

FTC#232 Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decisions:

Application 2022-133 Wairau Housing Development Project

Date submitted:	16 May 2023	Tracking #: BRF-2941	
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. Wairau Housing Development Project application 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 Hāpai Development Property Limited Partnership 5. Section 17 Report (Databox link) 6. Comments received from Ministers and Marlborough District Council (Databox link)

Ministry for the Environment contacts

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

FTC#232: 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 Hāpai Development Property Limited Partnership to refer the Wairau Housing Development 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-2849) with your initial decisions annotated is in Appendix 2.
3. The project is to subdivide an approximately 4.5-hectare site located adjacent to Wairau Hospital on Hospital Road, Blenheim and construct approximately 105 residential units and supporting infrastructure including roads and reserves intended to vest with Marlborough District Council, accessways, car-parking areas and three-waters services.
4. The project will involve activities such as:
 - a. subdividing land
 - b. demolishing buildings and structures
 - c. removing vegetation
 - d. carrying out earthworks
 - e. discharging stormwater onto land
 - f. constructing residential units
 - g. landscaping and planting of open space
 - h. constructing or installing structures and infrastructure associated with the development, including roads and accessways, and infrastructure for three waters services.
 - i. any other activities that are:
 - i. associated with the activities described in a to h; and
 - ii. within the project scope as described in paragraph 3.
5. The project will require subdivision and land use consents under the Proposed Marlborough Environment Plan (PMEP) and resource consent under the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS).
6. The project site is located in the Urban Residential 2 zone, with fully operative provisions, under the PMEP. The proposed activities would have overall discretionary activity status.
7. The project site is owned by the Crown. The applicant and Te Runanga a Rangitane o Wairau are working with Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development (MHUD) on the purchase and development of the project site. The applicant has provided a letter in support of the referral application from MHUD.
8. No parties invited to comment opposed project referral.
9. 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 a panel, and notification of your decisions.

Assessment against statutory framework

10. 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.
11. 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 Marlborough District Council (MDC) (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.
12. 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

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

Section 17 report

14. The Section 17 report identifies six iwi authorities, three Treaty settlements and seven Treaty settlement entities relevant to the project area.
15. No specific cultural or commercial redress provided under the settlements would be affected by the project. The relevant Treaty settlements do not create any new co-governance or co-management processes that would affect decision-making under the Resource Management Act 1991 (RMA) for the project.

Comments received

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

18. s 9(2)(f)(ii), s 9(2)(g)(i)

19. s 9(2)(f)(ii), s 9(2)(g)(i)

20. s 9(2)(f)(ii), s 9(2)(g)(i)


s 9(2)(f)(ii), s 9(2)(g)(i)

21. s 9(2)(f)(ii), s 9(2)(g)(i)

22. MDC supported project referral but noted the proposed development may conflict with PMEP policies seeking a lower density of housing in the Urban Residential 2 zone.

Section 18 referral criteria

23. 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)).

24. The project does not include any ineligible activities, 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 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 219 direct full-time equivalent jobs over a 5-year design and construction period
- b. increase housing supply through the construction of approximately 105 residential units
- c. progress faster than would otherwise be the case under standard RMA process

26. 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

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 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.

29. Section 23(5)(b) of the FTCA enables you to decline a project if it is more appropriate for the project to go through standard RMA consenting processes.

30. 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, particularly due to the residential density proposed. The site is zoned Urban Residential 2 under the PMEP, and the proposal would be a Discretionary Activity and MDC noted that the project seem to conflict with the current policies for this zone (such as Policy 12.1.3 which seeks to maintain a lower density living with fewer multi-level storied buildings or apartment and with larger lot sizes). However, we note MDC supported project referral and 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 a

panel may therefore seek comments as widely as considered necessary or appropriate for the project.

31. We consider a panel will be best placed to assess the project's effects, including effects associated with the proposed level of density, with the benefit of a complete resource consent application.
32. 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)).
33. Section 23(5)(g) enables you to decline a project if there is insufficient time for the application to be referred and considered before the FTCA is repealed. 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)).

Conclusions

34. 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.
35. If you decide to refer the project, we do not consider that you need to specify any additional information that the applicant must submit to a panel under section 24(2)(d) of the FTCA. Our reasons are detailed in Table A.
36. 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 the following parties:
 - a. Ngāti Tama ki Te Waipounamu Trust
 - b. Ngāti Apa ki Te Rā Tō Post-Settlement Trust
 - c. Ngāti Apa ki Te Rā Tō Charitable Trust

Next steps

37. 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 Ngāti Tama ki Te Waipounamu Trust, Ngāti Apa ki Te Rā Tō Post-Settlement Trust and Ngāti Apa ki Te Rā Tō Charitable Trust.
38. 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.
39. We have attached a notice of decisions letter to the applicant based on our recommendations (refer Appendix 4). Once you have signed the letter we will assist your office to copy it to all relevant parties.
40. 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

