS) is to ensure that growth management integrates long term land use, the infrastructure necessary to support growth and the ability to fund and supply the infrastructure in a timely and equitable manner.

A structure plan would be required to be prepared in accordance with POL UD10 of the RPS, that can meet the following (as relevant):

- Be prepared as a single plan for the whole of a greenfield growth area;
- Be prepared in accordance with the matters set out in POL UD12;
- Show indicative land uses, including:
 - principal roads and connections with the surrounding road network and relevant infrastructure and services;
 - land required for stormwater treatment, retention and drainage paths;
 - any land to be set aside for business activities, recreation, social infrastructure , environmental or landscape protection or enhancement, or set aside from development for any other reason; and
 - pedestrian walkways, cycleways, and potential public passenger transport routes both within and adjoining the area to be developed;
- Identify significant natural, cultural and historic or heritage features; and
- Identify existing strategic infrastructure.

All of these matters can, and will be, addressed in HTST's FTCA proposal. In particular:

- The entire Wairatahi greenfield growth area is in single landownership. That means that there are not multiple landowners that need to be guided by a structure a plan to ensure that services lined up and are integrated.
- Infrastructure issues are understood and appropriately and equitably sequenced and funded.
- All land required to deal with servicing like for instance stormwater, and also park land can be supplied on site.

HDC in its comments at page 9 and 10 has effectively confirmed this, stating that the Project meets most if not all of the components which would encourage its development for residential use.

In addition, the proposal for Wairatahi is in accordance with the HDC Flaxmere investment programme map. This specifically identifies between 400-500 dwellings on the site (18.5 dwellings per Ha gross). The current proposal allows for 475 Dwellings with no retirement village and 530 dwellings including a retirement village. In other words, what is proposed is in general accordance with the Council's own expectations.

To the extent that there might be some benefit in "stepping back" from the detail of a consent application and considering a structure plan with the key elements identified above, it would be

possible for any Order in Council to state that such a structure plan should be prepared as part of the information to support any application lodged with the EPA. It could even be attached to the land in a formal way through a consent notice, requiring that any future consent applications be in general accordance with that structure plan. This is something that the EPA could consider as part of the FTCA process.

HDC also appears to have misunderstood the nature of the Project/ consents being sought. It appears to think that the “intent of the application is to provide a development framework”, which will result, “upon purchase, [in] individual property owners need[ing] to seek condition variations to undertake what they wish to do and may normally be allowed under a residential zoning”. While some “flexibility” will be sought in the conditions to allow some flexibility in final typologies developed on each lot, HTST does not intend to sell vacant lots to individuals to develop themselves. That would be inefficient and would not result in the swift delivery of housing to the market. Affordability comes from scale, and it can be expected that much of the development will be modular, and with some prefabrication offsite. While seeking affordability, HTST also wants to ensure that what is developed is of a good consistent quality. HTST is likely to develop some of the development itself, as well as partnering with one or more build-partners, with some “superlots” potentially sold to developers to help bring housing to the market as quickly as possible. Contrary to HDC’s concept of efficiency, if a Plan Change were to proceed, then consents would likely be sought on a staged basis. Some area might in that scenario be provided to the market as vacant lots, with individual purchasers then able to make their own consent applications (or rely on any permitted activity standards). These approaches would require multiple consents, at different times, being much more inefficient than an overall consent as HTST is seeking under its FTCA application.

The short point is that all that a Plan Change would result in is unnecessary delay and cost (both to HTST, HDC, and the community), without any material (or any) benefit.

Other matters

Density and urban design

HDC has stated that the Proposal is “seeking to achieve a density (260 m² net per site) that far exceeds the current minimum expected in the adjoining Flaxmere General Residential Zone (500 m² net per site)”, the implication being that HTST is seeking too great a density of development. HDC’s analysis is somewhat misleading, as in the Flaxmere General Residential Zone a supplementary building of up to 80m² is allowed on each site. This means, using standard assumptions of 70% utilisation and 75% efficiency that over 550 dwellings could be delivered on the site under the Flaxmere General Residential Zone, if that zone were to be applied. As also noted earlier, the Council’s own Flaxmere investment plan identified 400-500 dwellings for the site. HDC’s earlier work with Isthmus also envisaged up to 451 dwellings onsite, in alignment with the Hastings Residential Intensification Guide. It is also noted that HDC’s own Flaxmere town centre development project includes housing at a greater density than the currently allowed minimum lot size, based on its own Hastings Residential Intensification Guide.

HTST rejects any suggestion or inference that it is chasing yield or otherwise seeking to maximise its commercial return. It is wanting to achieve a high quality urban environment, that delivers affordable housing by design, and has developed its Proposal with considerable expert assistance (Planning, Urban Design, Economic/Social, Ecological, Acoustic, Traffic, Geotechnical, and more). The result is an application that:

- a. Delivers a simple but highly functional urban pattern;
- b. Ensures a high level of connectivity and amenity;

- c. Optimises CPTED responses;
- d. Maximises affordable-by-design housing; and
- e. Provides significant riparian and stormwater management areas (the latter generally being available for recreational use) of some 6.6ha (or 23% of the site), and a central common reserve that in the latest design will exceed 2,000m² in area (as sought by HDC).

Forward progress

We understand that the Minister may request further information, following comments received. If the Minister does have any further concerns that HTST can assist with, particularly in light of any comments received from HDC, we would be happy to assist (for example on any of the planning or urban design matters that the Minister may wish to understand better).

Otherwise, HTST looks forward to a positive decision by the Minister in respect of its application for referral. It reiterates its current commitment to continue to work with HDC in good faith in respect of its Proposal, and anticipates that all most, if not all, of HDC's detailed comments will be able to be resolved at further stages of the process, should the Project be referred.

Ngā mihi



Marcus Hill
Authorised representative for HTST