

In Confidence

Office of the Minister for the Environment

Cabinet

Minor amendment to Schedule 87 (Summerset Rotorua Project) of the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020

Proposal

1. This paper seeks approval to make a minor amendment to Schedule 87 (Summerset Rotorua Project) (the Project) of the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020 (the Order) to include a missing reference to an unformed legal road and railway corridor which the Project requires for stormwater conveyance.

Background

2. The COVID-19 Recovery (Fast-track Consenting) Act 2020 (FTCA) was one of the Government's temporary actions to support New Zealand's economic recovery from COVID-19. The FTCA enabled any person to apply to the Minister for the Environment to fast-track certain approvals required by the Resource Management Act 1991 (RMA) for their project.
3. Projects that were accepted were referred to an expert consenting panel by an amendment to the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020, subject to Cabinet's agreement. This allowed an applicant to lodge resource consent applications and/or notices of requirement for a designation with the Environmental Protection Authority (EPA) for consideration by a panel.
4. The former Minister for the Environment, Hon David Parker (the Minister) received an application by Summerset Villages (Rotorua) Limited (SVRL) for the Project. On 30 May 2023, the Minister issued a Notice of Decision (NOD) accepting the Project for referral. The NOD was subsequently given effect through an amendment to the Order (Schedule 87) which was gazetted on 12 June 2023.
5. SVRL have since advised that Schedule 87 of the Order does not include reference to an unformed legal road and area of the railway corridor which forms part of the Project site, and which will be required for the Project as a location for proposed stormwater works.
6. SVRL's original application included reference to the use of the unformed legal road and rail corridor as part of the project, but inclusion of the unformed legal road and rail corridor were omitted from the approximate geographic location of the project in the Order.

Statutory prerequisites

7. The statutory pre-requisites for making an amendment under section 27(4)(b) of the FTCA are as follows: first, a referral order must have been made on the recommendation of the Minister, in accordance with section 27(2), and must give effect to the Minister's decisions under section 24. Secondly, the amendment to the referral order can only be made by Order in Council, and it must be specifically for the purpose of correcting a minor error or omission.
8. Importantly, when an order is made under Section 27(4)(b) of the COVID-19 Recovery (Fast-track Consenting) Act 2020, no application is required to be made or considered under Subpart 1, Part 2 and the amendment need not comply with the requirements set out in Schedule 3 of that Act.
9. The FTCA was repealed on 8 July 2023. Schedule 1, Section 1(4) provides that an (OIC) made under the Act may, despite its revocation, be amended after the date of revocation as if it were still in force. This only applies for the purposes of Section 1(2), which states that any OIC remains in force for 'the purpose of completing any matter commenced under the Act before it's repeal'.
10. Considering these provisions together, the OIC may be amended provided the amendment is for the purpose of completing a matter commenced under the Act before its repeal. Because Summerset's application for referral under the Act was made on 25 November 2022 and the Act was repealed on 8 July 2023, the amendment is for the purpose of completing the referral application and the OIC may be validly amended despite the repeal of the Act.

Proposal to amend the Order under s 27(4)(b) of the FTCA

11. As noted above, the former Minister for the Environment decided under section 24 of the Act to refer the project to an expert consenting panel and recommended that a referral order be made under section 27. I propose that the Order be amended under section 27(4)(b) to correct a minor omission in the geographical scope of the Order, ensuring that it aligns with the original decision to accept the Project's application for referral.
12. The proposed amendment constitutes a correction of a minor error or omission. The original referral application, which was referred to the expert consenting panel, had anticipated that the geographical scope of the Order would include both the unformed legal road and the rail corridor. However, the relevant Cabinet Paper and Cabinet Minute from the original decision inadvertently omitted these areas from the geographic description of the Order. Specifically, the unformed legal road, as shown in the attached survey plan (ID R22420480) and Gazette dated 6 July 1922 (Appendix 1), and the rail corridor between the Project site and Parawai Road were excluded. This omission is considered a minor error, and the amendment seeks to correct it, ensuring that the geographic scope accurately reflects the original intention. These factors demonstrate that the amendment meets the criteria outlined in section 27(4)(b).
13. As Minister for the Environment, I authorised this amendment, under the Cabinet Manual, as a minor and technical amendment, consistent with existing policy decisions, and directed officials to instruct the Parliamentary Counsel Office to draft the amendment without reference to Cabinet.
14. The expert consenting panel received legal advice that suggests the Panel's jurisdiction is limited by the Order's scope and geographical location, and since

proposed activities on the unformed legal road and rail corridor likely fall outside the Order's scope, the applicant may need to amend the application or request a suspension to apply for an amended referral order. There are no broader implications for the Project arising from this proposed amendment.

