

FTC#45 Application for referred project under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decision on:

Application 2020-031 – Summerset Retirement Village - Waikanae

Date Submitted:	4 March 2021	Tracking #: 2021-B-07584
Security Level	In-Confidence	MfE Priority: Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Decision	TBA

Actions for Minister's Office Staff	Return the signed briefing to MfE.
Number of appendices and attachments	<p>Titles of appendices and attachments (ie, separate attached documents):</p> <ol style="list-style-type: none"> 1. Summerset Retirement Village application and further information received 2. Stage 1 Briefing Note and Decision 3. Statutory Framework for making decisions 4. Draft Notice of Decision Letter to Summerset Villages (Waikanae) Limited 5. Section 17 Report 6. Comments received from Ministers, Local Authorities and Waka Kotahi New Zealand Transport Agency

Ministry for the Environment contacts

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FTC#45: Application for referred projects under the COVID-19 Recovery (Fast-track Consenting) Act – Stage 2 decision

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 Summerset Villages (Waikanae) Limited for referral of Summerset Retirement Village – Waikanae (the Project). A copy of the application is included in Appendix 1.
2. We seek your decision on whether the Project should be referred to an expert consenting panel (a panel). This is the second briefing relating to this application. A copy of the first briefing (2020-B-07332) is included in Appendix 2.
3. The Project involves the construction and operation of a retirement village, and associated facilities in Waikanae. This project will result in the construction of 217 residential units, 120 assisted living units and recreational, healthcare and retail facilities.
4. We recommend you accept the application for referral under section 24 of the FTCA and refer it to a panel for fast-tracking.

Statutory Framework Summary

5. The statutory framework for making your decision is set out in Appendix 3. You must apply this framework when you are deciding to accept all or part of the Project for referral to a panel. You may accept referral of the Project if you are satisfied that it meets the referral criteria in section 18, including whether it will help to achieve the purpose of the FTCA.
6. 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.

Analysis

Issues and Risks

Potential adverse effects on natural wetlands

7. The Project involves:
 - a. damming and diversion of water into natural wetlands
 - b. earthworks within 10 m of a natural wetland.
8. The natural wetlands affected by this Project are classified as significant natural wetlands in the Greater Wellington Proposed Natural Resources Plan (GWPNRP). Greater Wellington Regional Council (GWRC) states that the wetlands support irreplaceable threatened ecosystems and they are concerned the discharge of water into them could have significant adverse effects.
9. The applicant has applied to GWRC to consent the activities. The application is currently on hold at the applicant's request. GWRC advises that the application will be publicly notified as the applicant did not provide information quantifying the proposed changes to the wetland hydrology and mitigation measures, and did not agree to GWRC commissioning a peer review of the effects of the stormwater.
10. The Project seeks to avoid direct effects on the wetlands by sizing and shaping the

stormwater basins avoiding all direct physical effects and to mimic, as far as possible, the current stormwater inflows to the wetlands. A monitoring regime is proposed, and in the event that the wetlands were adversely affected, remedial works are proposed such as supplementary planting of wetland species that are more tolerant of hydrology changes. The applicant advises that the likelihood of such an eventuality is considered to be low, and that the adverse effects on the wetlands can be mitigated.

11. The National Policy Statement for Freshwater Management 2020 (NPSFM) is relevant to the Project, specifically Policy 6 of the NPSFM which states that there is no further loss of extent of natural inland wetlands, the values of the wetlands are protected, and restoration promoted.
12. The National Environmental Standard for Freshwater (NESF) does not prohibit the discharge of water into wetlands or earthworks close to them but imposes a non-complying activity status.
13. The GWPNRP sets out a framework to protect and enhance significant natural wetlands while recognising that development will have adverse impacts. The diversion of water into wetlands is classified as a non-complying activity indicating this activity has the potential to have significant adverse effects.
14. While the Project has the potential to have adverse effect on wetlands, we consider that if sufficient information is included in any consent application lodged with the Environmental Protection Authority (EPA) a panel could assess the effects of diverting stormwater into the wetlands and consider whether appropriate conditions could offset, remedy, or mitigate the effects.
15. If you accept this application for referral, we recommend that you direct the applicant to provide a report detailing an assessment of the Project's effects on natural wetlands and the mitigation methods. The applicant should also include with any consent application lodged with the EPA, an independent report peer reviewed by a suitably qualified expert jointly appointed by the applicant and GWRC.

Potential for more than minor effects on the neighbourhood during construction

16. The Project will involve earthworks and construction activities that will generate construction traffic, noise, and other adverse effects associated with large scale residential developments. Kāpiti Coast District Council (KCDC) has advised that these activities have the potential to have significant effects on neighbouring properties, and some of the local roads (Ferndale and Ngarara Road) that are not designed to accommodate construction traffic.
17. We consider that the above issues are typical of a large residential development and can be considered by a panel if the appropriate information is provided. If you accept this application for referral, we recommend you direct:
 - a. the applicant to provide an assessment of the effects of construction activities, including earthworks on neighbouring properties
 - b. the applicant to provide an assessment of the effect of the construction activities on the transport network, including local roads
 - c. a panel to invite comments from Ferndale Resident's Association and Park Road Resident's Association. These groups were recommended by KCDC and will ensure people local to the area that are not adjacent to the site can have their comments considered by a panel.