41. 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.
42. 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 Hāpai Development Property Limited Partnership unless you are satisfied that the Wairau Housing Development 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 219 direct full-time equivalent jobs over a 5-year design and construction period
 - ii. increase housing supply through the construction of approximately 105 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. Ngāti Tama ki Te Waipounamu Trust
- ii. Ngāti Apa ki Te Rā Tō Post-Settlement Trust
- iii. Ngāti Apa ki Te Rā Tō Charitable Trust

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. Ngāti Tama ki Te Waipounamu Trust
- ii. Ngāti Apa ki Te Rā Tō Post-Settlement Trust
- iii. Ngāti Apa ki Te Rā Tō Charitable Trust

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

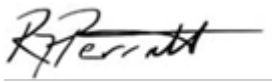
l. **Sign** the notice of decisions letter to the applicant (attached in Appendix 4).

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
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 Wairau Housing Development Project Applicant Hāpai Development Property Limited Partnership c/- Remac Consulting Location 46 Hospital Road, Blenheim (Lot 9 DP 527731) and Hospital Road, Blenheim (Lot 10 DP 527731)	The project is to subdivide an approximately 4.5-hectare site located adjacent to Wairau Hospital on Hospital Road, Blenheim and construct approximately 105 residential units and supporting infrastructure including roads and reserves intended to vest with Marlborough District Council, accessways, car-parking areas and three-waters services. The project will involve activities such as: - subdividing land - demolishing buildings and structures - removing vegetation - carrying out earthworks - discharging stormwater onto land - constructing residential units - landscaping and planting of open space - constructing or installing structures and infrastructure associated with the development, including roads and accessways, and infrastructure for three waters services. - any other activities that are:	The project is eligible for referral 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)) Based on the information provided by the applicant we consider the project may result in the following economic benefits: - provide approximately 219 direct full-time equivalent jobs over a 5-year design and construction period - contribute approximately 1.6-\$2.2 million to GDP 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 project has the potential for positive effects on the social wellbeing of current and future generations as it will: - generate employment by providing approximately 219 direct FTE jobs over a 5-year design and construction period - increase housing supply through the construction of approximately 105 residential units The applicant is formally representing the interests of Rangitāne o Wairau and Te Tau Ihu iwi for the project, and has formal agreements in place with Rangitāne o Wairau, Ngāti Rārua, Ngāti Tama, Ngāti Kuia, Ngāti Koata, and Te Ātiawa o Te Waka-a-Māui. 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 9-12 months faster than under standard Resource Management Act 1991 (RMA) process due to the likelihood of public notification.	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 MDC supported project referral and noted the FTCA would be the best option for the proposal to be processed under. MDC noted the proposed development may conflict with PMEP policies seeking a lower density of housing in the Urban Residential 2 zone. MDC identified a number of reports and assessments that would normally be required for a project of this type. All responses received by parties invited to comment are attached in Appendix 6.	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 due to the residential density proposed. However, we note MDC supported project referral and 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). We consider a panel will be best placed to assess the project's effects with the benefit of a complete resource consent application. 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: - s 9(2)(f)(ii), s 9(2)(g)(i) - s 9(2)(f)(ii), s 9(2)(g)(i) - We note MDC's comments identified a number of reports and assessments which would normally be required for a project of this type. We consider these are generally covered by the requirements of clause 9 of schedule 6 of the FTCA, and therefore we do not consider it is necessary to direct the applicant to provide these assessments. There are no significant reasons to decline to refer the project. We recommend you accept the application under section 24 of the FTCA and refer all of the project to a panel. 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: - Ngāti Tama ki Te Waipounamu Trust

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)?			
	i. associated with the activities described in a to h; and ii. within the project scope as described above. The project will require subdivision and land use consents under the Proposed Marlborough Environment Plan (PMEP) and resource consent under the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (NES-CS).		Will the project result in a public benefit? (19(d)) Based on the information provided by the applicant, we consider the project may result in the following public benefits: • generating employment • increasing housing supply Potential to have significant adverse environmental effects, including greenhouse-gas emissions (19(e)) The applicant considers the project will not have any significant adverse effects. We consider the project has the potential for adverse environmental effects including: • earthworks and construction effects (including traffic, noise, vibration, sedimentation) • access and traffic effects • visual, character and amenity effects relating to development density • potential reverse sensitivity effects The application details that preliminary technical assessments in support of their view that the project will not have any significant adverse effects have been completed. 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. Other relevant matters (19(f)) • N/A		MDC has not raised concerns to indicate the applicant has a poor history of environmental regulatory compliance. Insufficient time for the project to be referred and considered before FTCA is repealed (23(5)(g)) 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. 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. Other issues and risks: • N/A	• Ngāti Apa ki Te Rā Tō Post-Settlement Trust • Ngāti Apa ki Te Rā Tō Charitable Trust