Timing and 28-day rule

15. Cabinet previously agreed to waive the 28-day rule for Orders in Council related to projects referred to a panel. However, I understand that this waiver is no longer applicable. Therefore, I request that Cabinet waive the 28-day rule for this Amendment Order, as it addresses a minor and technical matter necessary to facilitate the applicant's approval process by the expert consenting panel.
16. The Environmental Protection Authority has advised that the expert consenting panel's decision is due by 20 February 2025, or an extension may be needed to allow for additional expert caucusing. DPMC guidance suggests that a waiver of the 28-day rule is appropriate where a delay would undermine the purpose of the regulations. Without the waiver, the applicant's ability to obtain consent may be compromised, particularly if an extension to allow additional expert caucusing is not provided.
17. If the waiver is granted, the Order will come into force on 13 February 2025.

Compliance

18. The proposal to amend the referral order has met the statutory prerequisites set out in section 27(4)(b) and Section 27(2) of the COVID-19 Recovery (Fast-track Consenting) Act (FTCA). The proposed amendment constitutes a correction of a minor error or omission, as the original referral application had contemplated that the geographical scope of the Order would include both the unformed legal road and the rail corridor.
19. The Amendment Order complies with:
 - a. the principles of the Treaty of Waitangi
 - b. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993
 - c. the principles and guidelines set out in the Privacy Act 2020
 - d. relevant international standards and obligations
 - e. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

20. I do not consider that there are grounds for the Regulations Review Committee to draw this Order in Council to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel Office

21. The Amendment Order has been certified by the Parliamentary Counsel Office as being in order for submission:

- a. provided that is made on my recommendation and gives effect to decisions under section 24 of the Act in respect of the Summerset Rotorua Project; and
- b. provided that it makes an amendment to the Act that is of a kind referred to in section 27(4)(b) of the Act; and
- c. except that it will come into force on 13 February 2024, which is earlier than the 28th day after its certification in the *Gazette*.

Impact Analysis

Regulatory Impact Assessment

22. The Regulatory Impact Assessment (RIA) requirements for this proposal have been waived. Cabinet has agreed that a RIA is not required for Orders in Council relating to projects to be referred to a panel¹.

Climate Implications of Policy Assessment

23. The Climate Implications of Policy Assessment (CIPA) team at the Ministry for the Environment has been consulted and confirms that the CIPA requirements² do not apply to the projects.

Publicity

24. The Amendment Order will be available on the New Zealand Legislation website following its notification in the New Zealand Gazette.

Proactive release

25. I intend to proactively release this paper on the Ministry for the Environment's website subject to redactions as appropriate under the Official Information Act 1982.

Consultation

26. Consultation was completed at the time of the original decision and as this amendment is administrative in nature, no additional consultation is required.

Recommendations

The Minister for the Environment recommends that Cabinet:

- 1 **note** Section 27(4)(b) of the COVID-19 Recovery (Fast-track Consenting) Act 2020 allows a referral order to be amended by Order in Council to correct a minor error or omission
- 2 **note** that an amendment to clause 5 of Schedule 87 of the COVID-19 Recovery (Fast-track Consenting) Referred Projects Order 2020 is required to correct an omission in the approximate geographic location of the project
- 3 **note** that the Minister for the Environment authorised an amendment to clause 5 of Schedule 87 of the COVID-19 Recovery (Fast-track Consenting) Referred Projects

¹ ENV-20-MIN-0033 and CAB-20-MIN-0353 refer

² CO (20) 3 refers

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Order 2020 as a minor and technical amendment and directed officials to instruct the Parliamentary Counsel Office to draft the amendment without reference to Cabinet

- 4 **note** that the amendment complies with the statutory requirements of Section 27(4)(b) and Section 27(2)
- 5 **authorise** submission of the COVID-19 Recovery (Fast-track Consenting) Referred Projects (Summerset Rotorua) Amendment Order 2025, to the Executive Council
- 6 **note** that the COVID-19 Recovery (Fast-track Consenting) Referred Projects (Summerset Rotorua) Amendment Order 2025 come into force on 13 February 2025
- 7 **note** that a delay in publication of the COVID-19 Recovery (Fast-track Consenting) Referred Projects (Summerset Rotorua) Amendment Order 2025 may compromise the applicant's ability to obtain consent and undermine its purpose
- 8 **note** that a waiver of the 28-day rule is sought:
 - a. so that the regulations can come into force on 13 February 2025
 - b. on the grounds that delaying publication of the COVID-19 Recovery (Fast-track Consenting) Referred Projects (Summerset Rotorua) Amendment Order 2025 would undermine its purpose
- 9 **agree** to waive the 28-day rule so that the COVID-19 Recovery (Fast-track Consenting) Referred Projects (Summerset Rotorua) Amendment Order 2025 comes into force on 13 February 2025.

Authorised for lodgement

Hon Penny Simmonds

Minister for the Environment

Appendix 1 – Survey Plan and Gazette