Loss of mahoe trees

18. This Project will involve the removal of mahoe trees (approximately 3.3 hectares) to create

space for the development to occur. The applicant notes that there are no alternative options and that they are proposing to offset the loss by planting two units of mahoe for every one unit of mahoe lost.

19. KCDC and GWRC did not raise this as an issue in their comments. The Minister for Land Information has stated this is a reason why they Project would be more appropriate to be consented through a standard RMA process.
20. We consider this issue can be considered by a panel who could place conditions in place to manage the offsetting of mahoe. We do not think it is necessary to direct the applicant to provide information on this as they will need to address it in the information requirements stated in the FTCA.

Our Advice

21. Before making your decision, you must consider the application and any further information provided by Summerset Villages (Waikanae) Limited (in Appendix 1), the Section 17 report (in Appendix 5), local authorities, Ministers' and Waka Kotahi NZ Transport Agency's comments (in Appendix 6).
22. A summary of our analysis and advice for this application is provided in Table A. We consider the Project meets the referral criteria in section 18 and will help achieve the purpose of the FTCA as it has the potential to:
 - a. create up to 30 FTEs in the first stage (earthworks) of the project and up to 270 in the second stage (construction) (section 19(d)(i))
 - b. provide housing for aged people in an area experiencing significant housing demand for people over the age of 65 (section 19(d)(ii))
 - c. provide investment into Kāpiti's aged care sector (section 19(a)).
23. Any adverse effects arising from the application and mitigation measures to be tested through a panel having regard to Part 2 of the Resource Management Act 1991(RMA) and the purpose of the FTCA.
24. We recommend you accept the application under section 24 of the FTCA and that the Project be referred to a panel.
25. We consider that directions should also be made to require the applicant to provide information in an application submitted to a panel under section 24(2)(d) of the FTCA to enable a Panel to better understand the effects of the Project on wetlands, neighbouring properties and the local transport network.
26. We consider that directions should also be made to specify groups from whom a panel must invite comments on a consent application under section 24(2)(e) of the FTCA for the following reasons:
 - a. Ferndale Resident's Association and Park Road Resident's Association. These groups were recommended by KCDC and will ensure people local to the area that are not adjacent to the site can have their comments considered by the Panel.
 - b. Capital and Coast District Health Board to ensure health matters are considered in a Panel's decision. We think this is an appropriate way to respond to the Minister for Senior's concerns (in Appendix 6)

Next Steps

27. After making your decision on the application, you must give notice of this decision, and the reasons for it, to the applicant and the persons, entities and groups listed in section 25 of the FTCA. We have attached a letter to the applicant based on our recommendations (refer Appendix 4). The Ministry will work with your office to give notice to the persons invited to comment on your behalf.
28. To refer the Project, you must recommend that a referral order be made by way of an Order in Council (OIC).
29. 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

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** 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 should consider under section 19 whether it would result in a public benefit (such as generating employment and economic benefits 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. decline the application for any reason under section 23(2) of the FTCA
 - ii. refer all or part of the Project to an expert consenting panel
 - iii. refer the initial stages of the Project to a panel while deferring decisions about the Project's remaining stages.
- 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 an expert consenting 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 Summerset Retirement Village - Waikanae Project meets the referral criteria in section 18 of the FTCA.

Yes/No

- g. **Agree** the Summerset Retirement Village - Waikanae Project will help achieve the purpose of the FTCA as it has the potential to:
 - i. create up to 30 FTEs in the first stage (earthworks) of the Project and up to 270 in the second stage (construction) (section 19(d)(i))
 - ii. provide housing for aged people in an area experiencing significant housing demand for people over the age of 65 (section 19(d)(ii))
 - iii. provide investment into Kāpiti's aged care sector (section 19(a))

Yes/No

- h. **Agree** to refer all of the Summerset Villages Waikanae project to an expert consenting panel.

Yes/No

- i. **Agree** that for the purposes of clause 9(6)(c) of Schedule 6 of the FTCA the applicants are required to include the following information in any consent application lodged with the EPA:

- i. a report assessing the effects of diverting stormwater into the wetlands, any changes to wetland hydrology, and any mitigation methods. This report must be peer reviewed by a suitably qualified person jointly appointed by the applicant and GWRC and the comments of that review provided to a panel
- ii. an assessment of the effects of construction activities, including earthworks on neighbouring properties
- iii. an assessment of the effect of the construction activities on the transport network, including local roads
- iv. an Earthworks and Sediment Control Assessment
- v. an Infrastructure Assessment and Stormwater Management Plan
- vi. a Geotechnical Assessment

Yes/No

- j. **Agree** that an expert consenting panel be required to invite comments from the following additional persons or groups under section 24(2)(e) of the FTCA:

- i. Ferndale Residents' Association
- ii. Park Road Residents' Association
- iii. Capital and Coast District Health Board

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 Summerset Retirement Village – Waikanae Project to an expert consenting panel in accordance with your decisions recorded herein.

Yes/No

- l. **Sign the attached (Appendix 4)** notice of decision to Summerset Villages (Waikanae) Limited.

Yes/No

- m. **Note** that the Ministry for the Environment is required to publish the decision, the reasons, and the section 17 report on the Ministry for the Environment's website as required by section 25(3) of the FTCA.

Signatures



Sara Clarke

Manager – Fast Track Consenting

Date 4 March 2021

Hon David Parker

Minister for the Environment

Date

Table A: Stage 2 - Project Summary Analysis

[illegible]

Project details	Project description	Does all or part of the Project meet the referral criteria in section 18?		Summary of comments received	Does the Project help achieve the purpose of the FTCA (section 19)?	Section 24 assessment
		Project eligibility for referral (section 18(3a - d))	Section 17 report – summary of key findings			
	<ul style="list-style-type: none"> establishment of supporting infrastructure (roading, pedestrian linkages, parking, water, wastewater, stormwater including stormwater ponds) establishment of signs to identify and promote the village and other associated works within the scope of the Project. <p>The applicant will require land use consents and water and discharge permits.</p>			<p>s 9(2)(f)(ii), s 9(2)(g)(i)</p> <p>Local authorities Kapiti Coast District Council (KCDC) thinks that either the FTCA or RMA are appropriate for this Project provided that the views of the people that may be affected are taken into account. They do note that they are currently processing the consent for this Project but have not made any notification decisions.</p> <p>They state this Project will provide employment and housing for aged people and note there is significant housing demand for people over 65 in the district.</p> <p>They noted the Project earthworks and construction activities have the potential to have more than minor effects on neighbouring properties and the transport network, including two roads (Ferndale and Ngarara) that are not appropriate for construction traffic. They do note these issues can be resolved through consultation and traffic management plans.</p> <p>They provided a list of information they have received for this Project that should be included in an application if it is referred to a panel.</p> <p>Greater Wellington Regional Council (GWRC) does not support this Project progressing through the fast track process.</p> <p>In their comments GWRC states that it is currently processing a resource consent application for this Project. They have concerns about the Project's effect on natural wetlands and have requested further information from the applicant on this. As they are not satisfied with the information received, they have recommended the application be publicly notified. This recommendation has not yet been acted upon. Notification has not yet occurred as the applicant has asked the process to be put on hold pending a decision by you to fast track the Project.</p>	<ul style="list-style-type: none"> Mahoe forest that is being removed, with some offset increase in traffic from construction and the development once it is operational impacts on landscape and visual amenity construction effects including erosion and sedimentation, dust, noise and vibration. increase in demand on water, wastewater and stormwater services effects on the ground stability of the site <p>Any potential adverse effects arising from the Project and mitigation measures can be tested through the expert consenting panel having regard to Part 2 of the RMA and the purpose of the FTCA.</p>	<p>We recommend that you direct a panel to seek comment from the following persons under section 24(2)(e) of the FTCA:</p> <ul style="list-style-type: none"> Capital and Coast District Health Board Ferndale Resident's Association Park Road Resident's Association

Project details	Project description	Does all or part of the Project meet the referral criteria in section 18?		Summary of comments received	Does the Project help achieve the purpose of the FTCA (section 19)?	Section 24 assessment
		Project eligibility for referral (section 18(3a - d))	Section 17 report – summary of key findings			
				<p>They state that the natural wetlands that will be affected by this Project are classified as significant natural wetlands in the Greater Wellington proposed Natural Resources Plan. GWRC has stated that these wetlands support threatened ecosystems that are not replaced and GWRC are concerned the discharge of water into them will have significant adverse effects.</p> <p>Waka Kotahi NZ Transport Agency Waka Kotahi have stated that they have been engaging with the applicant on the Project for the past year. They note they Project will have impacts on the Kāpiti expressway.</p> <p>Waka Kotahi think these issues can be resolved by a panel if this Project is referred provided that they and the applicant agree on a set of conditions and resolve existing property issues.</p> <p>They have acknowledged that the applicant has removed a sign that was a concern for them.</p> <p>They have asked to be invited to provide comments to a panel if this Project is referred.</p> <p>All responses received by parties invited to comment are attached at Appendix 6.</p>		

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Schedule of Appendices and Attachments

Appendix 1 – Summerset Villages Waikanae – Application form and Additional Information Received

Appendix 2 – 2020-B-07332 FTC34 – Application for referred project under the COVID-Recovery FTCA - Stage 1 decision on Summerset Villages Waikanae Application

Appendix 3 – Statutory Framework for making decisions

Appendix 4 – Draft Notice of Decision letter to Summerset Villages (Waikanae) Limited

Appendix 5 – Section 17 Report

Appendix 6 – Comments received from Ministers, Local Authorities and Waka Kotahi NZ Transport Agency

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